



Sectional Titles act.

Sectional Titles Act, 95 of 1986

Date of Commencement: 1 June 1988

ACT

To provide for the division of buildings into sections and common property and for the acquisition of separate ownership in sections coupled with joint ownership in common property; the control of certain incidents attaching to separate ownership in sections and joint ownership in common property; the transfer of ownership of sections and the registration of sectional mortgage bonds over, and real rights in, sections; the conferring and registration of rights in, and the disposal of, common property; the establishment of bodies corporate to control common property and for that purpose to apply rules; and the establishment of a sectional titles regulation board; and to provide for incidental matters.

Definitions, Section 1

1 Definitions

(1) In this Act and the rules, unless the context otherwise indicates architect

'architect' means a person registered as an architect in terms of section 19 of the Architects' Act, 1970 (Act 35 of 1970);

body corporate

'body corporate', in relation to a building and the land on which such building is situated, means the body corporate of that building referred to in section 36 (1);

building

'building' means a structure of a permanent nature erected or to be erected and which is shown on a sectional plan as part of a scheme;

Chief Surveyor-General

'Chief Surveyor-General' means the Chief Surveyor-General appointed in terms of section 2 of the Land Survey Act, 1997 (Act No. 8 of 1997);

common property

'common property', in relation to a scheme, means-

(a) the land included in the scheme;

(b) such parts of the building or buildings as are not included in a section; and

(c) land referred to in section 26;

conveyancer

'conveyancer' means a conveyancer as defined in the Deeds Registries Act;
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Council

'Council' means, in relation to architects, the South African Council for Architects established in terms of the Architects' Act, 1970 (Act 35 of 1970), and, in relation to land surveyors, the South African Council for Professional Land Surveyors and Technical Surveyors established in terms of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act 40 of 1984);

court

'Court' means the provincial or local division of the High Court having jurisdiction and, for the purposes of section 44, a magistrates' court having jurisdiction;

Deeds Registries Act

'Deeds Registries Act' means the Deeds Registries Act, 1937 (Act 47 of 1937), and any regulation made thereunder;

deeds registry

'deeds registry' means a deeds registry as defined in the Deeds Registries Act;

developer

'developer' means a person who is the registered owner of land, situated within the area of jurisdiction of a local authority, on which is situated or to be erected a building or buildings which he has divided or proposes to divide into two or more sections in terms of a scheme, or the holder of the right referred to in section 25 to extend a scheme, or his successor in title, and includes-

(a) for the purposes of sections 10 and 15B (3) (c), 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) for the purposes of rebuilding any building that is deemed to have been destroyed, as contemplated in section 48, the body corporate concerned;

development scheme

'development scheme' means a scheme in terms of which a building or buildings situated or to be erected on land within the area of jurisdiction of a local authority is or are, for the purposes of selling, letting or otherwise dealing therewith, to be divided into two or more sections, or as contemplated in the proviso to section 2 (a);

draft sectional plan

'draft sectional plan' means a sectional plan prepared in accordance with the provisions of section 5, but not yet approved by the Surveyor-General; and 'draft sectional plan of subdivision', 'draft sectional plan of consolidation' and 'draft sectional plan of extension' have a corresponding meaning;

exclusive use area

'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;

land

'land' means the land comprised in a scheme as shown on a sectional plan;

land surveyor

'land surveyor' means a person registered as a professional land surveyor in the register prescribed in section 7 (4) (a) of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act 40 of 1984);
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lease

'lease' for the purposes of section 17(1) means a lease which-

- (a) was entered into for a period of not less than ten years;
- (b) was entered into for the natural life of the lessee or of any other person mentioned in the lease; or
- (c) is renewable from time to time at the will of the lessee indefinitely or for periods which, together with the first period, amount in all to not less than 10 years;

local authority

'local authority' means a municipality contemplated in section 151 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), exercising jurisdiction in the area in which the land is situated;

Minister

'Minister' means the Minister of Land Affairs;

notary public

'notary public' means a notary public as defined in the Deeds Registries Act;

operative town planning scheme

'operative town planning scheme' means a town planning scheme map and accompanying town planning scheme clauses prepared in terms of any law;

owner

'owner', means, in relation to-

(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 No. 28 of 1966), the liquidator or 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;

(b) immovable property and real rights in immovable property-

(i) registered in the names of both spouses in a marriage in community of property, either one or both of the spouses;

(ii) registered in the name of only one spouse and forming part of the joint estate of both spouses in a marriage in community of property, either one or both of the spouses,

and 'owned' and 'ownership' have a corresponding meaning;

participation quota

'participation quota', in relation to a section or the owner of a section, means the percentage determined in accordance with the provisions of section 32 (1) or (2) in respect of that section for the purposes referred to in section 32 (3), and shown on a sectional plan in accordance with the provisions of section 5 (3) (g);

prescribed

'prescribed' means prescribed by this Act or by regulation;

quota

'quota', in relation to a section or the owner of a section, means the participation quota of that section;

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registrable

'registrable' means capable of being registered in terms of the Deeds Registries Act;

registrar

'registrar' means a registrar of deeds as defined in the Deeds Registries Act;

regulation

'regulation' means a regulation made and in force under this Act;

rules

'rules', in relation to a building or buildings which has or have been divided into a section or sections and common property, means the management rules and conduct rules referred to in section 35 (2) for the control, management, administration, use and enjoyment of the sections and common property;

scheme

'scheme' means a development scheme;

section

'section' means a section shown as such on a sectional plan;

sectional mortgage bond

'sectional mortgage bond' means a mortgage bond hypothecating-

(a) a unit or an exclusive use area, land or an undivided share in such unit, area or land held under a separate sectional title deed; or

