

CHIEF REGISTRAR'S CIRCULAR NO. 11 OF 2010

SECTIONAL TITLES ACT, 1986 (ACT NO. 95 OF 1986), AS AMENDED BY THE SECTIONAL TITLES AMENDMENT ACT, 2010 (ACT NO. 11 OF 2010)

1. COMMENCEMENT OF THE ACT

The Sectional Titles Amendment Act 2010 (Act No. 11 of 2010) ("the Amendment Act"), was published in Government Gazette No. 33849, and came into operation on 7 December 2010.

2. PURPOSE OF THE AMENDMENT ACT

The main purpose of the Amendment Act is to amend the Sectional Titles Act, 1986 (Act No. 95 of 1986) ("the Act"), in order to enhance the application of the Act and to address current shortfalls.

3. AMENDMENT OF THE ACT

The following is a brief explanation of the amendment of the Act. Only the amendments that relate to registration issues are discussed.

3.1. Amendment of section 11 of the Act

3.1.1. Sections 11(3)(d)(ii) and 11(3)(d)(iii) of the Act have been amended, by section 3(a) of the Amendment Act, to provide for the issuing of **more than one** certificate of real right of extension of a scheme and more than one certificate of real right of exclusive use areas, as contemplated in sections 25(1) and 27(1), respectively.

3.1.2. The amendment to section 11(3)(d) provides for the deletion of reference to section 40(5) of the Deeds Registries Act, 1937, and the adoption of a procedure similar to that in section 40(5).

- *Until the regulations to the Act have been amended, an application and consent for the substitution of the land under a mortgage bond in terms of section 11 (3)(d) of the Act must be drafted, with the necessary changes, along the lines of Form MM and Form WW in Act No. 47 of 1937.*

3.1.3. Section 3(b) of the Amendment Act provides for the insertion of section 11(3)(fB) and 11(3)(fC), to read as follow:

- “(fB) the certificate or certificates of real right in respect of any right which has or have been reserved by him or her in terms of section 25(1);
 (fC) the certificate or certificates of real right in respect of any right of exclusive use if a condition, as contemplated in section 27(1), has been imposed; and”*

Section 11 was, prior to its amendment, silent on the lodgment of certificates of real right of extension and certificates of real right of exclusive use areas, as contemplated in sections 25(1) and 27(1) of the Act. Section 11 now provides for the **lodgment** of the certificate(s) and is therefore in line with section 12 that provides for the **registration** of the said certificate(s).

3.2. Amendment of section 12 of the Act:

Section 12(1)(e) and 12(1)(f), as amended by section 4 of the Amendment Act, provide for the issuing of **more than one** certificate of real right of extension of a scheme and more than one certificate of real right of exclusive use areas, as contemplated in sections 25(1) and 27(1), respectively.

3.3. Amendment of section 14 of the Act:

Section 5 of the Amendment Act provides for the amendment of section 14(8), to read as follows:

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

The reason for the amendment of section 14(8) is to make it clear that a registered sectional plan may also be cancelled upon the destruction of or damage to buildings, and upon the disposal of the destruction of buildings, as contemplated in sections 48 and 49, **without the requirement of a court order**. It is therefore not necessary to obtain a court order upon the cancellation of a sectional plan where the buildings are damaged or destroyed.

3.4. Insertion of section 15B(5A):

Section 6 of the Amendment Act provides for the insertion of section 15B(5A), to

read as follows:

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

Prior to amendment, section 15B(5) of the Act provided for the issuing of a certificate of registered sectional title or a certificate of real right (in respect of an undivided share in a unit, a right to exclusive use areas, or a right referred to in section 25 (1)) only in instances where such unit or right was held in joint ownership. Section 15B(5A) now provides for the issuing, **to any person** who is the owner of a unit or the owner of a share in such unit, of a certificate of registered sectional title of any fraction of his or her undivided share in such unit.

- *Until the regulations to the Act have been amended, the application for the issuing of a certificate of registered sectional title in terms of section 15B(5A), must be drafted, with the necessary changes, on the lines of Form I in Annexure 1. The said certificate of registered sectional title must be drafted, with the necessary changes, along the lines of Form J in Annexure 1.*

3.5. Amendment of section 24 of the Act:

3.5.1. The amendment of section 24(6)(d)(i), by section 7(b) of the Amendment Act, provides for the deletion of reference to ‘conveyancer’. This section now provides for an architect or land surveyor to determine a deviation in the participation quota upon the extension of a section.

