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Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 546 Cape Town

7 December 2010

No. 33849

THE PRESIDENCY

No. 1172

7 December 2010

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

No. 11 of 2010: Sectional Titles Amendment Act, 2010.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 3 December 2010.)

ACT

To amend the Sectional Titles Act, 1986, so as to amend certain definitions; to redefine the boundaries between certain sections and common property; to regulate the substitution of bonds registered in respect of different pieces of land shown on the sectional plan; to provide for the issuing of certificates of real rights of extension and certificates of real rights of exclusive use areas at the opening of a sectional title register; to provide for the issuing of more than one certificate of real rights of extension and more than one certificate of real rights of exclusive use areas; to further regulate the cancellation of registered sectional plans; to provide for the issuing of a certificate of registered sectional title in respect of a fraction of an undivided share in a section; to provide for a notice to a mortgagee for consent to proposed extensions to a section in a scheme; to provide for the extension of a scheme by the addition of rights to exclusive use areas only; to provide for a right of extension of a scheme in respect of a building or buildings that already exist; to provide for the deletion of a provision pertaining to certain administrative expenses payable by a developer; to provide for the deletion of a superfluous reference to urban immovable property; to provide for the production of a certificate by a conveyancer regarding the payment of moneys in respect of the cession of real rights; to provide for a cession of real rights to exclusive use areas within a specific time for the benefit of owners of sections; to further provide for the vesting of rights to exclusive use areas where an owner ceases to be a member of a body corporate; to provide for the cancellation of exclusive use area rights with the written consent of the mortgagee and holder of a registered real right; to further provide for the regulation of consent of bondholders for the registration of servitudes; to provide for the payment of certain contributions by a developer towards the defrayal of certain rates and taxes and the maintenance of common property; to further provide for liability for payment of contributions where ownership in units changes; to provide for the levying of special contributions by the trustees of a body corporate; to provide for the use of exclusive use areas for purposes depicted on the registered sectional plan only; to substitute obsolete references; to delete and amend certain incompatible provisions no longer applicable; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 95 of 1986, as amended by section 1 of Act 63 of 1991, section 1 of Act 7 of 1992, section 1 of Act 15 of 1993, section 1 of Act 44 of 1997, Proclamation R9 of 31 January 1997; section 1 of Act 29 of 2003, section 1 of Act 7 of 2005 and section 1 of Act 6 of 2006

1. Section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986) (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the definition of “**developer**” of the following paragraph:
 “(a) for the purposes of sections 4(3), 10 and 15B(3)(c), also the agent of any such person or his or her successor in title, or any other person acting on behalf of any of them; and”;
- (b) by the substitution in subsection (1) for the definition of “**Minister**” of the following definition:
 “ “**Minister**” means the Minister of [Land Affairs] Rural Development and Land Reform;”;
- (c) by the substitution in subsection (1) for paragraph (a) of the definition of “**owner**” of the following paragraph:
 “(a) immovable property, subject to paragraph (b), the person registered as owner or holder thereof and includes the trustee in an insolvent estate, [a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act 28 of 1966),] the liquidator of a company or close corporation which is an owner, and the executor of an owner who has died, or the representative, recognised by law, of an owner who is a minor or of unsound mind or is otherwise under a disability, if such trustee, liquidator, executor or representative is acting within the scope of his or her authority;” and
- (d) by the substitution for subsection (3A) of the following subsection:
 “(3A) If a body corporate is unable to obtain a unanimous resolution, it may [subject to] notwithstanding the provisions of subsection (3)(c), approach the court for relief.”.

Amendment of section 5 of Act 95 of 1986, as amended by section 3 of Act 63 of 1991, section 11 of Act 7 of 1992 and section 5 of Act 6 of 2006

2. Section 5 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

- “(a) by reference to the floors, walls and ceilings thereof, or as may be prescribed; Provided that any window, door or other structure which divides a section from another section or from common property, shall be considered to form part of such floor, wall or ceiling; and”.