(b) a registered lease or sub-lease of any such unit, exclusive use area or land or an undivided share in such unit, area or land, which when it was entered into, was for a period of not less than 10 years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than 10 years; or; or

(c) any other registered real right in or over any such unit or undivided share in a unit or common property or the rights referred to in sections 25 and 27;

sectional plan

'sectional plan', in relation to a scheme, means a plan approved by the Surveyor-General-

(a) which is described as a sectional plan;

(b) which shows the building or buildings and the land comprised in the scheme, as divided into two or more sections and common property; and

(c) which complies with the requirements of section 5, and includes a sectional plan of subdivision, consolidation or extension as provided for in this Act;

sectional title deed

'sectional title deed' means a certificate of registered sectional title or a deed of transfer;

sectional title register

'sectional title register' means the register referred to in section 12 (1) (b), and includes any sectional plan registered under this Act, and a deeds registry's duplicate of any certificate of registered sectional title deemed to be incorporated in such register;

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special resolution

'special resolution' means, subject to subsection (2), a resolution passed by a majority of not less than three-fourths of the votes (reckoned in value) and not less than three-fourths of the votes (reckoned in number) of members of a body corporate who are present or represented by proxy or by a representative recognized by law at a general meeting of which at least 30 days' written notice, specifying the proposed resolution, has been given, or a resolution agreed to in writing by at least 75% of all the members of a body corporate (reckoned in number) and at least 75% of all such members (reckoned in value) personally or by proxy or by a representative of any such member recognized by law: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the



members of the body corporate;
statutory plan

'statutory plan' means a land development objective prepared in terms of Chapter IV of the Development Facilitation Act, 1995 (Act No. 67 of 1995), an integrated development plan prepared in terms of section 10D (4) (b) or section 2 of Schedule 2A to the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other integrated plan, layout plan or package of plans in force in the area and which has or have been approved by a competent authority in terms of any law.

Surveyor-General

'Surveyor-General' means a Surveyor-General appointed in terms of section 5 of the Land Survey Act, 1997 (Act No. 8 of 1997);

this Act

'this Act' includes the regulations;

unanimous resolution

'unanimous resolution' means, subject to subsection (3), a resolution-

(a) passed unanimously by all the members of a body corporate who are present or represented by proxy or by a representative recognized by law at a general meeting of the body corporate of which at least 30 days' written notice, specifying the proposed unanimous resolution, has been given, and at which meeting at least 80% of all the members of a body corporate (reckoned in number) and at least 80% of all the members (reckoned in value) are present or so represented: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the members of the body corporate; or
(b) agreed to in writing by all the members of the body personally or by proxy or by a representative of any such member recognized by law;

undivided share in common property

'undivided share in common property', in relation to an owner, means an undivided share of that owner in common property as determined in accordance with the quota of the section of which he is the owner and, in relation to a section, means an undivided share in common property apportioned to that section in accordance with the quota of the section;

unit

'unit' means a section together with its undivided share in common property apportioned to that section in accordance with the quota of the section.

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Notice procedure for Special and Unanimous Resolutions

(2) For the purposes of the definition of 'special resolution' in subsection (1), a notice contemplated in that definition shall be deemed adequate if-

(a) it has been delivered by hand to a member not less than 30 days prior to the relevant general meeting; or

(b) it was despatched by prepaid registered post not less than 30 days prior to such meeting to the address of a member's unit in the relevant scheme, or to such other address as a member may have indicated in writing for the purposes of such notice.

Qualifications to definition of a Unanimous Resolution

(3) For the purposes of the definition of 'unanimous resolution' in subsection (1)-

(a) a notice contemplated in that definition shall be deemed adequate if it has been delivered to, or despatched to the address of a member, as contemplated in paragraphs (a) and (b), respectively, of subsection (2);

(b) a member present or represented at a meeting contemplated in that definition, who himself, or through a proxy or representative, as the case may be, abstains from voting on the resolution in question, shall be regarded as having voted in favour of the resolution; and

(c) where the resolution in question adversely affects the proprietary rights or powers of any member as owner, the resolution shall not be regarded as having been passed unless such member consents in writing thereto.

Body Corporate right to approach court when unable to obtain a Unanimous Resolution

(3A) If a body corporate is unable to obtain a unanimous resolution, it may, subject to the provisions of subsection (3) (c), approach the court for relief.

Qualification to definition of a local authority

(4) The Minister may by notice in the Gazette declare any institution or body established by or under the provisions of any other law and which exercises powers and performs duties which, in the opinion of the Minister, correspond with the powers and duties ordinarily exercised or performed by an institution or body referred to in the definition of 'local authority', to be a local authority for the purposes of this Act.

