

Namibia

## Sectional Titles Act, 2009

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Republic of Namibia  
Annotated Statutes

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## Sectional Titles Act, 2009

### Act 2 of 2009

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Assented to on 22 April 2009

Commenced on 15 December 2014 by [Government Notice 252 of 2014](#)

*[Up to date as at 14 July 2020]*

ACT

To provide for the division of buildings into sections and common property and the acquisition of separate ownership in sections coupled with joint ownership in common property, the control of certain rights 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; to establish the Sectional Titles Regulation Board; and to provide for incidental matters.

*[Most statutes contain a statement here which says "BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:", or similar. No such statement appears in the Government Gazette in which this law was published.]*

### Part I – DEFINITIONS AND INTERPRETATION

#### 1. Definitions and interpretation

(1) In this Act, unless the context otherwise indicates -

“**architect**” means a person registered as an architect in terms of section 11 of the Architects’ and Quantity Surveyors’ Act, 1979 (Act No. 13 of 1979);

“**body corporate**”, in relation to a building and the land on which the building is erected, means the body corporate of that building and land referred to in section 38(1);

“**building**” means a structure of a permanent nature erected or to be erected or in the process of being erected and which is shown on a sectional plan as part of a scheme;

“**commencement date**” means the date of commencement of this Act;

“**common property**”, in relation to a scheme, means -

- (a) the land included in the scheme;
- (b) those parts of the building or buildings that are not included in a section; and
- (c) land referred to in section 27;

“**conveyancer**” means a conveyancer as defined in section 102 of the Deeds Registries Act;

“**Council**” means -

- (a) in relation to an architect, the Namibia Council for Architects and Quantity Surveyors referred to in section 2 of the Architects’ and Quantity Surveyors’ Act, 1979 (Act No. 13 of 1979); and
- (b) in relation to a land surveyor, the Namibian Council for Professional Land Surveyors, Technical Surveyors and Survey Technicians established by section 2 of the Professional Land Surveyors’, Technical Surveyors’ and Survey Technicians’ Act, 1993 (Act No. 32 of 1993);

“**Court**” means the High Court of Namibia referred to in Article 80(1) of the Namibian Constitution and, for the purposes of sections 46 and 49, includes a magistrate’s court having jurisdiction;

“**Deeds Registries Act**” means the Deeds Registries Act, 1937 (Act No. 47 of 1937), and includes any regulation made under that Act;

“**deeds registry**”, notwithstanding anything to the contrary in the Deeds Registries Act or any other law contained, means the deeds registry established at Windhoek by section 1 of the Deeds Registries Act, irrespective of where the land in question is situated in Namibia;

“**developer**” means -

- (a) a person who is the registered owner of land, situated within the area of jurisdiction of a local authority, on which is erected or is to be erected or is in the process of being erected a building or buildings which that registered owner has divided or intends to divide into two or more sections or as contemplated in section 2(a)(ii) in terms of a scheme;
- (b) the successor in title of the registered owner of land referred to in paragraph (a); or
- (c) the holder of the right referred to in section 26 to extend a scheme,

and, for the purposes of the rebuilding of a building that is deemed to have been destroyed as contemplated in section 51, includes the body corporate concerned;

“**development scheme**” means a scheme in terms of which a building or buildings erected or to be erected or in the process of being 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 section 2(a)(ii);

“**draft sectional plan**” means a sectional plan prepared in accordance with section 7, but not yet approved by the local authority concerned, and “draft sectional plan of subdivision”, “draft sectional plan of consolidation” and “draft sectional plan of extension” have a corresponding meaning;

“**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**” means the land comprised in a scheme as shown on a sectional plan;

“**Land Survey Act**” means the Land Survey Act, 1993 (Act No. 33 of 1993);

“**land surveyor**” means a person who is registered as a practitioner under section 17 of the Professional Land Surveyors’, Technical Surveyors’ and Survey Technicians’ Act, 1993 (Act No. 32 of 1993), and whose name is entered as a professional land surveyor in the register of practitioners referred to in section 13 of that Act;

“**lease**”, for the purposes of section 19(1), means a lease that -

- (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 option of the lessee indefinitely or for periods that, together with the first period, amount in all to not less than ten years;

“**local authority**” means -

- (a) a local authority council as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992); or
- (b) a local authority declared as such under subsection (5);

“**Minister**” means the Minister responsible for land affairs;

“**notary public**” means a notary public as defined in section 102 of the Deeds Registries Act;

“**operative town planning scheme**” means a town planning scheme map and accompanying town planning scheme clauses prepared and approved in terms of any law;

“**owner**”, means -

- (a) in relation to immovable property, subject to paragraph (b), the person registered in the deeds registry as the owner or holder of the immovable property, and includes -
  - (i) the trustee of the insolvent estate of an owner;
  - (ii) the liquidator of a company or close corporation that is an owner;
  - (iii) the executor of the estate of an owner who is deceased; and
  - (iv) the representative, recognised by law, of an owner who is -
    - (aa) a minor;
    - (bb) of unsound mind; or
    - (cc) otherwise by reason of a disability unable to manage or attend to his or her own affairs,

if that 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; or
  - (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**”, in relation to a section or the owner of a section, means the percentage determined in accordance with section 34(1) in respect of that section for the purposes referred to in section 34(3), and shown on a sectional plan in accordance with section 7(3)(g);

“**prescribed**” means prescribed by regulation;

“**rateable property**” means rateable property as defined in section 1 of the Local Authorities Act, 1992 (Act No. 23 of 1992);

“**register**”, when used as a verb, means register in the deeds registry, and “registered” and “registration” have a corresponding meaning;

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

*[The closing quotation mark after the word “registrable” should be a double quotation mark instead of a single quotation mark.]*

“**registrar**” means the registrar of deeds as defined in section 102 of the Deeds Registries Act;

“**regulation**” means a regulation made or in force under this Act;

“**Regulation Board**” means the Sectional Titles Regulation Board established by section 55(1);

“**repealed Act**” means the Sectional Titles Act, 1971 (Act No. 66 of 1971), repealed by section 60;

“**rules**”, in relation to a building or buildings that has or have been divided into a section or sections and common property, means the management rules and the conduct rules referred to in section 37(3) relating to the control, management, administration, use and enjoyment of the sections and common property, and includes any substitution, addition, amendment or repeal thereof under section 37(4);

“**scheme**” means a development scheme;

“**section**” means a section shown as such on a sectional plan;

“**sectional mortgage bond**” means a mortgage bond hypothecating -

- (a) a unit or an undivided share in a unit or land held under a separate sectional title deed; or
- (b) a registered lease or sub-lease of any unit or undivided share in a unit or land referred to in paragraph (a); or
- (c) any other registered real right in or over any unit or undivided share in a unit referred to in paragraph (a) or common property or any of the rights referred to in sections 26 and 28;

“**sectional plan**”, in relation to a scheme, means a plan approved in terms of section 9 by the local authority concerned -

- (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 7,

and includes a sectional plan of subdivision, a sectional plan of consolidation and a sectional plan of extension as provided for in this Act;

“**sectional title deed**” means a certificate of registered sectional title or a deed of transfer;

“**sectional title register**” means a sectional title register referred to in section 12(1)(b), and includes a registered sectional plan and the deeds registry’s duplicate of a certificate of registered sectional title deemed to be incorporated in that register;

“**special resolution**” means, subject to subsection (2) -

- (a) a resolution passed by a majority of not less than 75 per cent of the votes (reckoned in value) and not less than 75 per cent of the votes (reckoned in number) of the members of a body corporate who are present, or represented by proxy or by a representative recognised by law, at a general meeting of the body corporate of which at least 30 days’ written notice, containing full particulars of the proposed resolution, has been given; or
- (b) a resolution agreed to in writing by not less than 75 per cent of all the members of the body corporate (reckoned in number) and not less than 75 per cent of all those members (reckoned in value) personally or by proxy or by a representative of any such member recognised by law;

“**staff member**” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

“**Surveyor-General**” means the Surveyor-General appointed in terms of section 2(1) of the Land Survey

Act, or a person acting in that capacity by virtue of section 2(2) of that Act;

“**this Act**” includes any regulation;

