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GENERAL NOTICE

NOTICE 1109 OF 2009

DEPARTMENT OF RURAL DEVELOPMENT AND LAND REFORM

PUBLICATION OF THE SECTIONAL TITLES AMENDMENT BILL, 2009, FOR GENERAL COMMENT

The Minister for Rural Development and Land Reform has approved the publication of the Sectional Titles Amendment Bill, 2009 in the Government Gazette for general comment. Comment must be submitted in writing within a period of 21 days from the date of publication hereof to:

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Chief Registrar of Deeds
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NS LEFAFA

CHIEF REGISTRAR OF DEEDS

REPUBLIC OF SOUTH AFRICA

SECTIONAL TITLES AMENDMENT BILL, 2009

*(As introduced in the National Assembly as a section 75 Bill; Bill published in
Government Gazette No. of)(The English text is the official text of the Bill)*

**(MINISTER FOR AGRICULTURE
AND LAND AFFAIRS)**

[B - 2009]

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.

BILL

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 piece 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 that 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 replace a reference to the former Association of Law Societies of the Republic of South Africa; 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, 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 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 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

- (c) 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 is registered against one or more pieces of land shown on the sectional plan];**”;

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

“(dA) if a bond is registered against one or more pieces of land shown on a sectional plan, upon written application by the developer and with the written consent of the mortgagee, all the land shown on the sectional plan may be substituted for the land originally mortgaged under the bond : Provided that, 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

- (c) 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 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-

- (a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(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;”; and

- (b) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(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) The provisions of subsection (5) shall apply, with the necessary changes, to any person who is the owner of a unit and who wants to obtain 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.”; and

- (b) by the substitution in subsection (6) for paragraph (d) of the following paragraph :

“(d)(i) any sectional mortgage bond to which the section may be subject, together with a certificate by a conveyancer stating that there is not a deviation of more than 10 per cent in the participation quota of any section as a result of the extension, or if there is a deviation of more than 10 per cent, that the mortgagee of each section in the scheme has consented to the registration of the sectional plan of extension of a section; and

- (ii) if there is a deviation of more than 10 per cent, a notice must be sent to each mortgagee by registered post by the applicant, citing details of the mortgage bond, the mortgagor and the reference number of the mortgage loan (if any), the proposed extension in relation to its size, location and 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, it shall be deemed that the mortgagee does not have any objection to the proposed extension and that the mortgagee consents thereto; and.”.

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 agreed upon between the members of the body corporate and registered bondholders, from time to time prior to the expiry of the stipulated period, which agreement must be entered into 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 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 for subsection (2) of the following subsection :

“(2) In the event of a reservation in terms of subsection (1), the application for the registration of the sectional plan shall, in addition to the documents referred to in section 11(3), be accompanied by –

(a) a plan to scale of the building or buildings **[to be erected]** and on which –

(i) the part of the common property affected by the reservation;

(ii) the siting, height and coverage of all buildings;

(iii) the entrances and exits to the land;

(iv) the building restriction areas, if any;

(v) the parking areas; and

(vi) the typical elevation treatment of all buildings,

are indicated;

(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;

(c) a schedule indicating the estimated participation quotas of all the sections in the scheme after such section or sections have been added to the scheme;

(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) particulars of such applicable expenses as are specified in section 37(1)(a), which will be borne by the developer from the date of establishment of the body corporate until the sectional plan of extension is registered;]

(f) the certificate of real right which is to be issued in terms of section 12(1)(e); and

(g) such other documents and particulars as may be prescribed.”;

(d) 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”;

(e) by the insertion of the following subsection after subsection (4) :

“(4A) The registrar shall not register a cession of real right of extension or a portion or an undivided share therein, unless a conveyancer’s certificate confirming that as at date of registration –

(a) if a body corporate is deemed to be established in terms of section 36(1), that 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

(b) if a body corporate is not deemed to be established, that no moneys are payable,

is produced to the registrar.”;

- (f) 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, subject to the provisions of section 27(4)(b) which shall apply only where a scheme is extended 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.”;

- (g) 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.”;

- (h) 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 such rights of exclusive use reflected on the plan of extension;”;

- (i) by the substitution in subsection (10) for paragraph (dA)(ii) of the following paragraph:

“(dA)(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”;

- (j) by the substitution for subsection (11) of the following subsection:

“(11) When the requirements of this section and of any other law have been complied with, the registrar shall –

- (a) register the sectional plan of extension;
- (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

- (k) 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, sections 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 27A of Act 95 of 1986

10. Section 27A of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) include a schedule indicating to which **[member]** owner each such part is allocated.”.