PART I - Introductory Provisions, Sections 2-3

2 Ownership and real rights in or over parts of buildings, and registration of title to ownership or other real rights in or over such parts

Notwithstanding anything to the contrary in any law or the common law contained-

(a) a building or buildings comprised in a scheme and the land on which such building or buildings is or are situated, may be divided into sections and common property in accordance with the provisions of this Act: Provided that where a scheme comprises more than one building, any such building may, subject to section 5 (4), be so divided into a single section and common property;

(b) separate ownership in such sections or an undivided share therein may be acquired in accordance with the provisions of this Act;

(c) the owners of such sections shall own such common property in undivided shares in accordance with the provisions of this Act;

(d) any real right may be acquired in or over any such section or an undivided share therein or common property in accordance with the provisions of this Act; and

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(e) a registrar may, in accordance with the provisions of this Act, register in a deeds registry a title deed whereby ownership in, or any lease of, or any other real right in or over, any such section or an undivided share therein or common property is acquired.

3 Application of Deeds Registries Act, reproduction of documents, and units deemed to be land

(1) Save as is otherwise provided in this Act or any other law or the context otherwise indicates, the provisions of the Deeds Registries Act shall, in so far as such provisions can be so applied, apply mutatis mutandis in relation to all documents registered or filed or intended to be registered or filed in a deeds registry in terms of this Act.

(2) The registrar concerned may reproduce or cause to be reproduced any document referred to in subsection (1) by means of microfilming or any other process which in his opinion accurately and durably reproduces any such document, and may preserve or cause to be preserved such reproduction in lieu of such document.

(3) A reproduction referred to in subsection (2) shall, for the purposes of a deeds registry, be deemed to be the original document, and a copy obtained by means of such reproduction and which has been certified by the registrar as a true copy of such reproduction, shall be admissible in evidence and shall have all the effects of the original document concerned.

(4) A unit shall be deemed to be land.

PART II - Development Schemes, Sectional Plans and Sectional Title Registers,
Sections 4-14

4 Approval of development schemes

(1) A developer who intends to establish a scheme shall cause a draft sectional plan to be submitted to the Surveyor-General in terms of section 7;

(2) A scheme may relate to more than one building situated, to be erected or being in the process of erection on the same piece of land, or on more than one piece of land, whether contiguous or noncontiguous: Provided that the building or buildings to be divided into sections shall be situated only on one such piece of land or on two or more such contiguous pieces of land registered in the name of the same person and which have been notorially tied.

(3) If a part of a building which is comprised in a proposed scheme and which after a division of the building will constitute a unit therein, is wholly or partially let for residential purposes, a developer shall not cause a draft sectional plan to be submitted as contemplated in subsection (1), unless-

(a) every lessee of a part which is so let for residential purposes-

(i) has been notified in writing by the developer, by letter delivered either personally or despatched by registered post, of a date, at least 14 days after the delivery or despatch of such letter, as the case may be, of a meeting of such lessees to be held in the building in question, or in another building within a reasonable distance from the first-mentioned building, within the area of jurisdiction of the local authority concerned, at which the developer or his or her agent intends to be available to provide the lessees with-

(aa) such particulars of the relevant scheme as they may reasonably require from him or her; and

(bb) the information regarding their rights as set out in section 10 of this Act; and

(ii) has at the same time, with the notice referred to in subparagraph (i), been provided by the developer with a certificate containing the prescribed particulars in respect of the relevant building, and parts thereof or units therein, and of the relevant scheme; and

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(b) a meeting contemplated in paragraph (a) (i) has been held and the developer or his or her agent has been available thereat to provide the particulars contemplated in the said paragraph, and has answered all reasonable questions put to the developer or agent by the lessees 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 the requirements of section 11A of the Share Blocks Control Act, 1980 (Act 59 of 1980).

(3A) For the purposes of subsection (3) 'lessee' means a lessee who is a party to a lease entered into with the developer or any of his or her predecessors in title.

(5) An architect or a land surveyor acting on behalf of a developer shall inspect the property, and, if-

(a) in regard to any matter other than the proposed use, the building to which the scheme relates does not comply with any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law at the date of approval of the building plans;

(b) in regard to matters other than buildings, there is non-compliance with any applicable condition of any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law;

(c) the building to which the scheme relates, has not been erected in accordance with any applicable building regulations or building by-laws in operation at the date of erection: apply to the local authority concerned for the condonation of such non-compliance and the local authority may condone such non-compliance by issuing a certificate to the applicant; Provided that no certificate shall be issued for condonation of non-compliance with a national building regulation regarding the strength and stability of any building unless a deviation has been permitted or an exemption has been granted in terms of section 18 (2) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

5 Manner of preparing draft sectional plans

(1) A draft sectional plan shall be prepared and signed by a land surveyor or an architect in accordance with the provisions of this Act, and the numerical and other data recorded thereon shall be within the prescribed limits of accuracy: Provided that the part of a draft sectional plan referred to in subsection (3) (a), and any delineation of an exclusive use area of which the boundaries are not represented by physical features of a permanent nature, shall be prepared by a land surveyor and signed by him.

(2) A draft sectional plan which has been prepared by a land surveyor or architect who has been required by the Chief Surveyor-General to sit for a prescribed examination in connection with the preparation of draft sectional plans, and which has been submitted to the Surveyor-General as required by section 7, shall not be accepted by the Surveyor-General unless the land surveyor or architect concerned has passed such examination.