“**unanimous resolution**” means, subject to subsection (3) -

- (a) a resolution passed unanimously by all the members of a body corporate who are present, or represented by proxy or by a representative recognised by law, at a general meeting of the body corporate of which at least 30 days’ written notice, containing full particulars of the proposed unanimous resolution, has been given, and at which meeting not less than 80 per cent of all the members of the body corporate (reckoned in number) and not less than 80 per cent of all the members (reckoned in value) are present or so represented; or
- (b) a resolution agreed to in writing by all the members of the body corporate personally or by proxy or by a representative of any such member recognised by law;

“**undivided share in common property**” means -

- (a) in relation to the owner of a section, the undivided share of that owner in the common property as determined in accordance with the participation quota of the section of which he or she is the owner; and
- (b) in relation to a section, the undivided share in the common property apportioned to the section in accordance with the participation quota of the section; and

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

(2) For the purposes of the definition of “special resolution” in subsection (1) -

- (a) a general meeting of the body corporate may, in circumstances determined in the rules, be convened to be held on a date earlier than 30 days after the date on which notice of the proposed resolution has been given to all the members of the body corporate; and
- (b) a notice contemplated in that definition is deemed adequate if -
  - (i) it was delivered by hand to a member of the body corporate not less than 30 days, or such shorter period as may be determined pursuant to paragraph (a), before the date of the relevant general meeting;
  - (ii) it was despatched by prepaid registered post to a member of the body corporate not less than 30 days, or such shorter period as may be determined pursuant to paragraph (a), before the date of the relevant general meeting, addressed to that member’s postal address furnished by him or her in writing for the purpose of despatching such a notice by post; or
  - (iii) it was sent to a member of the body corporate not less than 30 days, or such shorter period as may be determined pursuant to paragraph (a), before the relevant general meeting by facsimile transmission to a facsimile number furnished by that member in writing for the purpose of sending such a notice by facsimile transmission.

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

- (a) a general meeting of the body corporate may, in circumstances determined in the rules, be convened to be held on a date earlier than 30 days after the date on which notice of the proposed resolution has been given to all the members of the body corporate;
- (b) a notice contemplated in that definition is deemed adequate if it has been delivered to, or despatched or faxed to the address or facsimile number of, a member of the body corporate as contemplated in paragraph (b)(i), (ii) or (iii) of subsection (2);
- (c) a member of the body corporate present or represented at a meeting contemplated in that definition who himself or herself, or through a proxy or representative, abstains from voting on the resolution in question is deemed to have voted in favour of that resolution; and



- (d) where the resolution in question adversely affects the proprietary rights or powers of a member of the body corporate as owner of a section, that resolution is deemed not to have been passed unless that member consents in writing thereto.
- (4) If a body corporate is unable to obtain a unanimous resolution, the body corporate may, subject to subsection (3)(d), approach the Court for relief.
- (5) The Minister, acting with the concurrence of the Minister responsible for local government and after consultation with the local authority to be affected by a declaration under this subsection, may by notice in the Gazette declare any institution or body established by or under 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 a local authority, to be a local authority for the purposes of this Act.

## Part II – INTRODUCTORY PROVISIONS

### 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

Despite anything to the contrary in any law or the common law -

- (a)
  - (i) a building or buildings comprised in a scheme and the land on which such building or buildings is or are erected may, subject to subparagraph (ii), be divided into sections and common property in accordance with this Act;
  - (ii) where a scheme comprises more than one building, any such building may, subject to section 7(4), be divided into a single section and common property in accordance with this Act;
- (b) separate ownership in such sections or an undivided share therein may be acquired in accordance with this Act;
- (c) the owners of such sections own such common property in undivided shares in accordance with this Act;
- (d) a real right may be acquired in or over any such section or an undivided share therein or common property in accordance with this Act; and
- (e) the registrar may, in accordance with this Act, register 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

Except as otherwise provided in this Act or any other law, or unless the context otherwise indicates, the provisions of the Deeds Registries Act apply, in so far as those provisions can be so applied, with the necessary changes in respect of all deeds and other documents registered or filed, or intended to be registered or filed, in the deeds registry in terms of this Act, irrespective of where the land to which any such deed or document relates is situated in Namibia.

### 4. Keeping of records and reproduction of documents

- (1) The registrar must keep -
  - (a) by means of a computer or in any other manner; or
  - (b) by means of a computer and in any other manner,as the registrar may determine, such registers and records, including records of deeds or other documents referred to in section 3, 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 and accessibility to any deed or other document registered in the deeds registry.

- (2) The register may reproduce or cause to be reproduced any register, record, or deed or other document referred to in subsection (1) by means of microfilming or any other process which in the registrar's opinion accurately reproduces any such register, record, or deed or other document in such manner that any such reproduction forms a durable medium for reproducing and preserving any such register, record, or deed or other document, and preserve or cause to be preserved such reproduction in place of such register, record, or deed or other document.
- (3) A reproduction under subsection (2) is, for the purposes of the deeds registry, deemed to be the original register, record, or deed or other 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, is admissible in evidence and has all the effects of the original register, record, or deed or other document.

## 5. Units deemed to be land

A unit is deemed to be land.

## Part III – DEVELOPMENT SCHEMES, SECTIONAL PLANS AND SECTIONAL TITLE REGISTERS

### 6. Approval of development schemes

- (1) A developer who intends to establish a scheme must, subject to section 7(2), cause a draft sectional plan in respect of the proposed scheme -
  - (a) first to be submitted to the Surveyor-General for his or her approval within the meaning of the Land Survey Act; and
  - (b) after being approved under paragraph (a), to be submitted to the local authority concerned for its approval in terms of section 9.
- (2) A scheme may relate to more than one building erected or to be erected or in the process of being erected on the same piece of land, or on more than one piece of land, whether contiguous or non-contiguous, but the building or buildings that is or are to be divided into sections must be situated only on one such a 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 notarially linked.
- (3) A local authority may, with the concurrence of the Minister and of the Minister responsible for local government, determine the fees and charges payable to that local authority in connection with the approval under this Act of a development scheme, a draft sectional plan, or a draft sectional plan of subdivision, consolidation or extension, by the local authority.

### 7. Manner of preparing draft sectional plans

- (1) A draft sectional plan must, subject to subsection (2), be prepared and signed by a land surveyor or architect in accordance with this Act, and the numerical and other data recorded thereon must be within the prescribed limits of accuracy, but 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, must be prepared by a land surveyor and signed by him or her.
- (2) Despite anything to the contrary in this Act or any other law, only a land surveyor or architect -
  - (a) who has passed the prescribed examination in connection with the preparation of draft sectional plans; and
  - (b) to whom the Surveyor-General has, in the prescribed form, issued a certificate to the effect that he or she has passed the examination referred to in paragraph (a),may prepare or sign, or make any amendment to, a draft sectional plan or sectional plan that is to be submitted to the Surveyor-General or a local authority for approval or other purposes in terms of this Act.

- (3) A draft sectional plan must -
- (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, but any error in that diagram or general plan in regard to the boundaries of the land must be rectified in terms of the Land Survey Act, before the preparation of the draft sectional plan;
  - (b) indicate the name of the scheme;
  - (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 on or attached to it a schedule specifying -
    - (i) the participation quota of each section in accordance with section 34(1); and
    - (ii) the total of the participation quotas of all sections shown thereon; and
  - (h) be drawn in such manner and format, and contain such other particulars, as may be prescribed.
- (4) The common boundary between a section and another section or common property is the median line of the dividing floor, wall or ceiling.
- (5) For the purposes of subsection (3)(d), the boundaries of a section must be defined -
- (a) by reference to the floors, walls and ceilings of the section, or in such other manner 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 the section that can be defined in terms of that paragraph, in the prescribed manner.
- (6) A section may consist of non-contiguous parts of a building or buildings comprised in a scheme.

## **8. Duties of land surveyors and architects, and non-liability of State and local authorities**

- (1) A land surveyor or architect preparing a draft sectional plan must -
- (a) where the building in question has been erected, prepare the draft sectional plan from actual measurements undertaken by him or her or under his or her direction or supervision in such manner as will ensure accurate results, and in accordance with this Act;
  - (b) where the building in question has not been erected, prepare the draft sectional plan in accordance with this Act and must, after the building has been erected, certify that the building has been erected in accordance with the sectional plan or in accordance with the sectional plan as amended by him or her; and
  - (c) attach to the draft sectional plan a certificate, signed by the land surveyor or architect, stating that -
    - (i) the draft sectional plan has been prepared in accordance with this Act; and
    - (ii) the relevant provisions of this Act relating to the preparation of draft sectional plans have been complied with.
- (2) Neither the State nor a local authority nor an official in the employment of the State or local authority is

liable for a defective measurement or work pertaining thereto undertaken or performed by a land surveyor or architect, despite the fact that the sectional plan relating to that measurement or work has been approved by the Surveyor-General or local authority, or accepted for registration.