Amendment of section 11 of Act 95 of 1986, as amended by section 5 of Act 63 of 1991, section 3 of Act 7 of 1992 and section 7 of Act 44 of 1997

3. Section 11 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
 “(d) any mortgage bond to which the land may be subject, together with the consent of the mortgagee to the opening of the sectional title register and to the endorsement of such bond to the effect that it attaches to—
 (i) the sections and common property shown on the sectional plan;
 (ii) the certificate or certificates of real right in respect of a right reserved [by him] in terms of section 25(1); and
 (iii) the certificate or certificates of real right in respect of a right of exclusive use as contemplated in section 27(1);
 Provided that [section 40 (5) of the Deeds Registries Act shall apply with the necessary changes to any bond which] where a bond is registered against one or more pieces of land shown on the sectional plan, all the land shown on the sectional plan may, upon

written application by the developer and with the written consent of the mortgagee, be substituted for the land originally mortgaged under the bond and if different pieces of land shown on the sectional plan are mortgaged under different bonds, the sectional plan may not be registered unless the bonds are cancelled.”; and

(b) by the insertion in subsection (3) after paragraph (fA) of the following paragraphs:

“(fB) the certificate or certificates of real right in respect of any right which has or have been reserved by him or her in terms of section 25(1);

(fC) the certificate or certificates of real right in respect of any right of exclusive use if a condition, as contemplated in section 27(1), has been imposed; and”.

Amendment of section 12 of Act 95 of 1986, as amended by section 6 of Act 63 of 1991

4. Section 12 of the principal Act is hereby amended by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs, respectively:

“(e) issue to the developer, in the prescribed form, a certificate or certificates of real right in respect of any reservation made [by him] in terms of section 25(1), subject to any mortgage bond registered against the title deed of the land;

(f) issue to the developer, in the prescribed form, a certificate or certificates of real right in respect of a right of exclusive use as contemplated in section 27(1), subject to any mortgage bond registered against the title deed of the land; and”.

Amendment of section 14 of Act 95 of 1986, as amended by section 8 of Act 63 of 1991 and section 4 of Act 7 of 1992

5. Section 14 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) A registered sectional plan shall, subject to the provisions of subsection (6) and [section] sections 17(6), 48 and 49, only be cancelled by an order of the Court, and the registrar shall give effect to any such cancellation by making the necessary endorsements and entries in his or her records, and shall notify the Surveyor-General, who shall cancel the original sectional plan and the deeds office copy thereof.”.

Amendment of section 15B of Act 95 of 1986, as amended by section 10 of Act 44 of 1997 and section 2 of Act 6 of 2006

6. Section 15B of the principal Act is hereby amended by the insertion of the following subsection after subsection (5):

“(5A) Subsection (5) shall apply, with the necessary changes, to any person who is the owner of a unit or the owner of a share in such unit and who contemplates obtaining a certificate of registered sectional title of any fraction of his or her undivided share in such unit.”.

Amendment of section 24 of Act 95 of 1986, as amended by section 14 of Act 63 of 1991, section 17 of Act 44 of 1997, section 5 of Act 29 of 2003 and section 2 of Act 7 of 2005

7. Section 24 of the principal Act is hereby amended—

(a) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) in the case of the floor area of the section in question being increased by the extension, a revised schedule, in substitution for the schedule referred to in section [7(2)(b)] 5(3)(g), reflecting the participation quotas of all the sections as modified after taking the increased floor area of the section in question into account.”;

- (b) by the substitution in subsection (6) for paragraph (d) of the following paragraph:
- “(d) any sectional mortgage bond to which the section may be subject, together with—
- (i) a certificate by a [conveyancer] land surveyor or architect stating that there is not a deviation of more than 10 per cent in the participation quota of [any] the relevant section as a result of the extension [,] ; or
 - (ii) if there is a deviation of more than 10 per cent, a certificate by a conveyancer stating that the mortgagee of each section in the scheme has consented to the registration of the sectional plan of extension of [a] that section; and”;
- (c) by the insertion of the following subsection after subsection 6:
- “(6A) The applicant must, if there is a deviation of more than 10 per cent as a result of the extension, send a notice by registered post to each mortgagee or where a mortgagee is a financial institution, to its headquarters, giving details of—
- (a) the mortgage bond;
 - (b) the mortgagor and the reference number of the mortgage loan (if any);
 - (c) the proposed extension in relation to its size and location; and
 - (d) the impact on the security of such mortgagee as to the diminution of the participation quota allocated to the mortgaged unit:
- Provided that if a response to the notice is not received by the applicant within 30 days of the date of the posting of the notice by registered post, it shall be deemed that the mortgagee does not have any objection to the proposed extension and that the mortgagee consents thereto.”.