(3) A draft sectional plan shall-

(a) delineate the boundaries of the land in accordance with the relevant diagram or general plan and the location of the relevant building or buildings in relation thereto: Provided that any error in such diagram or general plan in regard to the boundaries of the land shall be rectified in terms of the Land Survey Act, 1997 (Act 8 of 1997), prior to the preparation of the sectional plan: Provided further that if the Surveyor-General does not require rectification of such diagram or general plan, the land surveyor shall record his own dimensions on that part of the draft sectional plan referred to in this paragraph;

(b) indicate the name of the scheme;

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(c) include a plan to scale of each storey in the building or buildings shown thereon;

(d) subject to subsections (4) and (5), define the boundaries of each section in the building or buildings, and distinguish each section by a number;

(e) show the floor area to the median line of the boundary walls of each section, correct to the nearest square metre, and the total of the floor areas of all the sections;

(f) delineate in the prescribed manner any exclusive use area;

(g) have endorsed upon or annexed to it a schedule specifying the quota of each section in accordance with section 32 (1) or (2) and the total of the quotas of all sections shown thereon; and
(h) be drawn in such manner and contain such other particulars as may be prescribed.

(4) The common boundary between any section and another section or common property shall be the median line of the dividing floor, wall or ceiling, as the case may be.

(5) For the purposes of subsection (3) (d) the boundaries of a section shall be defined-

(a) by reference to the floors, walls and ceilings thereof, or as may be prescribed; and

(b) in respect of a part of a section (such as a stoep, porch, balcony, atrium or projection) of which the boundaries cannot be defined in terms of paragraph (a) but being appurtenant to a part of that section which can be defined in terms of that paragraph, in the manner prescribed.

(6) A section may consist of non-contiguous parts of a building or buildings.

6 Duties of land surveyors and architects and non-liability of State

(1) A land surveyor or architect preparing a draft sectional plan shall prepare the draft sectional plan from an actual measurement undertaken by him or under his direction in such manner as well ensure accurate results, and in accordance with this Act.

(2) Neither the State nor any officer or employee in the service of the State shall be liable for any defective measurement or work appertaining thereto performed by any land surveyor or architect, notwithstanding the fact that the sectional plan relating to such measurement or work has been approved by the Surveyor-General.

7 Approval of draft sectional plans by Surveyor-General

(1) When a draft sectional plan is submitted in terms of section 4, the land surveyor or architect concerned shall on behalf of the developer submit to the Surveyor-General, for his or her approval, the prescribed number of copies of the draft sectional plan.

(2) The submission of the draft sectional plan to the Surveyor-General shall be accompanied by-

(a) a certificate issued by an architect or a land surveyor stating that the proposed division into sections and common property 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;

(b) where applicable, a certificate issued by a local authority in terms of section 4(5);

(c)

(d)

(e) if section 4(3) applies to the scheme-

(i) an affidavit by the developer stating that that section has been complied with;

(ii) a copy of the notice referred to in section 4(3)(a)(i) and the certificate referred to in section 4(3)(a)(ii); and

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(iii) where applicable, a certificate from a conveyancer in terms of the proviso to section 4(3);

(f) if section 4(3) does not apply to the scheme, an affidavit by the developer to that effect.

(2A) The Surveyor-General shall not be responsible for investigating the correctness or accuracy of any document submitted to him or her in terms of subsection (2) or section 21, 24 or 25.

(3) The manner of submission of the draft sectional plan and of all other documents to the Surveyor-General, shall be as prescribed.

(4) A Surveyor-General shall not approve a draft sectional plan, unless the applicable documents have been submitted to him or her in terms of subsection (2) and such plan has been prepared in accordance with this Act.

8 Improper conduct of land surveyors and architects

A land surveyor or architect shall for the purposes of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act 40 of 1984), and the Architects' Act, 1970 (Act 35 of 1970), as the case may be, be guilty of improper conduct, if he-

(a) signs, except as provided in such circumstances as may be prescribed, a draft sectional plan, a sectional plan or any other plan referred to in this Act, required in connection with the registration thereof, and in respect of which he or she has not carried out or supervised the measurements, and has not carefully examined and satisfied himself or herself of the correctness of the entries in any records and of the calculations in connection therewith which may have been made by any other person;

(b) signs any defective plan knowing it to be defective;

(c) repeatedly performs defective sectional title surveys in respect of which adequate checks have

not been applied;

(d) makes an entry in a field record, a copy of a field record or other document which purports to have been derived from actual measurement in the field, when it was in fact not so derived;

(e) supplies erroneous information to the Surveyor-General in connection with any scheme, knowing it to be erroneous;

(f) carries out his duties in terms of this Act in a manner which the Chief Surveyor-General finds after investigation to be incompetent or unsatisfactory; or

(g) contravenes a provision of this Act or fails to comply therewith,

and in the case of land surveyors, the Director General: Land Affairs or in the case of architects, the Director-General: Public Works, or any other official authorized thereto by the Director-General concerned, may refer a complaint in this regard to the relevant Council for investigation and the taking of such steps as the Council may deem fit.

9 Prohibition of certain acts before opening of sectional title register

10 Sale by developers of certain units occupied by certain lessees

(1) A developer shall, subject to subsection (5), not offer for sale or sell any unit in that building which is occupied by a lessee who was entitled to be notified in terms of section 4 (3) (a) (i), to any person other than such lessee, unless the developer has, by letter delivered either personally or by registered post, offered the unit for sale to the lessee and the lessee has refused the offer within a period of 90 days.