## 9. Approval of draft sectional plans by local authorities

- (1) When a draft sectional plan is in terms of section 6(1)(b) submitted to the local authority concerned for approval, the land surveyor or architect concerned must on behalf of the developer submit to that local authority the prescribed number of copies of the draft sectional plan.
- (2) A draft sectional plan submitted to the local authority concerned for approval must be accompanied by -
  - (a) a certificate issued and signed by a land surveyor or architect stating that -
    - (i) the proposed division of the building or buildings and land in question into sections and common property is not contrary to -
      - (aa) any operative town planning scheme or conditions subject to which a development was approved in terms of any law; or
      - (bb) any other current planning or development initiatives initiated by the local authority concerned,that may affect the development;
    - (ii) in regard to any matter other than the proposed use, the building or buildings to which the scheme relates is or are not contrary to any operative town planning scheme or conditions subject to which a development was approved in terms of any law;
    - (iii) in respect of matters other than buildings, any applicable condition of any operative town planning scheme or other condition subject to which a development was approved in terms of any law has been complied with; and
    - (iv) where the building or buildings to which the scheme relates has or have been erected, the building or buildings was or were erected in accordance with approved building plans; and
  - (b) such other documents and particulars as may be prescribed.
- (3) A local authority may, within 30 days after receipt of a draft sectional plan in terms of subsection (1), require the land surveyor or architect who on behalf of the developer submitted the draft sectional plan for approval to furnish it with such further documents and particulars as the local authority may reasonably require to consider the approval of that sectional plan.
- (4) A local authority is not responsible for investigating the correctness or accuracy of any document submitted to the local authority in terms of subsection (2) or (3) or in terms of section 22, 25, 26 or 27.
- (5) The manner of submission of a draft sectional plan and all other documents and particulars to a local authority is as prescribed.
- (6) A local authority may not approve a draft sectional plan unless -
  - (a) the draft sectional plan has been prepared in accordance with this Act; and
  - (b) the applicable documents have been submitted to the local authority in terms of subsection (2).
- (7) If a local authority approves a draft sectional plan, the local authority -
  - (a) must endorse that sectional plan accordingly;
  - (b) may impose registrable conditions -
    - (i) not in conflict with this Act; and
    - (ii) which the local authority may consider appropriate,

- subject to which that sectional plan is approved; and
- (c) must endorse any condition imposed under paragraph (b) on that sectional plan or on a schedule attached thereto.
- (8) A local authority must make its decision with regard to the approval or disapproval of a draft sectional plan known in writing to the developer who caused that sectional plan to be submitted to the local authority -
- (a) within 60 days after receipt of the draft sectional plan in terms of subsection (1); or
- (b) within 60 days after the land surveyor or architect concerned complied with the requirements of the local authority under subsection (3), if any,
- and, in the event of disapproving the sectional plan, give reasons for the disapproval thereof.

## 10. Improper or unprofessional conduct of land surveyors and architects

- (1) For the purposes of -
- (a) the Professional Land Surveyors', Technical Surveyors' and Survey Technicians' Act, 1993 (Act No. 32 of 1993), a land surveyor; or
- (b) the Architects' and Quantity Surveyors' Act, 1979 (Act No. 13 of 1979), an architect,
- may, despite anything to the contrary in any law, be found guilty by the relevant Council of improper conduct or professional misconduct, respectively, if he or she -
- (i) signs, except in such circumstances as may be prescribed, a draft sectional plan or 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 adequately and carefully examined and satisfied himself or herself as to the correctness of the entries in any records and of the calculations in connection therewith which may have been made by any other person;
- (ii) signs a defective draft sectional plan or sectional plan or any other plan referred to in this Act, knowing or suspecting any such plan to be defective in any respect;
- (iii) performs defective sectional title surveys for the purposes of this Act or fails to adequately and carefully scrutinise surveys performed under his or her direction or supervision;
- (iv) 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 the entry was in fact not so derived;
- (v) furnishes incorrect or misleading information relating to a scheme to a developer, a member of a body corporate, a local authority, the Surveyor-General or the registrar, knowing or suspecting such information to be incorrect or misleading;
- (vi) carries out his or her duties in terms of this Act in a manner which the Surveyor-General, after an investigation into the matter by the Surveyor-General as he or she may consider appropriate, finds to be incompetent or unsatisfactory; or
- (vii) contravenes or fails to comply with any provision of this Act.
- (2) In the case of -
- (a) a land surveyor, the Permanent Secretary: Lands and Resettlement; or
- (b) an architect, the Permanent Secretary: Works and Transport,
- or any other staff member authorised thereto by the Permanent Secretary concerned may refer a complaint relating to improper conduct or professional misconduct referred to in subsection (1) to the relevant Council for investigation and the taking of such action in terms of any applicable law as the relevant Council may consider appropriate.

- (3) Despite subsection (2), the Surveyor-General may, for the purposes of that subsection, refer any complaint relating to improper conduct or professional misconduct referred to in subsection (1) to the relevant Council.

## 11. Applications for opening of sectional title registers

- (1) A developer may, after approval of a draft sectional plan by the local authority concerned in terms of section 9, apply to the registrar for -
- (a) the opening of a sectional title register in respect of the land and building or buildings in question; and
  - (b) the registration of the sectional plan.
- (2) When applying for the opening of a sectional title register and the registration of a sectional plan under subsection (1), the developer concerned may in the schedule referred to in subsection (3)(b) impose registrable conditions.
- (3) An application under subsection (1) must be accompanied by -
- (a) the prescribed number of copies of the sectional plan endorsed by the local authority concerned in terms of section 9(7)(a);
  - (b) a schedule certified by a conveyancer setting out -
    - (i) the servitudes and conditions of title burdening or benefiting the land;
    - (ii) the other registrable conditions imposed by the developer under subsection (2) or by the local authority under section 9(7)(b); and
    - (iii) 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 that mortgage 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 or her in terms of section 26(1); and
    - (iii) the certificate of real right in respect of a right of exclusive use as contemplated in section 28(1),but section 40(5) of the Deeds Registries Act applies with the necessary changes in respect of any mortgage bond registered against one or more pieces of land shown on the sectional plan;
  - (e) a certificate by a conveyancer -
    - (i) stating that the rules made in terms of section 37(2) are applicable to the scheme; and
    - (ii) containing the other rules (if any) substituted by the developer for the rules contemplated in subparagraph (i);
  - (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; and
  - (g) such other documents, certificates or 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 applicable law have been complied with, the registrar,

on receipt of an application under section 11, must -

- (a) register the sectional plan and allot a distinctive number to it;
  - (b) open, in the prescribed manner, a sectional title register in respect of the land and building or buildings shown on the sectional plan;
  - (c) keep the necessary registers and records in accordance with section 4;
  - (d) simultaneously with the opening of the sectional title register in terms of paragraph (b), 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 -
    - (i) a certificate of real right in respect of any reservation made by the developer in terms of section 26(1); and
    - (ii) a certificate of real right in respect of a right of exclusive use as contemplated in section 28(1),  
subject to any mortgage bond registered against the title deed of the land; and
  - (f) make the necessary endorsements -
    - (i) on the title deed;
    - (ii) on any mortgage bond registered against the title deed of the land;
    - (iii) on any other relevant document; and
    - (iv) in the registrar's records.
- (2) The registrar must notify in writing -
- (a) the local authority concerned; and
  - (b) the Surveyor-General,
- of the registration of a sectional plan in terms of this section and furnish that local authority and the Surveyor-General with particulars of the land in respect of which the sectional plan was registered, and the number of the sectional plan.