Amendment of section 25 of Act 95 of 1986, as amended by section 15 of Act 63 of 1991, section 6 of Act 7 of 1992, section 18 of Act 44 of 1997, section 6 of Act 29 of 2003 and section 3 of Act 7 of 2005

8. Section 25 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:

“**Extension of schemes by addition of sections and exclusive use areas or by addition of exclusive use areas only**”;
 - (b) by the substitution for subsection (1) of the following subsection:

“(1) A developer may, subject to the provisions of section 4(2), in his or her application for the registration of a sectional plan, reserve, in a condition imposed in terms of section 11(2), the right to erect [and], complete or include from time to time, but within a period stipulated in such condition or such extended period as may be agreed upon by unanimous resolution of the body corporate and bondholders, from time to time prior to the expiry of the stipulated period, by way of a bilateral notarial deed, for his or her personal account—

 - (a) a [further] building or buildings;
 - (b) a horizontal extension of an existing building;
 - (c) a vertical extension of an existing building,

on a specified part of the common property, and to divide such building or buildings into a section or sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners of one or more sections, or to delineate exclusive use areas on or in specified parts of the land and buildings in terms of section 5(3)(f) and to confer the right of exclusive use over such areas upon the owner or owners of one or more sections.”;

- (c) by the substitution in subsection (2)(a) for the words preceding subparagraph (i) of the following words:
 “a plan to scale of the building or buildings [**to be erected and**] on which—”;
- (d) by the substitution in subsection (2) for paragraphs (b) and (d) of the following paragraphs, respectively: 5
 “(b) a plan to scale showing the manner in which the building or buildings [**to be erected**] are to be divided into a section or sections and [**any**] exclusive use areas or the manner in which the common property is to be made subject to the rights of exclusive use areas only;
 (d) particulars of any substantial difference between the materials to be used in the construction of the building or buildings [**to be erected**] and those used in the construction of the existing building or buildings;”;
- (e) by the deletion in subsection (2) of paragraph (e);
- (f) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
 “(a) shall for all purposes be deemed to be a right to [**urban**] immovable property which admits of being mortgaged; and”;
- (g) by the insertion of the following subsection after subsection (4): 20
 “(4A) The registrar may not register a cession of real right of extension or a portion or an undivided share therein, unless a certificate by a conveyancer is produced to the registrar confirming that, as at the date of registration— 25
 (a) if a body corporate is deemed to be established in terms of section 36(1), the body corporate has certified that all moneys due to the body corporate by the cedent in respect of the said real right have been paid, or that provision has been made to the satisfaction of the body corporate for the payment thereof; or 30
 (b) if a body corporate is not deemed to be established, no moneys are payable.”;
- (h) by the substitution for subsection (5) of the following subsection:
 “(5) A right reserved in terms of subsection (1) may be exercised by the developer or his or her successor in title thereto, even though the developer or his or her successor in title, as the case may be, has no other interest in the common property, by the addition of rights of exclusive use: Provided that the rights of exclusive use must be ceded within 12 months after their creation, either to the body corporate of the scheme or to one or more registered owners of a section or sections in the scheme.”;
- (i) by the substitution for subsection (9) of the following subsection:
 “(9) A developer or his or her successor in title to a right reserved in terms of subsection (1), or the body corporate in terms of subsection (6), as the case may be, may, after approval of a sectional plan of extension by the Surveyor-General in terms of this section, apply to the registrar for the registration of such plan of extension and the inclusion of the additional [**section or**] sections and exclusive use areas, or the inclusion of exclusive use areas only, in the relevant sectional title register.”;
- (j) by the substitution in subsection (10) for paragraph (d) of the following paragraph:
 “(d) certificates of registered sectional title in the prescribed form in favour of the developer, his or her successor in title or the body corporate, as the case may be, in respect of each section and a certificate of real right in respect of the rights of exclusive use reflected on the plan of extension.”;
- (k) by the substitution in subsection (10)(dA) for subparagraph (ii) of the following subparagraph:
 “(ii) the certificate of real right in respect of a right of exclusive use as contemplated by subsection (10)(c) and section 27(1); and”;
- (l) by the substitution in subsection (11) for paragraphs (b), (c) and (d) of the following paragraphs, respectively: 60