(2) If a lessee refuses an offer referred to in subsection (1) within the applicable period mentioned therein, or has at the expiration of such applicable period not accepted the offer, the developer shall not, within a period of 180 days from the date on which the lessee has refused the offer, or on which such applicable period has expired, as the case may be, offer for sale or sell the relevant unit to any person other than the lessee concerned at a price lower than the price at which it was offered for sale in terms of Sectional Titles Act, Rules and Regulations Page 11 of 100

subsection (1) to the lessee, unless the developer has again offered the unit at that lower price for sale to the lessee and he has refused the offer within a period of 60 days from the date thereof, or has on the expiration of that period not accepted the offer.

(3) A developer-

(a) shall as from the date on which a lessee has been notified in terms of section 4 (3) (a) (i) by the developer of the meeting referred to in that section-

(i) subject to subparagraph (ii), as long as the lessee continues to occupy the relevant unit and to comply with the conditions of the relevant lease; or

(ii) after the unit has been offered for sale in accordance with subsection (1) to the lessee and the lessee has refused the offer or the relevant period referred to in subsection (1) has expired, as the case may be, until the date of expiry of the applicable period of 180 days referred to in subsection (2) or, where applicable, the period of 60 days referred to in the last-mentioned subsection, whichever date occurs last,

not require the lessee concerned to vacate the unit unless the lessee has been guilty of nonpayment of rent, or has inflicted material damage to the unit, or has been guilty of conduct which is a nuisance to occupiers of other units in the building concerned; and

(b) shall in any case contemplated in paragraph (a) (ii), until the date of expiry of the applicable period of 180 days mentioned therein or, where applicable, the period of 60 days mentioned in that paragraph, whichever date occurs last, not require or permit the lessee to pay an amount of rent higher than the amount which was payable by the lessee on the date contemplated in subsection (1) on which the lessee refused the offer referred to in that subsection, or on which the relevant period referred to in that subsection expired, as the case may be:

Provided that the foregoing provisions of this subsection shall not derogate from any applicable provision of the Rent Control Act, 1976 (Act 80 of 1976).

(4) If any unit referred to in subsection (1) is controlled premises as contemplated therein and the lessee is 65 years old or older and his monthly income does not exceed the maximum amount of income from time to time mentioned in any proclamation issued under section 52 (1) of the Rent Control Act, 1976 (Act 80 of 1976), for lessees of premises in respect of which rent control is in terms of that section established by such proclamation, such unit may as long as such lessee continues to occupy the unit and his income does not exceed such maximum amount, only be offered for sale or sold to that lessee or in the case of any other person only be offered for sale or sold to that person subject to the provisions of subsection (1) and the right of that lessee to continue to occupy that unit for as long as his income does not exceed such maximum amount.

(5) (a) Any contract of purchase and sale concluded contrary to the provisions of subsection (1), (2) or (4) shall be void,

(b) A developer or any person who has performed partially or fully in terms of a contract which is void by virtue of this subsection shall have a claim against the other party to the extent of such performance.

(c) A developer may in addition claim from any such person-

(i) reasonable compensation for the use which the person may have had of the building and land in question or any part thereof; and

(ii) compensation for any damage caused to that building or land or any part thereof by the person, or any other person for whose acts or omissions such person is delictually liable;

(d) A person to whom an option has been granted or a purchaser may in addition claim from the developer-

(i) reasonable compensation for any expenses incurred by him or her with or without the authority of the developer for the preservation of the building or land, or part thereof, or in respect of any Sectional Titles Act, Rules and Regulations Page 12 of 100

improvements which enhance the market value thereof and which were effected by him or her with the express or implied consent of the developer, and

(ii) compensation for any damage or loss suffered by him or her which he or she would otherwise have been entitled to claim from the developer on the ground of breach of contract had the contract not been void and had the developer failed to effect any transfer in accordance with the contract.

(6) A developer who-

(a) commits an act which, were it not for the provisions of subsection (5), would have constituted the sale of a unit contrary to any provision of subsection (1), (2) or (4); or

(b) contravenes any provision of subsection (3),

shall be guilty of an offence, and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

11 Applications for opening of sectional title registers

(1) A developer may, after approval of a draft sectional plan by the Surveyor-General, apply to the registrar in charge of the deeds registry in which the land comprised in the scheme is registered, for the opening of a sectional title register in respect of the land and building or buildings in question, and for the registration of the sectional plan.

(2) When making application for the opening of a sectional title register and the registration of a sectional plan, a developer may in the schedule referred to in subsection (3) (b) impose registrable conditions.

(3) An application in terms of subsection (1) shall be accompanied by-

- (a) two copies of the sectional plan;
- (b) a schedule certified by a conveyancer setting out the servitudes and conditions of title burdening or benefiting the land and the other registrable conditions imposed by the developer in terms of subsection (2), as well as such other particulars as may be prescribed;
- (c) the title deed of the land in question;
- (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 of real right in respect of a right reserved by him in terms of section 25 (1); and
 - (iii) the certificate 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;

- (e) a certificate by a conveyancer stating that the rules prescribed in terms of section 35 (2) are applicable, and containing the other rules (if any) substituted by the developer for those rules as contemplated in that section;
- (f) certificates of registered sectional title in the prescribed form in respect of each section and its undivided share in the common property, made out in favour of the developer;
- (g) such other documents and particulars as may be prescribed.