### **13. Effect of registration of sectional plan**

- (1) On the registration of a sectional plan the building or buildings and the land shown on the sectional plan are, subject to this Act, 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), is, on the registration of that plan 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 -
  - (a) is subject to or is benefited by the servitudes, other real rights or conditions (if any) which burden or benefit the land shown on the sectional plan; and
  - (b) is also subject to any registrable condition imposed by a developer under section 11(2) or by a local authority under section 9(7)(b).
- (3) On the registration of a sectional plan, a mortgage bond, lease, other real right or condition then registered against or affecting the land shown on the sectional plan, is deemed to be converted into a mortgage 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 registrar may in writing 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, a registered sectional plan found to be incorrect, or to substitute another sectional plan for the incorrect sectional plan, and -
  - (a) the body corporate may recover the costs incurred by it as a result of an alteration or amendment to a sectional plan, or the substitution thereof, in terms of this subsection, by action in any court (including a magistrate's court) of competent jurisdiction from the developer, land surveyor or architect concerned;
  - (b) despite anything to the contrary in any other law, a magistrate's court has jurisdiction to hear any action instituted under paragraph (a) irrespective of the amount of the claim.
- (2) If in the opinion of the registrar any person could be prejudiced as a result of an incorrect sectional plan, no transfer of any section affected by that defect and its undivided share in the common property, or a real right therein, may be registered until the defect in the registered sectional plan has been rectified, unless -
  - (a) the registrar is satisfied that the delay in causing the defective sectional plan to be rectified will cause undue hardship to any person; and
  - (b) 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 before the rectification of the defect.
- (3) The formalities for the alteration, amendment or substitution of a sectional plan in terms of subsection (1) are as prescribed.
- (4) The registrar must notify the Surveyor-General and the local authority concerned in writing of any alteration, amendment or substitution of a registered sectional plan in terms of subsection (1) that affects the description or extent of any section.
- (5) On giving notice in terms of subsection (4), the registrar must make the necessary endorsements reflecting any change of description or extent of any section -
  - (a) on the deeds registry copy of the sectional title deed and on any other registered document affected by that change; and
  - (b) on the owner's or holder's copy of the sectional title deed or any such other registered document when subsequently lodged with the deeds registry for any purpose.
- (6) The registrar may, on application by a developer and subject to subsection (7) -
  - (a) close the relevant sectional title register; and
  - (b) notify the Surveyor-General and the local authority concerned in writing that the sectional title register has been closed.
- (7) An application under subsection (6) must be accompanied by a certificate by a conveyancer in which the conveyancer certifies -
  - (a) that all the units of the scheme in question are registered in the name of that developer;
  - (b) that, where applicable, the developer is the holder of a right referred to in section 26 or 28; and
  - (c) that no unit or no right referred to in section 26 or 28 is encumbered with a sectional mortgage bond or a lease or in any other way.
- (8) When a sectional title register is closed under subsection (6)(a), the registrar -
  - (a) must make all such alterations, amendments, endorsements and entries on the developer's sectional title deeds and in the registers and records kept by the registrar as may be necessary to record that closing and the reversion of the land in question to the appropriate land register;



- (b) must -
    - (i) in the prescribed manner, cause the developer's title deed referred to in section 11(3)(c) to be revived; or
    - (ii) issue to the developer a certificate of registered title, in the form prescribed under the Deeds Registries Act, for the land referred to in paragraph (a), subject or entitled to such servitudes, other real rights and conditions (if any) as are still applicable to or in respect of that land; and
  - (c) must cancel the registered sectional plan.
- (9) Subject to subsection (8)(c) and section 19(17)(c)(ii), a registered sectional plan may only be cancelled by an order of the Court.
- (10) When a registered sectional plan is cancelled under subsection (9), the registrar must -
- (a) give effect to such a cancellation by making the necessary endorsements and entries in his or her records;
  - (b) cancel the registered sectional plan; and
  - (c) notify the Surveyor-General and the local authority concerned in writing of the cancellation of the registration of the sectional plan.

## **Part IV – REGISTRATION AND COMMON PROPERTY**

### **15. Preparation of deeds by conveyancer**

Subject to this Act or any other law, the registrar may not attest, execute or register a deed of transfer, sectional mortgage bond, certificate of title or certificate of registration of any kind whatsoever, unless any such deed, mortgage bond or certificate has been prepared and signed by a conveyancer in accordance with this Act.

### **16. Proof of certain facts in connection with deeds and documents by means of certain certificates**

- (1) A conveyancer, land surveyor or architect, or any other person who is authorised thereto by or under any law, who -
- (a) prepares a deed or other document for the purposes of registration or filing in the deeds registry; and
  - (b) signs a prescribed certificate on any deed or other document referred to in paragraph (a),
- accepts by virtue of the signing of that certificate the responsibility, to the extent prescribed for the purposes of this section, for the accuracy of the facts mentioned in that deed or other document or which are relevant in connection with the registration or filing thereof, and which are prescribed.
- (2) The registrar must, during the course of his or her examination of a deed or other document in accordance with this Act, accept 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 that subsection has been signed have, for the purposes of that examination, been conclusively proved.
- (3) Nothing in subsection (2) contained derogates from the obligation of the registrar to give effect to an order of court or any other notification recorded in the deeds registry in terms of this Act or any other law and which affects the registration or filing of a deed or other document contemplated in that subsection.

### **17. Registration of transfer of ownership and other rights**

- (1) When a sectional title register has been opened and the relevant sectional plan has been registered in terms of section 12(1) -

- (a) ownership in a unit or land, or an undivided share in that unit or land, held under a sectional title deed must, subject to this Act or any other law, be transferred by means of a deed of transfer signed or attested by the registrar, but where -
- (i) the State, whether by way of expropriation or otherwise, acquires all the units or land held under a sectional title deed; or
  - (ii) a local authority by virtue of any other law acquires all the units or land held under a sectional title deed by any other such authority,
- the registrar must make such alterations and entries in his or her registers and such endorsements on any such title deed as may be necessary to register the transfer to the State or the local authority of the property so acquired free of charge, and that section 31(4)(a) of the Deeds Registries Act applies with the necessary changes in respect of such a transfer by endorsement;
- (b) the registrar must register -
- (i) a notarial lease of a unit or an undivided share in a unit, and a notarial cancellation or modification of such a lease, by means of an endorsement made by him or her on the relevant sectional title deed; and
  - (ii) a notarial sublease and a notarial cession of such a lease or sublease, and a notarial cancellation or modification of such a sublease, by means of an endorsement made by him or her on the relevant lease,
- but, if any such lease or sublease has lapsed by effluxion of time, the registrar must cancel the registration on production of proof that the lease or sublease has so lapsed;
- (c) the registrar must register a sectional mortgage bond by which -
- (i) a unit or an undivided share in a unit or land held under a sectional title deed;
  - (ii) a registered lease or sublease of a unit or an undivided share in a unit or land held under a sectional title deed; or
  - (iii) a registered real right in or over a unit or an undivided share in a unit or land referred to in this paragraph,
- is hypothecated, and a cession, cancellation or modification of such a mortgage bond, by means of an endorsement made by him or her on the relevant sectional title deed or on the registered lease or sublease or mortgage bond or other deed; and
- (d) the registrar must register -
- (i) 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
  - (ii) a notarial cancellation or modification of such a real right,
- by means of an endorsement made by him or her on the relevant sectional title deed, but, in the case of a registered real right that has lapsed for any reason, the registrar must cancel the registration on production of proof that the real right has lapsed.
- (2) Despite anything to the contrary in any other law, it is not necessary to attach a diagram to a sectional title deed under which a unit or an undivided share in a unit is held if reference is made in the sectional title deed to the registered sectional plan.
- (3) The registrar may not register a transfer of a unit or an undivided share in a unit unless there is submitted to the registrar -
- (a) a conveyancer's certificate confirming that on the date of registration -
    - (i) (aa) if a body corporate is deemed to be established in terms of section 38(1), that body corporate has certified that all moneys due to the body corporate by the transferor in

- respect of that 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 in terms of section 38(1), no moneys are payable; and
- (ii) (aa) no real right of extension of a scheme as contemplated in section 26 is registered in favour of a developer or the body corporate; or
  - (bb) if a real right of extension of a scheme is registered as contemplated in item (aa) -
    - (A) that it is disclosed in the deed of alienation to the transferee as required by section 26(16); or
    - (B) if it is not so disclosed, that the transferee after conclusion of the deed of alienation has in writing exercised his or her option in terms of section 26(17) (a) and that the transferee has elected not to annul the alienation on the ground of that defect; and
- (b) a conveyancer's certificate or other document, whichever may be applicable, prescribed by section 78 of the Local Authorities Act, 1992 (Act No. 23 of 1992); and
  - (c) such other documents and particulars as may be prescribed by or under this Act or any other law.
- (4) A unit is capable of being held by two or more persons in joint ownership.
- (5) Any person who is the joint owner of a unit held by that person and one or more other persons under one sectional title deed may, on application to the registrar in the prescribed manner, obtain a certificate of registered sectional title in the prescribed form in respect of his or her undivided share in that unit.
- (6) No -
- (a) transfer of a fraction only of a joint owner's undivided share in a unit;
  - (b) hypothecation or lease of the whole or a fraction of a joint owner's undivided share in a unit,
- may be registered unless a certificate of registered sectional title obtained under subsection (5) in respect of that undivided share is produced to the registrar.