Amendment of section 29 of Act 95 of 1986

11. 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 be **[lodged with the registrar]** obtained by the notary 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

12. Section 37 of the principal Act is hereby amended -

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph :

“(b) (i) to require the owners, whenever necessary, to make contributions to such fund for the purposes of satisfying any claims against the body corporate : Provided that the body corporate shall require the owner or owners of a section or sections entitled to the right to the exclusive use of a part or parts of the common property, whether or

not such right is registered or conferred by rules made under the Sectional Titles Act, 1971 (Act 66 of 1971), to make such additional contribution to the fund as is estimated necessary to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water, unless in terms of the rules the owners concerned are responsible for such costs; and

- (ii) 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 is estimated 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;; and

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

"(2) **[Any]** Liability for contributions levied under any provision of subsection (1), save for special contributions contemplated by subsection (2A), shall [be due and payable on] accrue 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 at the time when such resolution was passed :Provided that upon the change of ownership of a unit, 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 shall be 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

13. 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."

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

14. Section 54 of the principal Act is hereby amended by the substitution in subsection (2) for subparagraph (i) of paragraph (c) 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. Section 60 of the principal Act is hereby amended –

- (a) by the deletion in subsection (1) of paragraph (a);
- (b) by the deletion in subsection (1) of paragraph (b);
- (c) 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,]** 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

- (d) by the deletion of subsection (6A).

Amendment of section 60A of Act 95 of 1986

16. Section 60A of the principal Act is hereby amended –

- (a) by the deletion in subsection (1) of paragraph (a);

- (b) by the deletion in subsection (1) of paragraph (b); and
- (c) by the substitution for subsection (6) of the following subsection :

“(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,]** 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.”.

Short title

17. This Act is called the Sectional Titles Amendment Act, 2009.

MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES AMENDMENT BILL, 2009

1. PURPOSE

The Sectional Titles Amendment Bill, 2009 (hereinafter referred to as "the Bill"), proposes certain amendments to the Sectional Titles Act, 1986 (Act No. 95 of 1986) (hereinafter referred to as "the Act").

2. OBJECTS OF THE BILL

2.1.1. The definition of "developer" provides, for purposes of sections 10 and 15B(3)(c), for the inclusion of an agent or his or her successor in title, or any other person acting on behalf of any of the above-mentioned persons, to act on behalf of a developer. However, the definition does not include the developer's agent or his or her successor in title in respect of the approval of development schemes, as contemplated in section 4 of the Act. Clause 1(a) of the Bill provides for the necessary inclusion.

2.1.2. The definition of "owner" still makes reference to the Agricultural Credit Act, 1966 (Act No. 28 of 1966), yet the said Act has been repealed by the Agricultural Debt Management, 2001 (Act No. 45 of 2001). Clause 1(b) of the Bill proposes the omission of such reference, so as to reflect the correct legal position.

2.1.3. Section 1(3A) provides for a body corporate to approach the Court for relief in instances where it is unable to obtain a unanimous resolution. However, section 1(3A) is made subject to the provisions of section 1(3)(c) which stipulates that where a resolution adversely affects the proprietary rights or powers of any member as owner, such resolution shall not be regarded as having been passed unless such member consents thereto in writing. By making section 1(3A) subject to section 1(3)(c), the opportunity remains for an unreasonable owner to hold the body corporate to ransom. The current wording creates an absurd situation whereby a Court's discretion

relating the question whether the "proprietary rights or powers of any member as an owner" have been affected is excluded. Clause 1(c) of the Bill proposes the amendment of section 1(3A) in order to remedy this absurdity.

2.2. The phrase "the median line of the dividing floor, wall or ceiling", used in section 5(4), stipulates the boundary of any section in a sectional title scheme. The said phrase suggests that in the absence of a contrary indication on the sectional plan the legal nature of any window, door or other structure, which fills an aperture in the exterior wall, floor or ceiling of a section, is determined by reference to that wall, floor or ceiling. It would be of considerable assistance to those who manage sectional title schemes if the Act is amended to provide that the median line of a section will always pass through the centre of exterior windows, doors and other structures built into the section's exterior walls, floors and ceilings. The amendment of section 5(5)(a), as proposed in clause 2 of the Bill, is necessary to provide in this regard.

2.3.1. Section 4(2) provides for a sectional title register to be opened in respect of more than one piece of land, without having to first consolidate such pieces of land. If any of such pieces of land is hypothecated under a registered mortgage bond, the proviso to section 11(3)(d)(iii) requires compliance with section 40(5) of the Deeds Registries Act, 1937 (Act No. 47 of 1937), with the necessary changes. However, the application of section 40(5)(a), with the necessary changes, causes grave confusion, especially with regard to the format and content of the application. The amendment of section 11(3)(d) and the insertion of section 11(3)(dA), as proposed in clauses 3(a) and 3(b) of the Bill, will eliminate the confusion created by the current wording.