12 Registration of sectional plans and opening of sectional title registers

(1) When the requirements of this Act and any other relevant law have been complied with, the registrar shall

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- (a) register the sectional plan and allot a distinctive number to it;
- (b) open a sectional title register in respect of the land and building or buildings thereon in the manner prescribed;
- (c) keep by means of a computer or in any other manner or by means of a computer and in any other manner, such registers containing such particulars as are necessary for the purpose of carrying out the provisions of this Act or any other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed;
- (d) simultaneously with the opening of the sectional title register, issue to the developer in the prescribed form a certificate of registered sectional title in respect of each section and its undivided share in the common property, subject to any mortgage bond registered against the title deed of the land;
- (e) issue to the developer, in the prescribed form, a certificate 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 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
- (g) make the necessary endorsements on the title deed, any mortgage bond or other document, or in his records.

(2) The registrar shall notify the Surveyor-General and the local authority of the registration of the sectional plan and furnish the local authority with a copy thereof.

13 Effect of registration of sectional plans

(1) Upon the registration of a sectional plan the building or buildings and the land shown thereon shall, subject to the provisions of this Act, be deemed to be divided into sections and common property as shown on the sectional plan.

(2) A sectional plan, together with the schedule of servitudes and conditions referred to in section 11 (3) (b), shall upon the registration of such plan be deemed to be part of the sectional title deed, and an owner's title to his or her section and his or her undivided share in the common property shall be subject to or shall be benefited by the servitudes, other real rights or conditions (if any) which burden or benefit the land shown on the sectional plan, and shall also be subject to any registrable condition imposed by a developer in terms of section 11 (2).

(3) Upon the registration of a sectional plan, any mortgage bond, lease, other real right or condition then registered against or affecting the land shown on the sectional plan, shall be deemed to be converted into a bond, lease, other real right or condition registered against or affecting the sections and common property shown on the sectional plan.

14 Amendment and cancellation of sectional plans

(1) The Surveyor-General may require a land surveyor or architect who has prepared a registered sectional plan to alter or amend, or the developer or the body corporate to cause to be altered or amended, any registered sectional plan bound to be incorrect, or to substitute another sectional plan for the incorrect sectional plan.

(2) The body corporate may recover the costs incurred as a result of an alteration or amendment to a sectional plan, or the substitution thereof, in terms of subsection (1), from the developer, land surveyor or architect concerned.

(3) If in the opinion of the Surveyor-General any person could be prejudiced by an incorrect sectional plan, he shall advise the registrar as to which sections 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 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 is to be registered, consents in writing to the transfer or other registration being effected prior to the rectification of the defect.

(4) The formalities for the alteration, amendment or substitution of a sectional plan in terms of subsection (1), shall be as prescribed.

(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, 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.

(6) The registrar may on application by a developer, which application shall be accompanied by a certificate by a conveyancer in which he certifies-

(a) that all the units of a scheme are registered in the developer's name;

(b) that, if applicable, the developer is the holder of a right referred to in section 25 or 27; and

(c) that no unit or right referred to in section 25 or 27 is encumbered by a sectional mortgage bond or a lease or in any other way,

close the sectional title register, and notify the Surveyor-General and the local authority that the sectional title register has been closed, whereupon the Surveyor-General shall cancel the original sectional plan and the deeds registry copy thereof.

(7) Whenever a sectional title register has been closed under subsection (6), the registrar shall make all such alterations, amendments, endorsements and entries on the developer's sectional title deeds and in the registers and records kept by him, as may be necessary to record such cancellation and the reversion of the land in question to the applicable land register, and shall in the manner prescribed cause the developer's title deed referred to in section 11 (3) (c) to be revived, or shall issue to the developer a certificate of registered title in the form prescribed under the Deeds Registries Act for the said land, subject or entitled to such servitudes, other real rights and conditions (if any) as are still applicable to or in respect of such land.

(8) A registered sectional plan shall, subject to the provisions of subsection (6) and section 17 (6), 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 records, and shall notify the Surveyor-General, who shall cancel the original sectional plan and the deeds office copy thereof.

(9) The registrar shall notify the local authority of the cancellation of the registration of a sectional plan.

PART III - Registration and Common Property, Sections 15-19

15 Preparation of deeds by conveyancer

(1) Subject to the provisions of this Act or any other law, the registrar shall not attest, execute or register any deed of transfer, sectional mortgage bond, certificate of title or certificate of registration of any kind whatsoever, unless it has been prepared by a conveyancer.

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15A Proof of certain facts in connection with deeds and documents by means of certain certificates

(1) A conveyancer or any other person who is authorised thereto by or under any law, who prepares a deed or other document for the purposes of registration or filing in a deeds registry, and who signs a prescribed certificate on such deed or document, accepts by virtue of such signing the responsibility, to the extent prescribed by regulation for the purposes of this section, for the accuracy of the facts mentioned in such deed or document or which are relevant in connection with the registration or filing thereof, and which are prescribed by regulation.

(2) ...

(3) A registrar shall accept, during the course of his examination of a deed or other document in accordance with the provisions of this Act, that the facts referred to in subsection (1) in connection with the registration or filing of a deed or other document in respect of which a certificate referred to in subsection (1) or (2) has been signed, have for the purposes of such examination been conclusively proved: Provided that the foregoing provisions of this subsection shall not derogate from the obligation of a registrar to give effect to any order of court or any other notification recorded in the deeds registry in terms of this Act or a provision in any other law contained and which affects the registration or filing of such deed or other document.

