

REPUBLIC OF SOUTH AFRICA

SECTIONAL TITLES AMENDMENT BILL

*(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 OF AGRICULTURAL, LAND REFORM AND RURAL DEVELOPMENT)

[B - 2020]

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 provide for the developer to answer questions put to the developer by the agents of the lessees; to provide that a certificate issued by an architect or a land surveyor must also comply with section 26(2) of the Spatial Planning and Land Use Management Act, 2013; to further provide for the amendment of sectional plans in respect of exclusive use areas; to further provide for the amendment and cancellation of a sectional plan upon an order of the court; to provide for the noting of a title deed in respect of the lapsing of a reservation in terms of section 25; to provide for a lease of part of the common property with the consent of the holders of registered real rights; to amend the provisions relating to the alienation of common property; to further provide for the cancellation of a mortgaged section and mortgaged exclusive use area; to also provide for a developer to submit a plan for subdivision or consolidation to the Surveyor-General for approval to subdivide, consolidate and to extend a section; to extend the registration of subdivision of a section, the consolidation of sections, and the extension of sections to a developer; to provide for the filing of replacement documentation in respect of lost or destroyed documentation; to amend the provisions relating to the extension of

a scheme; to amend the provisions relating to participation quotas of sections; to regulate the membership of the sectional titles regulations board; to amend the transitional provisions; 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, sections 1 and 11 of Act 7 of 1992, section 1 of Act 15 of 1993, section 1 of Act 44 of 1997, Proclamation No. R. 9 of 1997, section 1 of Act 29 of 2003, section 1 of Act 7 of 2005, section 1 of Act 6 of 2006, section 1 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 1 of Act 33 of 2013

1. Section 1 of the Sectional Titles Act, 1986 (hereinafter referred to as "the principal Act"), is hereby amended—

(a) by the substitution for the definition of "**exclusive use area**" of the following definition:

" '**exclusive use area**' means a part or parts of the common property for the exclusive use by the owner or owners of one or more sections or by the occupant or occupants thereof recognised by law, as contemplated in this Act;" and

(b) by the substitution for the definition of "**Sectional Titles Schemes Management Act**" of the following definition:

" '**Sectional Titles Schemes Management Act**' means the Sectional Titles Schemes Management Act, **[2010]** 2011 (Act No. 8 of 2011;"

Amendment of section 4 of Act 95 of 1986, as amended by section 2 of Act 63 of 1991, section 2 of Act 15 of 1993, sections 2 and 30 of Act 44 of 1997, section 2 of Act 29 of 2003 and section 2 of Act 33 of 2013

2. Section 4 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

"(b) a meeting contemplated in paragraph (a)(i) has been held and the developer has been available thereat to provide the particulars contemplated in the said paragraph, and has answered all reasonable questions put to the developer by the lessees or their respective agents present: Provided that a developer need not comply with this subsection if all such lessees have stated in writing that they are aware of their rights which shall also be set out in such statement and that they do not wish to purchase the proposed units which they occupy and a conveyancer has certified in writing that such statements have been received in respect of all the units in question: Provided further that a share block company applying for the approval of a development scheme need not comply with the requirements of this subsection if that share block company has, within a period of two years before such application, already complied with section 11A of the Share Blocks Control Act, 1980 (Act No. 59 of 1980)."

Amendment of section 7 of Act 95 of 1986, as amended by section 4 of Act 63 of 1991, section 3 of Act 44 of 1997 and section 3 of Act 29 of 2003

3. Section 7 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

- "(a) a certificate issued by an architect or a land surveyor stating that the proposed division into sections and common property—
- (i) is not contrary to any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law, that may affect the development; and
 - (ii) complies with section 26(2) of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013):".