- “(b) extend the sectional title register to include the sections and exclusive use areas, as the case may be, depicted on the plan of extension;
- (c) simultaneously with the registration of the sectional plan of extension issue to the developer, his or her successor in title or the body corporate, as the case may be, a certificate of registered sectional title in respect of each section depicted on the sectional plan of extension and its undivided share in the common property, and a certificate of real right in respect of rights of exclusive use, subject to any mortgage bond registered against the title deed of the right of extension, furnish the local authority concerned with a copy of such plan of extension and notify the Surveyor-General of the registration of such plan of extension, and thereupon the Surveyor-General shall amend the original sectional plan and the deeds office copy of the sectional plan to reflect such extension; and
- (d) make such entries in his or her records and endorsements on the certificates of registered sectional title and certificates of real right in respect of rights of exclusive use referred to in [paragraphs] paragraph (c), any certificate of real right referred to in subsection (10)(c), and any sectional mortgage bond registered against the certificate of real right, as are necessary to give effect to this section.”; and
- (m) by the substitution for subsection (13) of the following subsection:
- “(13) A developer or his or her successor in title who exercises a reserved right referred to in subsection (1), or a body corporate exercising the right referred to in subsection (6), shall be obliged to erect and divide the building or buildings into sections and to delineate areas of the common property subject to rights of exclusive use strictly in accordance with the documents referred to in subsection (2), due regard being had to changed circumstances which would make strict compliance impracticable, and an owner of a unit in the scheme who is prejudiced by his or her failure to comply in this manner, may apply to the Court, whereupon the Court may order proper compliance with the terms of the reservation, or grant such other relief, including damages, as the Court may deem fit.”.

Amendment of section 27 of Act 95 of 1986, as amended by section 17 of Act 63 of 1991, section 20 of Act 44 of 1997, section 8 of Act 29 of 2003 and section 4 of Act 7 of 2005

9. Section 27 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) If a part or parts of common property is or are delineated on a sectional plan for a specific purpose in terms of section 5(3)(f), the developer [**may, for a specific purpose**] must, when making application for the opening of a sectional title register and the registration of the sectional plan, impose a condition in terms of section 11(2) in the schedule referred to in section 11(3)(b), by which the right to the exclusive use of such part or parts of the common property delineated for this purpose on the sectional plan, is conferred upon the owner or owners of one or more of the sections.”;
- (b) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
- “(b) If an owner ceases to be a member of the body corporate as contemplated in section 36(2), any right to an exclusive use area still registered in his or her name vests in the body corporate free from any mortgage bond or registered real right.”;
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) A right to the exclusive use of a part of the common property delineated on the sectional plan registered in favour of an owner of a section may with the written consent of the mortgagee of the [**relevant section**] exclusive use area and holder of a registered real right be

cancelled by the registration by the registrar of a notarial deed of cancellation entered into by the **[owner of the section entitled to]** holder of such right and the body corporate, duly authorized by a special resolution of its members, on behalf of all the owners of sections in the scheme.”; and

(d) by the substitution for subsection (6) of the following subsection:

“(6) A right to the exclusive use of a part of common property registered in favour of an owner of a section, shall for all purposes be deemed to be a right to **[urban]** immovable property over which a mortgage bond, lease contract or personal servitude of usufruct, *usus* or *habitatio* may be registered.”.

Amendment of section 29 of Act 95 of 1986

10. Section 29 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If the land to be burdened by a servitude or restrictive agreement is hypothecated, the written consent of every mortgagee, existing on the date of execution of the notarial deed, to the registration of such servitude or restrictive agreement shall before such registration be **[lodged with the registrar]** obtained by the notary public and filed in his or her protocol.”.

