

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. 27047 of 10 December 2004)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 10—2005]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Sectional Titles Act, 1986, so as to amend the definition of “exclusive use area”; to increase the percentage deviation in the participation quota as a result of the extension of any section in a scheme; to provide for the registration of a plan of extension where a scheme is extended by the addition of a section; to extend the types of real rights which may be registered against a portion of common property; to include imprisonment in a penalty provision; and to provide anew for the non-joinder of members where judgment has been given against the body corporate; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 95 of 1986, as amended by section 1 of Act 63 of 1991, section 1 of Act 7 of 1992, section 1 of Act 15 of 1993, section 1 of Act 44 of 1997 and section 1 of Act 29 of 2003 5

1. Section 1 of the Sectional Titles Act, 1986 (hereinafter referred to as the principal Act), is hereby amended by the substitution in subsection (1) 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 **[, as contemplated in section 27]**.” 10

Amendment of section 24 of Act 95 of 1986, as amended by section 14 of Act 63 of 1991, section 5 of Act 7 of 1992, section 17 of Act 44 of 1997 and section 5 of Act 29 of 2003

2. Section 24 of the principal Act is hereby amended by the substitution in subsection (6) for paragraph (d) of the following paragraph: 15

“(d) any sectional mortgage bond to which the section may be subject, together with a certificate by a conveyancer stating that there is not a deviation of more than **[five] 10** per cent in the participation quota of **[a section or sections] any section** as a result of the extension, or if there is a deviation of more than **[five] 20 10** per cent, that the mortgagee of each section in the scheme has consented to the registration of the sectional plan of extension of a section; and”.

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 and section 6 of Act 29 of 2003

3. Section 25 of the principal Act is hereby amended by the insertion of the following subsection after subsection (5):

“(5A) (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 apply for the registration of the relevant plan of extension and the inclusion of such unit in the relevant sectional title register.

(b) If the developer or his or her successor in title fails to take such steps and fails to register the relevant plan of extension within 90 days of completion for occupation of the unit, the developer or his or her successor in title shall be liable to the body corporate for the amounts payable in terms of section 37(1) as if the unit had been included in the relevant sectional title register on the date of completion.

(c) The certificate contemplated in section 15B(3)(a)(i)(aa) shall not be issued unless the amounts in question are paid to the body corporate.”.

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 and section 8 of Act 29 of 2003

4. Section 27 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

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

Amendment of section 36 of Act 95 of 1986, as amended by section 9 of Act 7 of 1992

5. Section 36 of the principal Act is hereby amended by the substitution in subsection (7) for paragraph (b) of the following paragraph:

“(b) A developer who fails to comply with any provision of paragraph (a) or (aA), shall be guilty of an offence and liable on conviction to a fine **[not exceeding R1 000]** or to imprisonment for a period not exceeding two years.”.

Amendment of section 47 of Act 95 of 1986

6. Section 47 of the principal Act is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:

“: Provided that any member who **[is so required to make a payment to a judgment creditor after he has paid to the body corporate any contribution which he was required to pay to that body corporate in respect of the same debt, shall be entitled to obtain a refund from the body corporate of the amount of the payment so made to the said creditor]** has paid the contributions due by him or her in terms of section 37(1) to the body corporate prior to the judgment against the body corporate, may not be joined as a joint judgment debtor in respect of the judgment debt.”.

Short title

7. This Act is called the Sectional Titles Amendment Act, 2005.

MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES AMENDMENT BILL, 2005

1. PURPOSE

The Bill aims at amending provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986) (“the Act”), in order to clarify certain issues and to eliminate existing interpretation problems.

2. CONTENTS OF BILL

2.1 The definition of “exclusive use area” in section 1 of the Act only refers to exclusive use areas in section 27 of the Act. However, the expressions “exclusive use area” and “exclusive use” appear in various other provisions of the Act. This situation obviously creates legal uncertainty and interpretation problems. The proposal in clause 1 of the Bill is a technical amendment which seeks to eliminate these problems.