15B Registration of transfer of ownership and other rights

(1) When a sectional title register has been opened and the sectional plan concerned has been registered-

(a) ownership in any unit or land, or any undivided share in such unit or land, held under a sectional

title deed shall, subject to the provisions of this Act or any other law, be transferred by means of a deed of transfer signed or attested by the registrar: Provided that where the State acquires all the units or land held under any sectional title deed, whether by way of expropriation or otherwise, or where a local authority by virtue of the provisions in any other law contained, acquires all the units or land held under a sectional title deed by any other such authority, the registrar shall make such alterations and entries in his registers and such endorsements on any such title deed as may be necessary to register transfer to the State or such authority, as the case may be, of the property so acquired free of charge, and that the provisions of section 31 (4) (a) of the Deeds Registries Act, 1937 (Act 47 of 1937), shall apply mutatis mutandis in respect of such a transfer by endorsement;

(b) the registrar shall register any notarial lease of a unit or an undivided share in a unit and any notarial cancellation or modification of such a lease by means of an endorsement made by him on the sectional title deed, and he shall register any notarial sub-lease and any notarial cession of such a lease or sub-lease and any notarial cancellation or modification of such a sub-lease by means of an endorsement made by him on the lease in question: Provided that if any such lease or sub-lease has lapsed by effluxion of time, the registrar shall cancel the registration on production of proof that the lease or sub-lease has so lapsed;

(c) the registrar shall register any sectional mortgage bond by which a unit or an undivided share in a unit or land held under a sectional title deed, or a registered lease or sub-lease of a unit or an undivided share in a unit or such land, or any registered real right in or over any such unit or undivided share in a unit or land, is hypothecated, and any cession, cancellation or modification of such bond, by means of an endorsement made by him on the sectional title deed or on the registered lease or sub-lease or bond or other deed; and

(d) the registrar shall register any other real right (which is embodied in a notarial deed) in or over a unit or an undivided share in a unit or land held under a sectional title deed, and any notarial cancellation or modification of such a real right, by means of an endorsement made by him on the sectional title deed: Provided that in the case of any registered real right which has lapsed for any reason, the registrar shall cancel the registration on production of proof that the real right has lapsed.

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(2) Notwithstanding anything to the contrary in any other law contained, it shall not be necessary to annex a diagram to any sectional title deed under which a unit or an undivided share in a unit is held, if reference is made in such deed to the registered sectional plan.

(3) The registrar shall not register a transfer of a unit or of an undivided share therein, unless there is produced to him-

(a) a conveyancer's certificate confirming that as at date of registration-

(i) (aa) if a body corporate is deemed to be established in terms of section 36 (1), that body corporate has certified that all moneys due to the body corporate by the transferor in respect of the said unit have been paid, or that provision has been made to the satisfaction of the body corporate for the payment thereof; or

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

(ii) no real right of extension of a scheme as contemplated in section 25 is registered in favour of a developer or the body corporate or, if such right is so registered, that it is disclosed in the deed of alienation to the transferee as contemplated in section 25 (14) or, if it is not so disclosed, that the transferee after the conclusion of the deed of alienation has in writing exercised his or her option in terms of section 25 (15) and that he or she has elected not to annul the alienation on the ground of the said defect;

(b) a clearance certificate from the local authority that all rates and moneys due to such local authority under any law in respect of the land and buildings of the scheme have been paid if-

(i) provision is made by law for the separate rating of units; or

(ii) the transfer will result in the establishment of a body corporate in terms of section 36;

(c) if the transferor is a developer, an affidavit by the developer in which it is declared whether the relevant unit is a unit to which the provisions of section 10 apply or not and, if those provisions so apply, that the transfer is effected in terms of a contract which is not contrary to any provision of that section.

(4) A unit shall be capable of being held by two or more persons in joint ownership.

(5) (a) Any person who is -

(i) the joint owner of a unit or

(ii) the joint holder of a right to an exclusive use area or

(iii) the joint holder of a right referred to in section 25(1),

held by such person and one or more other persons under one sectional title deed, certificate of real right or notarial deed of cession, as the case may be, may, upon application to the registrar in the prescribed manner, obtain a certificate of registered sectional title or a certificate of real right in the prescribed form in respect of his or her undivided share in such unit, right to an exclusive use area or right referred to in section 25(1).

(b) No transfer or cession of a fraction of an undivided share -

(i) in a unit or

(ii) right to an exclusive use area; or

(iii) right referred to in section 25(1),

and no hypothecation or lease of the whole or fraction of such undivided share shall be registered in a deeds registry unless a certificate of registered sectional title or certificate of real right in respect of such undivided share is produced to the registrar..

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16 Ownership of common property

(1) The common property shall be owned by owners of sections jointly in undivided shares proportionate to the quotas of their respective sections as specified on the relevant sectional plan.

(2) A sectional title deed in respect of a section shall, in a separate paragraph, describe the undivided share in the common property of the owner of the section as an undivided share in the common property apportioned to the section in accordance with the quota of the section.

(3) A section and its undivided share in the common property shall together be deemed to be one unit, and no section shall be disposed of or be otherwise dealt with apart from its appurtenant undivided share in the common property nor, subject to section 17, shall an undivided share in the common property be disposed of or be otherwise dealt with apart from the section to which it is appurtenant.