Amendment of section 37 of Act 95 of 1986, as amended by section 9 of Act 29 of 2003

11. Section 37 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) to require from a developer who is entitled to extend the scheme in terms of a right reserved in section 25(1), to make such reasonable additional contribution to the fund as may be necessary to defray the cost of rates and taxes, insurance and maintenance of the part or parts of the common property affected by the reservation, including a contribution for the provision of electricity and water and other expenses and costs in respect of and attributable to the relevant part or parts;”

(b) by the substitution for subsection (2) of the following subsection:

“(2) **[Any] Liability** for contributions levied under any provision of subsection (1), **[shall be due and payable on] save for special contributions contemplated by subsection (2A), accrues from the passing** of a resolution to that effect by the trustees of the body corporate, and may be recovered by the body corporate by action in any court (including any magistrate’s court) of competent jurisdiction from the persons who were owners of units, holders of exclusive use areas and holders of real rights of extension at the time when such resolution was passed: **Provided that upon the change of ownership of a unit, exclusive use areas and real rights of extension, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership.**”; and

(c) by the insertion of the following subsections after subsection (2):

“(2A) Any special contribution becomes due on the passing of a resolution in this regard by the trustees of the body corporate levying such contribution and may be recovered by the body corporate by action in any competent court (including any magistrate’s court) having jurisdiction, from the persons who were owners of units at the time when such resolution was passed.

(2B) ‘Special contribution’, for the purposes of this section, means any contribution levied under subsection (1) other than contributions which arise from the approval of the estimate of income and expenditure at an annual general meeting of a body corporate, determined to be a contribution to be levied upon the owners during the ensuing financial year.”.

Amendment of section 44 of Act 95 of 1986

12. Section 44 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) when the purpose for which a section or an exclusive use area is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section or exclusive use area to be used for any other purpose: Provided that with the written consent of all owners such section or exclusive use area may be used for another purpose.”. 5

Amendment of section 54 of Act 95 of 1986, as amended by section 22 of Act 63 of 1991, section 11 of Act 7 of 1992 and section 26 of Act 44 of 1997 10

13. Section 54 of the principal Act is hereby amended by the substitution in subsection (2)(c) for subparagraph (i) of the following subparagraph:

“(i) a conveyancer nominated by the Executive Council of the [Association of Law Societies of the Republic] Law Society of South Africa;”.

Amendment of section 60 of Act 95 of 1986, as amended by section 25 of Act 63 of 1991, section 4 of Act 15 of 1993 and section 28 of Act 44 of 1997 15

14. Section 60 of the principal Act is hereby amended—

(a) by the deletion of subsection (1);

(b) by the substitution for subsection (6) of the following subsection:

“(6) Rules decided on by unanimous resolution under the Sectional Titles Act, 1971, before the commencement date replacing rules contained in Schedule 1 to that Act, and at the said date not yet lodged with the registrar as contemplated in section 27(3) of that Act, [may be lodged within a period of six months after that date in terms of the said section as if that Act had not been repealed by section 59 of this Act, and shall where not so lodged within the said period,] shall lapse and be deemed in any such case to have been replaced, subject to addition, amendment or repeal as contemplated in section 35(2)(a) of this Act, by prescribed management rules contemplated in the last-mentioned section.”; and 20 25 30

(c) by the deletion of subsection (6A).

Amendment of section 60A of Act 95 of 1986

15. Section 60A of the principal Act is hereby amended—

(a) by the deletion of subsection (1); and

(b) by the substitution for subsection (6) of the following subsection: 35

“(6) Rules decided on by unanimous resolution under any law mentioned in Schedule 2 to the Proclamation before the commencement date replacing the rules contained in a schedule to such law, and at the said date not yet lodged with the registrar in terms of the provisions of such law, [may be lodged within a period of twelve months after that date in terms of the said law as if that law had not been repealed by the Proclamation, and shall, where not so lodged within the said period,] shall lapse and be deemed in any case to have been replaced, subject to addition, amendment or repeal as contemplated in section 35(2)(a) of this Act, by prescribed management rules contemplated in the last-mentioned section.”. 40 45

Short title

16. This Act is called the Sectional Titles Amendment Act, 2010.