

EXAMINERS NOTE

- *The purpose of this Note is to provide clarity in respect of certain matters discussed in CRC 13 of 2016.*
 - *A further (or amended) Chief Registrar's Circular will be issued as soon as CSOS has provided clarity in respect of the application of certain provisions of the Sectional Titles Schemes Management Act 8 of 2011.*
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1. Application of the amended Section 11(3)(e) of Act 95 of 1986:

Section 11(3)(e) of Act 95 of 1986, as amended, reads as follows:

“(e) a certificate by the Chief Ombud stating that the rules, contemplated in section 10 of the Sectional Titles Schemes Management Act have been approved;”

Question:

- Must section 11(3)(e) of Act 95 of 1986 strictly be followed in so far the certificate by the Chief Ombud *must* be lodged in instances where Rules are to be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register?

(Note: The certificate that is being referred to in section 11(3)(e) of Act 95 of 1986, is the same certificate that is being issued by the Chief Ombud upon approval of the substitution, addition, amendment, or repeal of the rules in term of section 10(5)(c) of Act 8 of 2011. The said section reads as follows: *“(c) If the chief ombud approves the substitution, addition, amendment or repeal of rules for filing, he or she must issue a certificate to that effect.”*)

Answer:

- No. Section 10(5)(d) of Act 8 of 2011 provides for the substitution, addition, amendment or repeal of the Rules to come into operation on the date of the issuing of the certificate contemplated in section 10(5)(c) **or** on the date of the opening of the sectional title register for the scheme, ***whichever is the latest.***

It is possible, from the wording of section 10(5)(d) of Act of 2011, that the certificate by the Chief Ombud (which is supposed to be lodged in the deeds registry in terms of section 11(3)(e) of Act 95 of 1986) may not be in existence at the time of the lodgement of the deeds for the opening of the scheme. Section 10(5)(d) gives the impression that this certificate may be issued by the Chief Ombud *after* the date of the registration of the opening of the scheme, and that such later date must then be regarded as the date of the coming into operation of the substitution, addition, amendment or repeal of the Rules .

Therefore, where Notification was made for the substitution, addition, amendment or repeal of the Rules, but where the certificate has not yet been issued by the Chief Ombud, the following certificate by the conveyancer may be lodged:

*“I (initials and surname of conveyancer) hereby certify that, upon the necessary enquiries made by myself, the Rules to the scheme..... (name of scheme) are to be *amended, substituted, repealed, or added to, and that the Developer has made the required notification to the Chief Ombud for such *amendment, substitution, repeal, or addition, as provided for in section 10(5)(a) of Act 8 of 2011. (signature)*

2. Application of the amended Section 15B(3)(i)(aa):

Section 15B(3)(i)(aa) of Act 95 of 1986 has been amended to read as follows:

“(aa) if a body corporate is deemed to be established in terms of section 2 (1) of the Sectional Titles Schemes Management Act, 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”

Question:

- Must the certificate in terms of section 15B(3)(i)(aa) make reference to the section / Act in terms of which the Body Corporate has been established?

Answer:

- No. It is acceptable if the ‘Section 15B(3) Certificate’ only makes reference to the establishment of the Body Corporate, without mentioning the specific section / Act under which such Body Corporate was established.

However, if the '*Section 15B(3) Certificate*' does make reference to the section / Act under which the Body Corporate was established, then the following applies:

- In instances where the '*Section 15B(3) Certificate*' was signed prior to 7 October (date of commencement of Act 8 of 2011), same must refer to the establishment of the Body Corporate in terms of section 36 of Act 95 of 1986;
- In instances where the '*Section 15B(3) Certificate*' was signed on or after 7 October, same must refer to the establishment of the Body Corporate in terms of section 2 of Act 8 of 2011.

Reason for the above:

Section 2(12) of **Act 8 of 2011** provides that '*Any reference in any law or document to a body corporate established in terms of the Sectional Titles Act must, after the commencement of this Act, be constructed as a reference to a "body corporate" referred to in section 2 of this Act*'..

- (*Deeds must not be rejected in instances where incorrect references to sections / Acts have been made on the 'Section 15B(3) Certificates'. A note may be raised for the conveyancer to amend the certificate to reflect the correct position.*)