Amendment of section 14 of Act 95 of 1986, as amended by section 8 of Act 63 of 1991, section 4 of Act 7 of 1992, section 5 of Act 11 of 2010 and section 3 of Act 33 of 2013

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

(a) by the substitution for subsection (3) of the following subsection:

"(3) If in the opinion of the Surveyor-General any person could be prejudiced by an incorrect sectional plan, he or she shall advise the registrar as to which sections or exclusive use areas are affected by any such defect in question, and thereafter no transfer of such section and its undivided share in the common property or the registration of a real right therein, or the cession of an exclusive use area shall be registered until the defect in the sectional plan has been rectified, unless the registrar is satisfied that the delay in causing the defective sectional plan to be rectified will cause undue hardship and

the person in whose favour transfer of the section and its undivided share in the common property or of a real right therein, or cession of an exclusive use area is to be registered, consents in writing to the transfer or other registration being effected prior to the rectification of the defect.";

(b) by the substitution for subsection (5) of the following subsection:

"(5) The Surveyor-General shall advise the registrar and the local authority of any alteration, amendment or substitution of a sectional plan in terms of subsection (1) which affects the description or extent of any section or exclusive use area, and thereupon the registrar shall make the necessary endorsements reflecting any change of description or extent upon the deeds registry copy of the sectional title deed and upon any other registered document affected by such change, and shall likewise endorse the owner's or holder's copy of that sectional title deed or any such other registered document whenever subsequently lodged at the deeds registry for any purpose."; and

(c) by the addition in subsection (8) of the following paragraph, the existing subsection becoming paragraph (a):

"(b) The provisions of section 49(3) to 49(5) apply, with the necessary changes, in instances where a body corporate is in existence upon cancellation of the sectional plan by an order of the Court."

Amendment of section 15B of Act 95 of 1986, as amended by section 10 of Act 63 of 1991, section 10 of Act 44 of 1997, section 2 of Act 6 of 2006, section 6 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 4 of Act 33 of 2013

5. Section 15B of the principal Act is hereby amended by the deletion in subsection (1) of the word "and" at the end of paragraph (c), the insertion of the word "and" at the end of paragraph (d) and the addition of the following paragraph:

"(e) the registrar must note the lapsing on the title deed of the right so reserved, if available, where a right in respect of a reservation in terms of section 25 has lapsed, on application by the developer or by the body corporate in instances where the developer is no longer in existence: Provided that where the title deed of the right is not available, an affidavit must be submitted by the developer or by the body corporate, as the case may be, to the effect that the title deed to such right is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original title deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon."

Amendment of section 17 of Act 95 of 1986, as amended by section 11 of Act 63 of 1991, section 11 of Act 44 of 1997, section 53 of Act 24 of 2003, section 4 of Act 29 of 2003, section 1 of Act 11 of 2005, section 5 of Act 6 of 2006, section 20 of Act 8 of 2011 and section 5 of Act 33 of 2013

6. Section 17 of the principal Act is hereby amended—

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

"(b) Where pursuant to subsection (1) it is sought to let land which forms part of the common property or a portion thereof on which a section or part of a section is erected, the registrar shall not register the lease, unless it is made subject to any right which the owner of the section or part of the section may have, as well as the rights of holders of real rights in terms of sections 25 and 27.";

(b) by the substitution for subsection (4B) of the following subsection:

"(4B) (a) Where in terms of subsection (1) it is sought to alienate a portion of land on which an exclusive use area or part thereof is registered, the registrar shall not register the transfer, unless the registration of the exclusive use area **[or part thereof]** has been cancelled with the written consent of the holder.

(b) The registrar shall notify the Surveyor-General and the local authority when the registration of an exclusive use area **[or part thereof]** has been cancelled in terms of paragraph (a), and on receipt of such a notice the Surveyor-General shall make

the necessary amendments on the original sectional plan and on the deeds registry copy of the sectional plan."; and

(c) by the substitution for subsection (4C) of the following subsection:

"(4C) **[The provisions of subsection (4B) shall apply with the necessary changes where,]** Where in terms of subsection (1), it is sought to alienate a portion of land on which a real right of extension in terms of section **[25]** 25(1) or any part of such right is registered, the registrar shall not register the transfer, unless the registration of such real right or part thereof has been cancelled with the written consent of the holder thereof.".

Substitution of section 18 of Act 95 of 1986, as amended by section 6 of Act 33 of 2013

7. The following section is hereby substituted for section 18 of the principal Act:

"Transfer of mortgaged unit, undivided share, common property or land, and cession of mortgaged lease or real right

18. The provisions of sections 56 and 57 of the Deeds Registries Act shall apply with the necessary changes to the transfer of any mortgaged unit or undivided share in a unit, the cession of any mortgaged lease of a unit or undivided share in a unit, the cession of any mortgaged real right in or over a unit or an undivided share in a unit, the cession of any mortgaged real right

under sections 25 and 27 of this Act or an undivided share therein, **[and]** the transfer under section 17 of this Act of any mortgaged common property or land or an undivided share therein and the cancellation under section 17 of any mortgaged section and exclusive use area, and real right under section 25."