2.3.2. Section 11 does not provide for the lodgement of certificates of real rights of extension and certificates of real rights of exclusive use areas, as contemplated in sections 25(1) and 27(1) of the Act, yet section 12 provides

for the issuing of the said certificates by the registrar of deeds. The proposed amendments in clause 3(c) of the Bill will rectify this anomaly.

2.4. Sections 12(1)(e) and 12(1)(f) provide for the issuing of one certificate of real right of extension and one certificate of real right of exclusive use areas as reserved by a developer in terms of sections 25(1) and 27(1) of the Act. This creates problems in instances where a real right of extension is subdivided and depicted on a plan. The amendment of sections 12(1)(e) and 12(1)(f), as proposed in clause 4(a) and 4(b) of the Bill, addresses the issue.

2.5. Section 14(8) makes provision for the cancellation of a registered sectional plan only by order of the Court. A registered sectional plan may, however, also be cancelled upon the destruction of or damage to buildings and upon the disposal on the destruction of buildings, as contemplated in sections 48 and 49, without the necessity of a Court Order. Clause 5 of the Bill seeks to make it clear that a Court Order is not necessary for the cancellation of a sectional plan where the buildings are damaged or destroyed.

2.6. Section 15B contains provisions with regard to the registration of the transfer of ownership and other rights in a deeds registry. However, it does not cater for the issuing of a certificate of registered sectional title in respect of a fraction of an undivided share in a unit in a sectional titles scheme. Clause 6 of the Bill provides in this regard.

2.7.1. Section 24(4) (b) contains reference to a schedule setting out participation quotas, as referred to in section 7(2)(b). However, section 7(2)(b) does not make reference to such schedule. The section that needs to be referred to in section 24(4)(b) is section 5(3)(g). Clause 7(a) of the Bill seeks to remedy the said defect.

2.7.2. Section 24(6)(d) requires the consent of every mortgagee in a scheme if the extension of a section would result in a deviation of more than 10 per cent in the participation quota of any section. The conveyancing fraternity

encounter practical difficulties in obtaining such consents. The amendment of section 24(6)(d), as proposed in clause 7(b) of the Bill, seeks to address this problem.

2.8.1. Section 25 provides for the extension of a scheme by the addition of sections and exclusive use areas. The extension of a scheme by the addition of exclusive use areas is only provided for where the addition of rights to exclusive use is incidental to or linked to the extension of the scheme by the creation of new sections in such scheme.

Section 25 does not provide for the extension of a scheme by the addition of rights to exclusive use only. Clauses 8(a), 8(b), 8(c), 8(f), 8(g), 8(h), 8(i), 8(j), 8(k) of the Bill, remedy this defect.

2.8.2. The Act does not provide for a mechanism to extend the period of time in which a right of extension in terms of section 25 must be exercised. The amendment of section 25(1) in clause 8(b) of the Bill caters in this regard.

2.8.3. Section 25(1) provides that a right of extension can only be reserved in respect of a right to erect and complete a further building or buildings or the horizontal or vertical extension of an existing building. However, the Act does not provide for the reservation of a right of extension in respect of a building or buildings that already exist. Clauses 8(b) and 8(c) provide in this regard.

2.8.4. Sections 25(4)(a) and 27(6) refer to "a right to urban immovable property". The Mutual Building Societies Act, 1965 (Act No. 24 of 1965), and the Building Societies Act, 1986 (Act No. 82 of 1986), which have since been repealed, limited loans on mortgages to urban immovable property. Loans for the acquisition of immovable property are regulated by the National Credit Act, 2005 (Act No. 34 of 2005). Whereas the latter Act in general deals with "immovable property", it is necessary, also for the sake of legal certainty, to reconcile the provisions of sections 25(4)(a) and 27(6) with the provisions of the National Credit Act, 2005. The proposed amendment in clauses 8(d) and 9(d) of the Bill seek to achieve this goal.

2.8.5. Section 15B(3)(a) relates only to money due to the body corporate in respect of a unit to be transferred and is silent with regard to money due to the body corporate in respect of an exclusive use area and a right to extend a scheme, as contemplated by section 25. This state of affairs is prejudicial to the body corporate as it makes the cession of exclusive use areas and rights of extension possible, without ensuring that moneys due to the body corporate by holders of such rights have been duly paid to the body corporate. The insertion of section 25(4A), as proposed in clause 8(e) of the Bill, remedies this defect.