(4) Any insurance of a section shall be deemed also to insure the undivided share in the common property of the owner of the section, even if no express reference is made to such share.

17 Alienation and letting of common property

(1) The owners and holders of a right of extension contemplated in section 25 may by unanimous resolution direct the body corporate on their behalf to alienate common property or any part thereof, or to let common property or any part thereof under a lease, and thereupon the body corporate shall, notwithstanding any provisions of section 20 of the Deeds Registries Act, but subject to compliance with any law relating to the subdivision of land or to the letting of a part of land, as the case may be, have power to deal with such common property or such part thereof in accordance with the direction, and to

execute any deed required for the purpose: Provided that if the whole of the right referred to in section 25 or section 60 (1) (b) is affected by the alienation of common property, such right shall be cancelled by the registrar with the consent of the holder thereof on submission of the title to the right.

(2) Any transaction in pursuance of a resolution referred to in subsection (1) shall be accompanied by a copy of the relevant resolution, certified by two trustees of the body corporate: Provided that where the transaction in question requires to be notarially executed, such resolution so certified shall be produced to the notary public concerned and be retained by him in his protocol.

(3) The registrar shall-

(a) register the transfer of land comprised in the common property, and thereupon the land shall revert to the land register and the registrar shall make an appropriate endorsement and entry on such title deed and in his or her records to give effect thereto: Provided that if a portion only of the land comprised in the common property and on which no section or part of a section is erected, is so transferred, no endorsement thereof shall be made on the sectional title deeds of the owners of units: Provided further that in such a case where a portion only of the land comprised in the common property is transferred, a diagram of such portion approved by the Surveyor-General in terms of the Land Survey Act, 1997 (Act 8 of 1997), shall be annexed to the said title deed;

(b) notify the Surveyor-General and local authority of any reversion of any land to the land register under paragraph (a), and upon receipt of such notification the Surveyor-General shall make an appropriate endorsement on the original sectional plan and the deeds registry copy thereof; and

(c) register a notarial lease of land comprising common property by making an appropriate endorsement against the schedule of conditions referred to in section 11 (3) (b), and no endorsement thereof shall be made on the sectional title deeds of the units: Provided that where a lease is registered over a portion only of the land comprised in the common property, a diagram of such portion approved in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), shall be annexed to the deed of lease.

(4) (a) Where, pursuant to subsection (1), it is sought to alienate a portion of the common property on which a section is erected, the registrar shall not register the transfer unless the registration of the section in question has been cancelled with the written consent of the owner.

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(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.

(c) When the registration of a section is cancelled under paragraph (a), the quota of the section shall lapse and the quotas of the remaining sections shall be proportionately adjusted.

(d) The registrar shall notify the Surveyor-General and the local authority whenever the registration of a section has been cancelled under paragraph (a), and upon receipt of such notification the Surveyor-General shall effect the necessary amendments to the original sectional plan, the deeds registry copy of the sectional plan and the schedule thereto specifying the quota of each section.

(4A) (a) Where part of a section is erected on a portion of the common property the unaffected part or parts of the section in the scheme shall be substituted in accordance with an amended participation quota schedule, which shall be referred to the surveyor-General for approval

(b) The Surveyor-General shall notify the registrar of a change or amendment of a sectional plan in terms of paragraph (a) which affects the description or extent of a section, and thereupon the registrar shall, simultaneously with the registration of the transfer of the part of the land included in the scheme,

make the necessary endorsement against the title deeds in question: Provided that the registrar shall not register the transfer of the common property, unless the sectional title deed of the affected section is endorsed with the new extent as reflected in the amended participation quota schedule.

(c) the registrar shall notify the Surveyor-General and the local authority whenever an endorsement has been made in terms of paragraph (b), and on receipt of such notice the Surveyor-General shall make the necessary amendments on the original sectional plan, the deeds registry copy of the sectional plan and the schedule thereto specifying the quota of each section.

(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.

(5) When the whole of the land comprised in the common property shown on the sectional plan is transferred by the body corporate pursuant to this section, the sectional title deeds of the owners of units and the title deeds of the holders of any registered real rights in the units, and the title deeds of the holders of exclusive use areas shall be surrendered to the registrar for cancellation, and the title deed of any other registered real right in the land, excluding mineral rights, shall be surrendered to the registrar for endorsement and the registrar shall close the sectional title register and notify the Surveyor-General and the local authority that the sectional title register has been closed.

(6) Upon receipt of the notification referred to in subsection (5), the Surveyor-General shall cancel the original sectional plan and the deeds registry copy of the sectional plan.

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

The provisions of sections 56 and 57 of the Deeds Registries Act shall apply mutatis mutandis with reference 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, and the transfer under section 17 of this Act of any mortgaged common property or land or an undivided share therein.

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19 Expropriation of common property or rights therein

(1) Whenever the whole or any part of, or any right in, the common property is expropriated under the provisions of any law, service of a notice of expropriation on the body corporate shall be deemed to be service thereof on the registered owner of every section in the building or buildings concerned, and each such owner shall be deemed to have appointed the trustees of the body corporate concerned as his duly authorized agents and representatives-

(a) to negotiate and settle the compensation payable to him, and to that end to employ attorneys, advocates and other experts; and

(b) on his behalf to receive and give valid acquittance f