Amendment of section 21 of Act 95 of 1986, as amended by section 14 of Act 44 of 1997 and section 20 of Act 8 of 2011

8. Section 21 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) The provisions of subsection (1) apply with the necessary changes where a developer, prior to the establishment of a body corporate, intends to subdivide his or her section or to consolidate two or more sections registered in his or her name."

Amendment of section 22 of Act 95 of 1986, as amended by section 12 of Act 63 of 1991 and section 15 of Act 44 of 1997

9. Section 22 of the principal Act is hereby amended—
(a) by the insertion after subsection (1) of the following subsection:

"(1A) The provisions of subsection (1) apply with the necessary changes where a developer, prior to the establishment of a body corporate, wishes to register a sectional plan of subdivision of a section."

- (b) by the insertion in subsection (2) of the following paragraph after paragraph (c):

"(cA) any lease or other deed embodying any other real right registered against the section at the time of subdivision, if available: Provided that where the lease or other deed embodying the real right is not available, an affidavit must be submitted by the owner or developer, as the case may be, to the effect that the lease or other deed is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original lease or other deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon:"

- (c) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

"(d) certificates of registered sectional title in the prescribed form for each of the new sections and their undivided shares in the common property created by the subdivision, made out in favour of the owner **[or, in the case of a partition, in favour of the persons entitled thereto in terms of the partition agreement]**:"

- (d) by the deletion in subsection (2) of paragraph (e); and
 (e) by the insertion after subsection (2) the following subsection:

"(2A) (a) Where an application as contemplated in subsection (1) is made by a developer, such application must also be accompanied by an affidavit by such developer to the effect that at the

date of the application, no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the developer had disclosed in writing to the acquirer thereof that application has been made for the registration of the sectional plan of subdivision of the relevant section.

(b) A deed of alienation in which the subdivision has not been disclosed, shall be voidable at the option of the acquirer."

Amendment of section 23 of Act 95 of 1986, as amended by section 13 of Act 63 of 1991 and section 16 of Act 44 of 1997

10. Section 23 of the principal Act is hereby amended—

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

"(1A) The provisions of subsection (1) apply with the necessary changes where a developer, prior to the establishment of a body corporate, wishes to register a sectional plan of consolidation of two or more sections."

(b) by the insertion in subsection (2) of the following paragraph after paragraph

(c):

"(cA) any lease or other deed embodying any other real right registered against the section at the time of consolidation, if available: Provided that where the lease or other deed embodying the real right is not available, an affidavit must be submitted by the owner or developer, as the case may be, to the

effect that the lease or other deed is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original lease or other deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon;"; and

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

"(2A) (a) Where an application as contemplated in subsection (1) is made by a developer, such application must also be accompanied by an affidavit by such developer to the effect that at the date of the application, no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the developer had disclosed in writing to the acquirer thereof that application has been made for the registration of the sectional plan of consolidation of the relevant sections.

(b) A deed of alienation in which the consolidation has not been disclosed, shall be voidable at the option of the acquirer."

Amendment of section 24 of Act 95 of 1986, as amended by section 14 of Act 63 of 1991, sections 17 and 29 of Act 44 of 1997, section 5 of Act 29 of 2003, section 2 of Act 7 of 2005, section 7 of Act 11 of 2010 and section 20 of Act 8 of 2011

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

(a) by the insertion after subsection (3) of the following subsection:

"(3A) The provisions of subsection (3) apply with the necessary changes where a developer, prior to the establishment of a body corporate, intends to extend the boundaries or floor area of his or her section.";

- (b) by the deletion in subsection (6) of the word "and" at the end of paragraph (d) and the insertion of the following paragraph after paragraph (d):

"(dA) any lease or other deed embodying any other real right registered against the section at the time of extension, if available: Provided that where the lease or other deed embodying the real right is not available an affidavit must be submitted by the owner or developer, as the case may be, to the effect that the lease or other deed is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original lease or other deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon; and"; and

- (c) by the insertion after subsection (6) of the following subsection:

(6AA)(a) Where an application as contemplated in subsection (6) is made by a developer, such application must also be accompanied by an affidavit by such developer to the effect that at the date of the application, no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the developer had disclosed in writing to the acquirer thereof that application has been made for the registration of the sectional plan of extension of the relevant section.