## 18. Ownership of common property

- (1) Owners of sections are jointly owners of the common property in undivided shares proportionate to the participation quotas of their respective sections as specified on the relevant sectional plan.
- (2) A sectional title deed in respect of a section must, 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 participation quota of the section.
- (3) A section and its undivided share in the common property are together deemed to be one unit, and -
  - (a) no section may be disposed of or be otherwise dealt with separately from its appurtenant undivided share in the common property; and
  - (b) subject to section 19, no undivided share in the common property may be disposed of or be otherwise dealt with separately from the section to which it is appurtenant.
- (4) Insurance of a section is deemed also to insure the undivided share in the common property of the owner of the section, even if no express reference to that undivided share is made in the policy of insurance.

## 19. Alienation and letting of common property

- (1) The owners of sections and holders of a right of extension contemplated in section 26 may by unanimous resolution direct the body corporate on their behalf to alienate common property or a part thereof, or to

let common property or a part thereof under a lease, and thereupon the body corporate has, despite 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, the power to -

- (a) deal with that common property or that part thereof in accordance with the direction; and
- (b) execute any deed required for that purpose,

but, if the whole of the right referred to in section 26 or section 61(1)(b) is affected by the alienation of common property, that right must be cancelled by the registrar with the consent of the holder thereof on submission of the title to the right.

- (2) A transaction pursuant to a unanimous resolution referred to in subsection (1) must be accompanied by a copy of the relevant resolution, certified by two trustees of the body corporate, but where the transaction in question requires to be notarially executed, that resolution so certified must be produced to the notary public concerned and be retained by that notary public in his or her protocol.
- (3) The registrar must -
  - (a) register the transfer of land comprised in the common property, and thereupon the land reverts to the land register and the registrar must make an appropriate endorsement and entry on the relevant title deed and in his or her records to give effect thereto, but -
    - (i) where 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 must be made on the sectional title deeds of the owners of sections;
    - (ii) in such a case where a portion only of the land comprised in the common property is transferred, a diagram of that portion approved by the Surveyor-General in terms of the Land Survey Act, must be attached to the relevant title deed;
  - (b) make an appropriate endorsement on the original registered sectional plan and the deeds registry copy of the registered sectional plan to reflect the reversion of any land to the land register in terms of paragraph (a);
  - (c) notify the Surveyor-General and the local authority concerned in writing of the reversion of any land to the land register in terms of paragraph (a); and
  - (d) register a notarial lease of land comprising common property by making an appropriate endorsement against the schedule referred to in section 11(3)(b), and no endorsement thereof may be made on the sectional title deeds of the units, but where a lease is registered against a portion only of the land comprised in the common property, a diagram of that portion approved in terms of the Land Survey Act, must be attached to the deed of lease.
- (4) Where pursuant to subsection (1) it is sought to alienate a portion of the common property on which a section is erected, the registrar may not register the transfer of that portion of the common property unless the registration of the section in question has been cancelled with the written consent of the owner of that section.
- (5) Where pursuant to subsection (1) it is sought to let land which forms part of the common property or a portion thereof and on which a section or part of a section is erected, the registrar may not register the lease of that land unless the lease is made subject to any right that the owner of the section or part of the section may have.
- (6) When the registration of a section is cancelled under subsection (4), the participation quota of the section lapses and the participation quotas of the remaining sections must be proportionately adjusted.
- (7) The registrar must notify the Surveyor-General and the local authority concerned in writing when the registration of a section has been cancelled under subsection (4).
- (8) On cancellation of the registration of a section under subsection (4), the registrar must make the necessary amendments on the original registered sectional plan, the deeds registry copy of the registered

sectional plan and the schedule thereto specifying the participation quota of each section.

- (9) 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 must be substituted in accordance with an amended participation quota schedule, which must be referred to the local authority concerned for approval.
- (10) The local authority concerned must notify the registrar in writing of a change or amendment of a sectional plan in terms of subsection (9) that affects the description or extent of a section.
- (11) On receipt of a notification referred to in subsection (10), the registrar must, simultaneously with the registration of the transfer of the part of the land included in the scheme, make the necessary endorsement against the relevant title deeds, but the registrar may 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 referred to in subsection (9).
- (12) The registrar must notify the Surveyor-General and the local authority concerned in writing when an endorsement has been made in terms of subsection (11).
- (13) On making an endorsement in terms of subsection (11), the registrar must make the necessary amendments on the registered sectional plan and the schedule thereto specifying the participation quota of each section.
- (14) Where pursuant to subsection (1) it is sought to alienate a portion of land on which an exclusive use area or part thereof is registered, the registrar may not register the transfer of that portion of land unless the registration of the exclusive use area or part thereof has been cancelled with the written consent of the holder of the exclusive use area.
- (15) The registrar must notify the Surveyor-General and the local authority concerned in writing when the registration of an exclusive use area or part thereof has been cancelled under subsection (14).
- (16) On cancellation of the registration of an exclusive use area or part thereof under subsection (14), the registrar must make the necessary amendments on the registered sectional plan.
- (17) When the whole of the land comprised in the common property shown on the registered sectional plan is transferred by the body corporate pursuant to this section -
  - (a) the sectional title deeds of the owners of units and the title deeds of the holders of any registered real right in the units and the title deeds of the holders of exclusive use areas must be surrendered to the registrar for cancellation;
  - (b) the title deed of any other registered real right in the land must be surrendered to the registrar for endorsement; and
  - (c) the registrar must -
    - (i) close the relevant sectional title register;
    - (ii) cancel the original registered sectional plan; and
    - (iii) notify the Surveyor-General and the local authority concerned in writing that the sectional title register has been closed.

## **20. Transfer of mortgaged unit, undivided share, common property or land, and cession of mortgaged lease or real right**

Sections 56 and 57 of the Deeds Registries Act apply with the necessary changes in respect of -

- (a) the transfer of a mortgaged unit or undivided share in a unit;
- (b) the cession of a mortgaged lease of a unit or undivided share in a unit;
- (c) the cession of a mortgaged real right in or over a unit or an undivided share in a unit; and

- (d) the transfer under section 19 of this Act of any mortgaged common property or land or an undivided share in common property or land.