3.5.2. The amendment to section 24(6)(d)(i) and 24(6)(d)(ii) provides for a certificate by a conveyancer to be lodged in instances where there is a deviation of more than 10% in the participation quota of the **section to be extended**, as a result of the extension.

3.6. Amendment of section 25 of the Act:

3.6.1. Section 8(a) of the Amendment Act provides for the substitution for the heading of section 25 of the following heading:

“Extension of schemes by addition of sections and exclusive use areas or by addition of exclusive use areas only”

The heading, as well as section 25(1), 25(2)(b), 25(5), 25(9), 25(10(d), 25(10(dA)(ii), 25(11)(b), (c), and (d), and 25(13), have been amended to also provide for the extension of a scheme by the addition of exclusive use areas only.

- *Until the regulations to the Act have been amended, the application for the issuing of a certificate of real right in terms of section 25(9) must be drafted, with the necessary changes, along the lines of Form O in Annexure 1.*

3.6.2. Section 25(1) has also been amended, by section 8(b) of the Amendment Act, to provide a mechanism whereby a developer may extend the period of time in which a right of extension must be exercised. The period of time may now be extended by unanimous resolution of the body corporate and bondholders and by way of a bilateral notarial deed. The extended period must be agreed upon prior to the expiry of the original stipulated period.

3.6.3. Section 25(1)(a) has been amended to provide for the reservation of a right of extension in respect of a building or buildings that **already exist**. Other sections that have been amended in this regard are sections 25(2)(a) and 25(2)(b) and (d).

3.6.4. Section 25(4A), as inserted by section 8(g) of the Amendment Act, provides for the lodgement of a conveyancer's certificate (regarding money that is due to the body corporate) with the cession of a real right of extension or a portion or an undivided share therein.

3.6.5. The amendment of section 25(5), by section 8(h) of the Amendment Act, relates to the amendment of section 25(1) that provides for the extension of a scheme by the addition of exclusive use areas only. Section 25(5) now provides that "rights of exclusive use must be ceded within 12 months after their creation".

3.7. **Amendment of section 27 of the Act:**

Section 27(5), as amended by section 9(c) of the Amendment Act, provides for the holder of a personal common law servitude or the holder of a lease, to consent, together with a mortgagee, to the cancellation of an exclusive use area.

3.8. **Amendment of section 29 of the Act:**

Section 10 of the Amendment Act provides for the amendment of section 29(3) to read as follows:

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

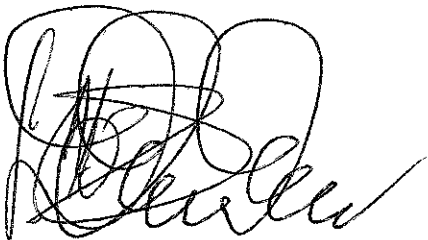
Prior to its amendment, section 29(3) of the Act provided for the written consent of every mortgagee to be obtained with the registration of a servitude or restrictive agreement over land in a sectional title scheme. The amended section 29(3) now provides for the obtaining and filing, in the protocol of the notary, of the consent of bondholders that exist on the date of execution of such servitude or agreement.

3.9. Amendment of section 44 of the Act:

Section 44(1)(g), as amended by section 12 of the Amendment Act, provides for the purpose for which an exclusive use area is intended to be used, to be shown expressly or by implication on a registered sectional plan.

4. IMPLEMENTATION OF AMENDMENTS TO THE ACT

The amended provisions to the Act must be applied only to deeds lodged after the date of issue of this circular. However, the amended provisions may also be applied to deeds lodged prior to the date of this Circular, but on or after the date of the coming into operation of the Amendment Act.



**CHIEF REGISTRAR OF DEEDS
DATE: 23 DECEMBER 2010**

REFERENCE: A.6/2/P AND A.1/2/1/1/2
RINGBINDER: 55

CHIEF REGISTRAR OF DEEDS
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