(b) A deed of alienation in which the extension has not been disclosed, shall be voidable at the option of the acquirer."

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, section 3 of Act 7 of 2005, sections 8 and 20 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 8 of Act 33 of 2013

12. Section 25 of the principal Act is hereby amended—

(a) by the insertion after subsection (2) of the following subsection:

"(2A) A registrar of deeds must, if any of the documentation referred to in subsection (2) (a), (b), (c), (d) or (g) have been lost or destroyed, on written application by the body corporate or if a body corporate has not been established, on written application by the developer, and in the prescribed form and manner, file such replacement documentation in the relevant sectional title register."

(b) by the substitution in subsection (5A) for paragraph (a) of the following paragraph:

"(a) If the right reserved in terms of subsection (1) is exercised, the developer or his or her successor in title shall immediately after completion of the relevant unit or exclusive use area apply for the registration of the relevant plan of extension and the inclusion of such unit or exclusive use area in the relevant sectional title register."

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

"(6) If no reservation was made by a developer in terms of subsection (1), or if such a reservation was made and for any reason has lapsed, the right to extend a scheme including land contemplated in section 26, shall vest in the body corporate which shall be entitled, subject to this section, section 5(1)(b) of the Sectional Titles Schemes Management Act and after compliance, with the necessary changes, with the requirements of paragraphs (a), (b), (c), (d) and (g) of subsection (2), to obtain a certificate of real right in the prescribed form in respect thereof: Provided that the body corporate shall only exercise, alienate or transfer such right with the written consent of all the members of the body corporate, the mortgagees of the units and real rights over the units, and the holders of registered real rights over the units in the scheme and who shall not withhold such consent without good cause in law.";

(d) by the substitution in subsection (10) for paragraph (c) of the following paragraph:

"(c) the certificate of real right by which the reservation in terms of subsection (1) or (6) is held [**, together with any sectional mortgage bond registered against the certificate of real right and the consent of the mortgagee to the substitution of the sections depicted on the sectional plan of extension and their undivided shares in the common property, as security in lieu of the real right held under the certificate of real right mortgaged under the bond]**";

(e) by the substitution in subsection (10)(dA) for the words preceding subparagraph (i) of the following words:

"any mortgage bond **[which may be affected by]** registered against the certificate of real right, together with the consent of the mortgagee to the registration of the extension of the scheme and the endorsement of such bond to the effect that it is attached to—"; and

(f) by the substitution in subsection (10)(dA) for subparagraphs (i) and (ii) of the following subparagraphs respectively:

- "(i) each section **[shown on the sectional plan]** and its undivided share in the common property as well as all exclusive use areas, shown on the sectional plan;
- (ii) the certificate or certificates of real right **[in respect of a right of exclusive use]** as contemplated by subsection (10)(d) and section 27(1); and".

Amendment of section 26 of Act 95 of 1986, as amended by section 16 of Act 63 of 1991, section 19 of Act 44 of 1997, section 7 of Act 29 of 2003, section 3 of Act 6 of 2006 and section 20 of Act 8 of 2011

13. Section 26 of the principal Act is hereby amended by the addition of the following subsections:

"(8) The provisions of subsections (4) to (7) apply with the necessary changes to instances where land, to extend the common property, is purchased or acquired by the developer.

(9) (a) Where a developer purchases or otherwise acquires land to extend the common property an affidavit, by such developer must be submitted to the registrar, to the effect that at the date of purchase or acquisition of such land no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the developer had disclosed in writing to the acquirer thereof that application has been made for the registration of a plan of extension of the common property.

(b) A deed of alienation in which the extension has not been disclosed, shall be voidable at the option of the acquirer."

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, section 4 of Act 7 of 2005, section 9 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 9 of Act 33 of 2013

14. Section 27 of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

"(5A) The provisions of subsection (5) apply with the necessary changes to the cancellation of a right to exclusive use of part of the common property registered in favour of a developer: Provided that such right may be cancelled by the developer prior to the establishment of a body corporate, with the written consent of the mortgagee of the exclusive use area, by means of the registration of a unilateral notarial deed of cancellation."