2.9.1. Section 27(1) makes the registration of exclusive use areas depicted in a sectional plan optional. This creates an untenable situation whereby it is possible to partially register a sectional plan. The amendment proposed in clause 9(a) of the Bill, will render the registration of exclusive use areas depicted in a sectional plan obligatory and make it impossible to register a sectional plan partially.

2.9.2. Section 27(4)(b) provides for the vesting of an exclusive use area in the body corporate free from any mortgage bond. The Act, however, is silent with regard to the position of the holder of a registered lease or holder of a registered right to usufruct, habitatio or usus. The amendment of section 27(4)(b), as proposed in clause 9(b) of the Bill, provides for the vesting of an exclusive use area in the body corporate free from any mortgage bond, a registered lease, usufruct, habitatio or usus.

2.9.3. No provision is made in the Act for the consent by the holder of a registered usufruct, habitation, usus, or a lease to the cancellation of an exclusive use area. The amendment of section 27(5), in clause 9(c) of the Bill, remedies this defect.

2.10. Section 27A authorises a developer or body corporate to make rules, *inter alia*, including a schedule indicating the members to which a right of exclusive use and enjoyment of the common property are allocated. This implies that whenever ownership of a unit changes, the schedule should

change as well. Clause 10 of the Bill proposes the inclusion in the schedule of the owner of a unit in a sectional title scheme to which a right of exclusive use and enjoyment of the common property is allocated and thereby eliminates the need to amend the schedule whenever a unit changes hands.

2.11. Section 29(3) provides for the consent of every bondholder for the registration of a servitude or restrictive agreement over land in a sectional title scheme. New bonds are registered over sections and exclusive use areas on a daily basis and it becomes virtually impossible to get the consent of every such bondholder. Clause 11 of the Bill proposes the amendment of section 29(3) to make provision for the obtaining and filing, in the protocol of the notary, of the consent of bondholders that exist on the date of execution of such servitude or agreement. This will eliminate the problem and also facilitate and expedite the work of conveyancers and the registrar of deeds in this respect.

2.12.1. Section 37, to the detriment of the body corporate, does not oblige a developer to pay attributable costs in respect of areas of common property subject to future development rights as provided for in section 25. The amendment of section 37(1)(b), as proposed in clause 12(a) of the Bill, addresses this problem.

2.12.2. Section 37 provides for the levying of contributions. In terms of section 37(2) contributions so levied are due and payable on the passing of a resolution by the trustees of the body corporate and the persons who were owners of units at the time the resolution was passed, are liable for the payment thereof. The Act, however, does not regulate the payment of contributions where ownership has changed. The addition of the proviso to this subsection, as proposed in clause 12(b) of the Bill, seeks to give clarity on the question pertaining to the payment of contributions in cases where ownership of units has changed.

2.12.3. Section 37 does not provide for the levying of special contributions. Over the years the levying of special contributions by the trustees of bodies

corporate has, however, become a general established practice. The amendment proposed in clause 12(c) of the Bill merely confirms and legalises a situation that has existed for a considerable number of years.

2.13. Section 44(1)(g) provides for the use of a section as shown on a registered sectional plan. This section, however, does not deal with the use of an exclusive use area. This state of affairs has resulted in the use of exclusive use areas for purposes for which they could not have been intended, for example garages being used for residential purposes.

Clause 13 of the Bill seeks to include the regulation of the use of exclusive use areas for purposes shown on the registered sectional plan.

2.14. Clause 14 of the Bill proposes the amendment of section 54(2)(c)(i) of the Act, in order to provide for the change of name of the Association of Law Societies of the Republic of South Africa to the Law Society of South Africa.

2.15. Section 60 still contains provisions in respect of savings and transitional provisions that have already lapsed. The amendment of section 60, as proposed in clause 15 of the Bill, is therefore a necessary step.

2.16. The amendment of section 60A, as proposed in clause 16 of the Bill, is consequential to the amendment of section 60, as referred to in paragraph 2.15 above.

2.17. Clause 17 of the Bill contains the short title.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. DEPARTMENTS / BODIES / PERSONS CONSULTED

The Law Society of South Africa

The South African Council for the Architectural Profession

The South African Council for Professional and Technical Surveyors
The Banking Council of South Africa
The Institute of Estate Agents of South Africa
National Association of Managing Agents

5. CONSTITUTIONAL IMPLICATIONS

There are no constitutional implications.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Land Affairs.

7. PARLIAMENTARY PROCEDURE

- 7.1. The State Law Advisers and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or section 76 of the Constitution applies.
- 7.2. The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.
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