## 21. Expropriation of common property or rights therein

- (1) When the whole or any part of, or any right in, the common property is expropriated under any law -
- (a) service of a written notice of expropriation on the body corporate is deemed to be service thereof on the registered owner of every section in the building or buildings in question; and
  - (b) each owner referred to in paragraph (a) is deemed to have appointed the trustees of the body corporate concerned as his or her duly authorised agents and representatives -
    - (i) to negotiate and settle the compensation payable to him or her in respect of the expropriation, and for that purpose to employ any competent person to assist them; and
    - (ii) on his or her behalf to receive and give valid acquittance for any compensation money paid.
- (2) Any compensation money received by the trustees on behalf of the owners in terms of subsection (1) must, subject to subsection (4) and (5), be paid to the owners in accordance with their participation quotas after the owners have received notice of the distribution in writing.
- (3) The notice in terms of subsection (2) must be given by the trustees within 14 days after receipt of the compensation money, and must be accompanied by a statement containing full particulars of the distribution of the compensation money.
- (4) An owner who considers the proposed distribution inequitable may, within 7 days after receipt of the notice in terms of subsection (2), notify the trustees in writing that he or she objects to that distribution, in which event the compensation money must be distributed -
- (a) in accordance with a division approved by unanimous resolution; or
  - (b) in accordance with a division approved by an arbitrator appointed under section 58(1).
- (5) The trustees must pay the compensation money to the owners -
- (a) where no objection under subsection (4) has been received, within 7 days after the lapse of the period referred to in that subsection; or
  - (b) where an objection under subsection (4) has been received, within 7 days after the approval of a division contemplated in subsection (4)(a) or (b).
- (6) Section 19(3)(a), (b) and (c) of this Act and sections 31(4) and 32(4) of the Deeds Registries Act apply with the necessary changes in respect of a transfer pursuant to an expropriation of land or a servitude or other real right in land comprising common property.
- (7) When land comprising common property on which a section or a part of a section is erected is transferred pursuant to an expropriation, the registrar must -
- (a) cancel the registration of the section in his or her records; and
  - (b) endorse -
    - (i) the deeds registry copy of the relevant title deed and any mortgage bond, lease or other registered document affected by the cancellation of registration in terms of paragraph (a); and
    - (ii) the owner's copy of the title deed or the holder's copy of the mortgage bond, lease or other document referred to in subparagraph (i), when subsequently lodged at the deeds registry for any purpose,to reflect the cancellation of the registration of the section.
- (8) Section 19(4)(b) and (c), (5), (6) and (7) applies with the necessary changes in respect of the cancellation of

the registration of a section in terms of subsection (7)(a).

## **Part V – SUBDIVISION, CONSOLIDATION AND EXTENSION OF SECTIONS**

### **22. Approval of plan of subdivision or consolidation by local authorities**

- (1) If an owner of a section intends to subdivide his or her section or to consolidate two or more sections registered in his or her name, that owner must with the consent of the trustees of the body corporate, which consent may not unreasonably be withheld, cause the land surveyor or architect concerned to submit a draft sectional plan of subdivision or a draft sectional plan of consolidation to the local authority concerned for approval.
- (2) The submission in terms of subsection (1) of the draft sectional plan of sub-division or draft sectional plan of consolidation to the local authority concerned must be accompanied by -
  - (a) the documents referred to in section 9(2), suitably amended; and
  - (b) either -
    - (i) in the case of a subdivision, a schedule specifying, in the prescribed manner, the apportionment of the participation quota of the section between the new sections created; or
    - (ii) in the case of a consolidation, a schedule specifying, in the prescribed manner, the participation quota of the new section created, being the aggregate of the participation quotas of the sections that are to be consolidated.
- (3) Section 9(5), (6) (7) and (8) applies, in so far as that section can be so applied, with the necessary changes in respect of the preparation and submission to the local authority concerned of a draft sectional plan of subdivision or a draft sectional plan of consolidation, and the approval of that sectional plan of subdivision or sectional plan of consolidation by that local authority.

### **23. Registration of subdivision of section**

- (1) An owner of a section may, after approval pursuant to section 22(3) of a sectional plan of subdivision of a section by the local authority concerned, apply to the registrar for the registration of that sectional plan of subdivision.
- (2) An application under subsection (1) must be accompanied by -
  - (a) two copies of the sectional plan of subdivision;
  - (b) the sectional title deed in respect of the section to be subdivided;
  - (c) any sectional mortgage bond to which the section may be subject, together with the consent of the mortgagee -
    - (i) to the cancellation of that mortgage bond;
    - (ii) to the release of the section from that mortgage bond; or
    - (iii) to the subdivision and substitution of the new sections in place of the section as security under that mortgage bond;
  - (d) certificates of registered sectional title, in the prescribed form, in respect of each of the new sections and their undivided shares in the common property created by the subdivision, made out in favour of the owner of the section to be subdivided or, in the case of a partition, in favour of the persons entitled thereto in terms of the partition agreement;
  - (e) the partition agreement (if any), if the section is owned by more than one owner; and
  - (f) such other documents and particulars as may be prescribed.

- (3) When the requirements of this section and any other applicable law have been complied with, the registrar must -
  - (a) register the sectional plan of subdivision referred to in subsection (1);
  - (b) notify the Surveyor-General in writing of the registration of the sectional plan of subdivision;
  - (c) furnish the local authority concerned with a copy of the sectional plan of subdivision registered in terms of paragraph (a); and
  - (d) amend the original registered sectional plan and the deeds registry copy of the registered sectional plan to reflect the subdivision of the section in terms of this section.
- (4) On registration of the sectional plan of subdivision in terms of subsection (3)(a), the portions in question are deemed to be separated from one another and each is deemed to be a separate section.
- (5) Simultaneously with the registration of the sectional plan of subdivision in terms of subsection (3)(a), the registrar must -
  - (a) in place of the sectional title deed referred to in subsection (2)(b), issue the certificates of registered sectional title referred to in subsection (2)(d); and
  - (b) make -
    - (i) such endorsements on the superseded and newly issued certificates of registered sectional title, any sectional mortgage bond, lease or other deed embodying any other real right registered against the section at the time of subdivision; and
    - (ii) such entries in the deeds registry records,  
as may be necessary to give effect to this section.
- (6) On registration of a sectional plan of subdivision in terms of subsection (3)(a), that sectional plan of subdivision is deemed to be incorporated in the sectional plan registered in terms of section 12(1)(a), and thereupon section 13(2) applies with the necessary changes in respect of that sectional plan of subdivision and the certificates of registered sectional title issued in terms of subsection (5).

## 24. Registration of consolidation of sections

- (1) An owner of a section may, after approval pursuant to section 22(3) of a sectional plan of consolidation of two or more sections by the local authority concerned, apply to the registrar for the registration of that sectional plan of consolidation.
- (2) An application under subsection (1) must be accompanied by -
  - (a) two copies of the sectional plan of consolidation;
  - (b) the sectional title deeds in respect of the sections to be consolidated;
  - (c) any sectional mortgage bond registered against the sections to be consolidated, together with the consent of the mortgagee to the registration of the sectional plan of consolidation;
  - (d) a certificate of registered sectional title, in the prescribed form, in respect of the new section shown on the sectional plan of consolidation, and its undivided share in the common property, made out in favour of the owner of the sections to be consolidated; and
  - (e) such other documents and particulars as may be prescribed.
- (3) When the requirements of this section and any other applicable law have been complied with, the registrar must -
  - (a) register the sectional plan of consolidation referred to in subsection (1);
  - (b) notify the Surveyor-General in writing of the registration of the sectional plan of consolidation;



- (c) furnish to the local authority concerned with a copy of the sectional plan of consolidation registered in terms of paragraph (a); and
  - (d) amend the original registered sectional plan and the deeds registry copy of the registered sectional plan to reflect the consolidation of the two or more sections in terms of this section.
- (4) On registration of the sectional plan of consolidation in terms of subsection (3)(a), the sections in question are deemed to be consolidated into a single section as shown on the sectional plan of consolidation.
- (5) Simultaneously with the registration of the sectional plan of consolidation in terms of subsection (3)(a), the registrar must, in place of the sectional title deeds referred to in subsection (2)(b), issue the certificate of registered sectional title referred to in subsection (2)(d), and thereupon subsection (5) of section 23 relating to the endorsements and entries to be made in the deeds registry records, and subsection (6) of that section, apply with the necessary changes.
- (6) Section 40(5) of the Deeds Registries Act applies with the necessary changes in respect of any mortgage bond registered against one or more component sections of the section shown on the sectional plan of consolidation.