2.2 Section 24 of the Act provides for the extension of the boundaries or floor area of a section in a scheme by the owner of the section. The body corporate, by a special resolution of its members, must approve the extension and a draft sectional plan of the extension must be submitted to the Surveyor-General by a land surveyor or architect. If the deviation in the participation quota of a section is more than five per cent as a result of the extension, the mortgagee of each section in the scheme must consent to the registration of the sectional plan of extension of the section. From the provisions of section 24(6)(d) of the Act, it is not clear whether the percentage deviation relates to the participation quota of the individual section concerned or to all the participation quotas of the sections in the scheme. The small percentage deviation does not justify the time and cost to obtain consent from each of the mortgagees for the registration of the sectional plan of extension. The proposal in clause 2 of the Bill seeks to clarify the uncertainty pertaining to the participation quota and to save time and cost by increasing the deviation percentage to 10 per cent.

2.3 Section 25 of the Act provides for the extension of schemes by the addition of sections. It does not, however, provide for the registration of a new extension in a scheme by the registrar of deeds. Many of the extensions are, therefore, not registered by the registrar of deeds. In many instances extensions are let by the developers and because they are not obliged to do so by the Act, the developers do not contribute to the levy fund of the particular scheme. The non-payment of contributions cannot be justified and also discriminates against the other owners who are obliged to pay the contributions. To rectify this situation, clause 3 of the Bill proposes the immediate registration of the plan of extension after completion of the extension. If the plan is not registered within 90 days of completion, the developer or successor in title will become liable for payment of contributions as if the unit had been included in the sectional title register.

2.4 Section 27 of the Act provides for the registration of rights of exclusive use of parts of common property in the name of an owner of a section in a scheme. In terms of section 27(6) such a right is deemed to be a right to urban immovable property over which a mortgage bond may be registered. This provision, however, does not provide for the registration of other real rights, for instance, where exclusive use areas are bequeathed subject to a lease contract. Clause 4 of the Bill seeks to extend the registration of real rights to include a lease contract or personal servitude of usufruct, *usus* or *habitatio*.

2.5 Section 36(7)(a) of the Act determines that a developer must convene a meeting of the members of the body corporate not later than 60 days after the establishment of the body corporate. At the meeting the members must be furnished with a copy of the sectional plan, a certificate from the local authority that all rates due by the developer up to the date of the establishment of the body corporate have been paid and proof of revenue and expenditure concerning the management of the scheme until the date of establishment of the body corporate. The developer must pay any residue, as revealed in the proof, over to the body corporate. A developer who fails to comply with any of the provisions is guilty of an offence and liable on conviction to a fine not exceeding R1 000. Developers often do not comply with these provisions, apparently because the penalty is not an effective deterrent for non-compliance. It has consequently become necessary to review the penalty provision for non-compliance. Clause 5 of the Bill proposes the inclusion of imprisonment for a period not exceeding two years.

2.6 Section 47 of the Act provides that a creditor of a body corporate may obtain judgment against the body corporate. If judgment has been obtained and remains unsatisfied, the creditor may apply to the court for the joinder of the members of the body corporate in their personal capacities as joint judgment debtors of the debt. The creditor may then recover the judgment debt outstanding on a *pro rata* basis. A member who is required to make a payment to a judgment creditor after the member has paid the contribution he or she was required to pay to the body corporate in respect of the debt, is entitled to obtain a refund from the body corporate for the amount paid to the creditor. It is, however, necessary to protect owners from losing their units in instances where a judgment debt against a body corporate remains unsatisfied and owners had paid their levies prior to the judgment. The proposed amendment in clause 6 of the Bill seeks to change the present legal process by excluding the joining of a member who had paid the contributions due to the body corporate prior to the judgment against the body corporate.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

Law Society of South Africa
South African Council for Architects
South African Council for Professional and Technical Surveyors
South African Property Owners Association
Banking Council of South Africa
Department of Housing
Department of Justice and Constitutional Development

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.