Amendment of section 32 of Act 95 of 1986, as amended by section 30 of Act 44 of 1997 and section 20 of Act 8 of 2011

15. Section 32 of the principal Act is hereby amended—

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

"(1) Subject to the provisions of section **[48]** 17 of the Sectional Titles Schemes Management Act, in the case of a scheme for residential purposes only as defined in any applicable operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law the participation quota of a section shall be a percentage expressed to four decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the section by the floor area, correct to the nearest square metre, of all the sections in the building or buildings comprised in the scheme."; and

(b) by the substitution in subsection (2) of the words preceding paragraph (a) of the following words:

"(2) Subject to the provisions of section **[48]** 17 of the Sectional Titles Schemes Management Act, in the case of a scheme other than a scheme referred to in subsection (1), the participation quota of a section shall be a percentage expressed to four decimal places, as determined by the developer: Provided that—".

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, section 26 of Act 44 of 1997, section 13 of Act 11 of 2010 and section 8 of Act 4 of 2011

16. Section 54 of the principal Act is hereby amended—

(a) by the substitution in subsection (2)(c) for the words preceding subparagraph

(i) of the following words:

"(c) **[seven]** nine members appointed by the Minister, who shall consist of the following persons—";

(b) by the substitution in subsection (2)(c) for subparagraph (i) of the following subparagraph:

"(i) **[a conveyancer]** two conveyancers nominated by the Executive Council of the Law Society of the Republic of South Africa;";

(c) by the deletion in subsection (2)(c) of the word "and" at the end of subparagraph (v), the insertion of the word "and" at the end of subparagraph (vi), and the addition of the following subparagraph:

"(vii) an officer occupying an office mentioned in section 2(1)(b) of the Deeds Registries Act, alternatively, an officer contemplated in section 2(1)(c) of the said Act."

(d) by the substitution for subsection (5) of the following subsection:

"(5) When any nomination in terms of subsection (2)(c)(i), (ii), (iii), **[or]** (iv), or (v) becomes necessary, the body concerned shall at the request of the Director-General of Rural Development and Land Reform furnish the nomination required for appointment to the regulation board, within a period of 60 days from the

date of such request, failing which the Minister may appoint, subject to the provisions of that subsection, any suitable person as a member in place of the person he or she would have appointed if the said body had not so failed to nominate a person."; and

(e) by the insertion after subsection (9) of the following subsection:

"(9A) The provisions of subsections (6), (7), (8) and (9) are, with the necessary changes, applicable to the appointment of an alternate member."

Amendment of section 55 of Act 95 of 1986, as amended by section 23 of Act 63 of 1991, section 10 of Act 7 of 1992, section 3 of Act 15 of 1993, section 17 of Act 170 of 1993, section 27 of Act 44 of 1997 and section 20 of Act 8 of 2011

17. Section 55 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) Regulations made by the Minister shall be published in the *Gazette* at least one month before the date specified in the relevant notice as the date of commencement thereof."

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, section 28 of Act 44 of 1997, section 14 of Act 11 of 2010 and section 20 of Act 8 of 2011

18. Section 60 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) Where an owner has, prior to the commencement of this Act, acquired in terms of an agreement or been granted in terms of rules made under the Sectional Titles Act, 1971, the right to the exclusive use of a part or parts of common property, the body corporate concerned shall, if so requested after the commencement date by the owner, **[transfer]** cede such right to the owner by the registration of a notarial deed entered into by the parties, in which the body corporate shall represent the owners of all relevant sections as transferor.

(b) The notarial deed of the cession of the right to exclusive use as referred to in paragraph (a), must be accompanied by a sectional plan on which is delineated, in the manner prescribed in terms of section 5(3)(f), a part or parts of the common property for the exclusive use by the owner or owners of one or more sections: Provided that no such delineation shall be made on the sectional plan in terms of this subsection if such delineation will encroach upon a prior delineation on the sectional plan of a part of the common property for the exclusive use by one or more of the owners."

Short title and commencement

19. This Act is called the Sectional Titles Amendment Act, 2020, and comes into operation on the date of publication in the *Gazette*.