## 25. Extension of sections

- (1) If an owner of a section intends to extend the boundaries or floor area of his or her section, that owner must with the approval of the body corporate, authorised thereto by a special resolution of its members, cause the land surveyor or architect concerned to submit a draft sectional plan of the extension to the local authority concerned for approval.
- (2) The submission in terms of subsection (1) of the draft sectional plan of extension of a section to the local authority concerned must be accompanied by -
- (a) the documents referred to in section 9(2), suitably amended; and
  - (b) in the case of the floor area of the section in question being increased by the extension, a revised schedule, in substitution for the schedule referred to in section 7(3)(g), specifying the participation quotas of all the sections as adjusted after taking the increased floor area of the section in question into account.
- (3) Section 9(5), (6), (7) and (8) applies, in so far as that section can be so applied, with the necessary changes in respect of the preparation and submission to the local authority concerned of a draft sectional plan of extension of a section, and the approval of that sectional plan of extension by that local authority.
- (4) An owner of a section may, after approval pursuant to subsection (3) of a sectional plan of extension of a section by the local authority concerned, apply to the registrar for the registration of that sectional plan of extension.
- (5) An application under subsection (4) must be accompanied by -
- (a) two copies of the sectional plan of extension of a section;
  - (b) the sectional title deed in respect of the section to be extended;
  - (c) any sectional mortgage bond to which the section may be subject, together with a certificate by a conveyancer stating that -
    - (i) there is not a deviation of more than 10 per cent in the participation quota of any section as a result of the extension; or
    - (ii) if there is a deviation of more than 10 per cent in the participation quota of any section, that the mortgagee of each section in the scheme has consented to the registration of the sectional plan of extension of a section; and
  - (d) such other documents and particulars as may be prescribed.

- (6) When the requirements of this section and any other applicable law have been complied with, the registrar must -
- (a) register the sectional plan of extension of a section referred to in subsection (4);
  - (b) make an appropriate endorsement on the sectional title deed referred to in subsection (5)(b), if the floor area of the section is increased by the extension, and such consequential endorsements against any deed registered against that title deed as may be necessary;
  - (c) notify the Surveyor-General in writing of the registration of the sectional plan of extension of a section;
  - (d) furnish the local authority concerned with a copy of the sectional plan of extension registered in terms of paragraph (a); and
  - (e) amend the original registered sectional plan and the deeds registry copy of the registered sectional plan to reflect the extension of the section in terms of this section.
- (7) On registration of a sectional plan of extension of a section in terms of subsection (6)(a), that sectional plan of extension is deemed to be incorporated in the sectional plan registered in terms of section 12(1)(a), and thereupon section 13(2) applies with the necessary changes in respect of that sectional plan of extension.

## Part VI – EXTENSION OF SCHEMES

### 26. Extension of schemes by addition of sections and exclusive use areas

- (1) A developer may, subject to section 6(2), in his or her application for the opening of a sectional title register and the registration of a sectional plan, reserve, in a condition imposed under section 11(2), the right to -
- (a) erect and complete from time to time, but within the period stipulated in that condition, for his or her personal account -
    - (i) a further building or buildings;
    - (ii) a horizontal extension of an existing building;
    - (iii) a vertical extension of an existing building,on a specified part of the common property;
  - (b) divide the building or buildings referred to in paragraph (a) into a section or sections and common property; and
  - (c) confer the right of exclusive use over parts of the common property referred to in paragraph (b) on the owner or owners of one or more sections.
- (2) When a reservation is made under subsection (1), the application for the opening of a sectional title register and the registration of a sectional plan referred to in that subsection must, in addition to the documents referred to in section 11(3), be accompanied by -
- (a) a plan to scale of the building or buildings to be erected, approved by the local authority concerned, and on which -
    - (i) the part of the common property affected by the reservation;
    - (ii) the location, height and coverage of all buildings;
    - (iii) the entrances and exits to and from the land;
    - (iv) the building restriction areas, if any;
    - (v) the parking areas; and

- (vi) the typical elevation of all buildings,  
are shown;
  - (b) a plan to scale showing the manner in which the building or buildings to be erected are to be divided into a section or sections and any exclusive use areas;
  - (c) a schedule indicating the estimated participation quotas of all the sections in the scheme after the addition to the scheme of the section or sections referred to in paragraph (b);
  - (d) particulars of any substantial difference between the materials to be used in the construction of the building or buildings to be erected and those used in the construction of the existing building or buildings;
  - (e) particulars of the applicable expenses specified in section 39(1)(a) that will be borne by the developer from the date of establishment of the body corporate until the sectional plan of extension is registered;
  - (f) the certificates of real right that is to be issued in terms of section 12(1)(e); and
  - (g) such other documents and particulars as may be prescribed.
- (3) The developer must, on receipt of a written demand, immediately pay to the body corporate all moneys due by the developer in terms of subsection (2)(e).
- (4) A right reserved under subsection (1) or vested in terms of subsection (7)(a), and in respect of which a certificate of real right has been issued -
- (a) is for all purposes deemed to be a right to urban immovable property that admits of being mortgaged;
  - (b) may be transferred by the registration of a notarial deed of cession in respect of the whole, a portion or a share in that right, but in the case of a cession affecting only a part of the land comprising the scheme only the part so affected must be identified to the satisfaction of the registrar.
- (5) A right reserved under subsection (1) may be exercised by the developer or his or her successor in title thereto, even though the developer or his or her successor in title has no other interest in the common property.
- (6) If the right reserved under subsection (1) is exercised, the developer or his or her successor in title must immediately after completion of the section in question apply for the registration of the relevant sectional plan of extension and the inclusion of that section in the relevant sectional title register.
- (7) If the developer or his or her successor in title fails to take the steps required by subsection (6) and fails to register the sectional plan of extension within 90 days after completion for occupation of the section, the developer or his or her successor in title is liable to the body corporate for the amounts payable in terms of section 39(1) as if the section had been included in the relevant sectional title register on the date of completion.
- (8) A conveyancer's certificate contemplated in section 17(3)(a)(i)(aa) may not be issued unless the amounts referred to in subsection (7) are paid to the body corporate.
- (9) If no reservation was made by a developer under 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 27, vests in the body corporate which is entitled, subject to this section and after compliance with the necessary changes with the requirements of subsection (2)(a), (b), (c), (d) and (g), to obtain a certificate of real right in the prescribed form in respect of that right.
- (10) The body corporate may exercise or alienate or transfer the right to extend a scheme referred to in subsection (9) only with the written consent of -
- (a) all the members of the body corporate; and
  - (b) the mortgagee of each unit in the scheme,

but a member or mortgagee may not unreasonably withhold his or her consent.

- (11) If no reservation has been made by a developer under subsection (1) and the body corporate has not yet been established, the registrar may, on application by the developer accompanied by -
- (a) the sectional mortgage bond;
  - (b) the written consent of any mortgagee; and
  - (c) such of the documents referred to in subsection (2) as are applicable,
- issue, subject to subsection (12), a certificate of real right of extension as contemplated in section 12(1)(e).
- (12) On compliance with subsection (11), this Act applies with the necessary changes in respect of a real right referred to in that subsection as if that right had originally formed part of the application for the opening of the sectional title register, and the certificate of real right of extension must be issued subject to any sectional mortgage bond registered against the land.
- (13) Sections 7, 8 and 9 apply with the necessary changes in respect of the submission of a draft sectional plan of extension to a local authority in terms of this section and the approval thereof by the local authority, but the draft sectional plan of extension submitted to the local authority must be accompanied by a revised schedule specifying the participation quota of each section in the building or buildings shown on the registered sectional plan and the sectional plan of extension, calculated in accordance with section 34 as if the sectional plan of extension formed part of the sectional plan when it was registered.
- (14) A local authority must file the revised schedule submitted to it in terms of subsection (13) with the registered sectional plan in place of the schedule referred to in section 7(3)(g).
- (15) A developer or his or her successor in title to a right reserved under subsection (1), or a body corporate vested with a right in terms of subsection (9), may, after approval of a sectional plan of extension by the local authority in terms of this section, apply to the registrar for -
- (a) the registration of the sectional plan of extension; and
  - (b) the inclusion of the additional section or sections in the relevant sectional title register.
- (16) An application under subsection (15) must be accompanied by -
- (a) two copies of the sectional plan of extension;
  - (b) the certificate of real right by which the reservation in terms of subsection (1) or (9) 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 shown on the sectional plan of extension and their undivided shares in the common property, as security in place of the real right held under the certificate of real right mortgaged under that bond;
  - (c) certificates of registered sectional title, in the prescribed form, in favour of the developer, his or her successor in title or the body corporate in respect of each section shown on the sectional plan of extension;
  - (d) any mortgage bond that may be affected by the right, together with the consent of the mortgagee to the registration of the extension of the scheme and the endorsement of that bond to the effect that it is attached to -
    - (i) each section shown on the sectional plan and its undivided share in the common property;
    - (ii) the certificate of real right in respect of a right of exclusive use as contemplated in section 28(1) or (5); and
    - (iii) where applicable, the certificate of real right in respect of the remainder of the right reserved under subsection (1); and
  - (e) such other documents and particulars as may be prescribed.

- (17) When the requirements of this section and any other applicable law have been complied with, the registrar must -
- (a) register the sectional plan of extension referred to in subsection (15)(a);
  - (b) extend the relevant sectional title register to include the sections shown on the sectional plan of extension;
  - (c) simultaneously with the registration of the sectional plan of extension -
    - (i) issue to the developer, his or her successor in title or the body corporate a certificate of registered sectional title in respect of each section shown on the sectional plan of extension and its undivided share in the common property, subject to any mortgage bond registered against the title deed of the right of extension;
    - (ii) notify the Surveyor-General in writing of the registration of the sectional plan of extension; and
    - (iii) furnish the local authority concerned with a copy of the sectional plan of extension registered in terms of paragraph (a);
  - (d) make such entries in his or her records and endorsements on -
    - (i) the certificates of registered sectional title referred to in paragraph (c)(i);
    - (ii) a certificate of real right referred to in subsection (16)(b); and
    - (iii) any sectional mortgage bond registered against the certificate of real right referred to in subparagraph (ii),as may be necessary to give effect to this section; and
  - (e) amend the registered sectional plan to reflect the extension of the scheme in terms of this section.
- (18) On registration of a sectional plan of extension in terms of subsection (17)(a) -
- (a) the owners of sections in the building or buildings in the scheme that is being extended, the mortgagees of sectional mortgage bonds and the holders of any real rights registered against those sections, are divested of their share or interest in the common property to the extent that an undivided share in the common property is vested in the developer, his or her successor in title or the body corporate by the issue of the certificates of registered sectional title referred to in subsection (17)(c)(i);
  - (b) a sectional mortgage bond whereby a real right held by a certificate of real right referred to in subsection (16)(b) is mortgaged, is deemed to be -
    - (i) a sectional mortgage bond over the sections shown on the sectional plan of extension and their undivided share in the common property; and
    - (ii) registered against the certificates of registered sectional title issued in terms of subsection (17)(c)(i); and
  - (c) the sectional plan of extension is deemed to be incorporated in the sectional plan registered in terms of section 12(1)(a), and thereupon section 13(1) and (2) applies with the necessary changes in respect of that sectional plan of extension.
- (19) A developer or his or her successor in title who exercises a reserved right referred to in subsection (1), or a body corporate exercising the right referred to in subsection (9), is obliged to erect and divide the building or buildings into sections strictly in accordance with the documents referred to in subsection (2), due regard being had to changed circumstances that would make strict compliance impracticable.
- (20) An owner of a section in the scheme who is prejudiced by the failure of the developer, his or her successor in title or the body corporate to comply in the manner contemplated in subsection (19) may apply to the Court, whereupon the Court may -

- (a) order proper compliance with the terms of the reservation; or
  - (b) grant such other relief, including damages, as the Court may consider appropriate.
- (21) In all cases where a developer or a body corporate has a real right to extend a scheme as contemplated in this section, that right must be disclosed in the deed of alienation to every purchase of a section in the scheme in question.
- (22) A deed of alienation in which a real right has not been disclosed as required by subsection (21), is voidable at the option of the purchaser.
- (23) After notice in writing by a purchaser to the developer or body corporate that he or she annuls the alienation in terms of subsection (22), the alienation is void.
- (24) A developer or body corporate or purchaser who has performed partially or fully in terms of a deed of alienation that is void by virtue of this subsection has a claim against the other party to the extent of such performance.
- (25) A developer or body corporate may in addition claim from the purchaser to whom an option has been granted under subsection (22) -
- (a) reasonable compensation for the use which that purchaser may have had of the building and land in question or any part thereof; and
  - (b) compensation for any damage caused to that building or land or any part thereof by that purchaser, or any other person for whose acts or omissions that purchaser is delictually liable.
- (26) A purchaser referred to in subsection (25) may in addition claim from the developer or body corporate -
- (a) interest at the prescribed rate on any payment made in terms of the deed of alienation, from the date of payment to the date of recovery thereof;
  - (b) reasonable compensation for any expenses incurred by that purchaser with or without the authority of the developer or body corporate for the preservation of the building or land, or part thereof, or in respect of any improvements which enhance the market value thereof and which were effected by the purchaser with the express or implied consent of the developer or body corporate; and
  - (c) compensation for any damage or loss suffered by that purchaser which he or she would otherwise have been entitled to claim from the developer or body corporate on the ground of breach of the deed of alienation had the deed of alienation not been void and had the developer or body corporate failed to effect any transfer in accordance with the deed of alienation.

## **27. Extension of schemes by addition of land to common property**

- (1) A body corporate, authorised thereto in writing by all its members, may purchase land to extend the common property.
- (2) Land purchased by a body corporate under subsection (1) is deemed to be owned by the owners of the sections in the building in question in the same proportion as their respective participation quotas as shown on the relevant sectional plan.
- (3) When land is purchased under subsection (1) to extend the common property, the body corporate must in respect of that land cause a draft plan of extension of the common property to be prepared and submitted, subject to subsection (4), to the local authority concerned for its approval.
- (4) Sections 7(1) and (2) and 9(2), (5), (6), (7) and (8) apply, in so far as those sections can be so applied, with the necessary changes in respect of the preparation and submission to the local authority concerned of a draft plan of extension of the common property, and the approval of that plan by that local authority.
- (5) A body corporate may, after approval pursuant to subsection (4) of a plan of extension of the common property by the local authority concerned, apply to the registrar for the registration of that plan of extension of the common property, and the application must be accompanied by the prescribed

documents.

- (6) When the requirements of this Act and any other applicable law have been complied with, the registrar, on receipt of an application in terms of subsection (5), must -
- (a) subject to subsection (7), register a plan of extension of the common property in terms of this section by making an endorsement on the relevant title deed to reflect that the land in question has been incorporated in the registered sectional plan;
  - (b) make such further endorsements and entries in his or her records as may be necessary to give effect to the registration contemplated in paragraph (a);
  - (c) notify the Surveyor-General in writing of the registration of the plan of extension of the common property;
  - (d) furnish the local authority concerned with a copy of the plan of extension of the common property registered in terms of paragraph (a); and
  - (e) amend the registered sectional plan to reflect the extension of the common property in terms of this section.
- (7) The registrar may not register a plan of extension in terms of this section if the additional land to be incorporated as common property is subject to a mortgage bond.
- (8) On the registration of a plan of extension of the common property in terms of this section -
- (a) that plan of extension is deemed to be incorporated in the relevant sectional plan registered in terms of section 12(1)(a); and
  - (b) the land to which that plan of extension relates is deemed to be incorporated as common property in the sectional plan registered as contemplated in paragraph (a).

## **Part VII – EXCLUSIVE USE OF COMMON PROPERTY AND SERVITUDES**

### **28. Rights of exclusive use of parts of common property**

- (1) If a part or parts of common property is or are delineated on a sectional plan in terms of section 7(3)(f), the developer, when applying for the opening of a sectional title register and the registration of a sectional plan under section 11(1), may for a specific purpose impose a condition under section 11(2) in the schedule referred to in section 11(3)(b) by which the right to the exclusive use of such part or parts of the common property delineated for that purpose on the sectional plan is conferred on the owner or owners of one or more of the sections.
- (2) The developer must cede the right to the exclusive use of a part or parts of the common property referred to in subsection (1) to the owner or owners of one or more of the sections by the registration of a unilateral notarial deed in favour of such owner or owners.
- (3) If a developer ceases to be a member of the body corporate as contemplated in section 38(2), any right to an exclusive use area still registered in the name of the developer vests in the body corporate free from any mortgage bond.
- (4) If a right to the exclusive use of a part or parts of the common property vests in a body corporate in terms of subsection (3), the body corporate must, in the prescribed form -
  - (a) apply to the registrar for the issue of a certificate of real right of exclusive use in its favour; and
  - (b) submit a certificate to the effect that the provisions of any law in connection with the vesting have been complied with.
- (5) The registrar must, after consideration of the application under subsection (4), issue a certificate of real right of exclusive use in the prescribed form.
- (6) If -

- (a) no condition was imposed as contemplated in subsection (1); and
  - (b) the body corporate has not yet been established,
- the registrar may, subject to subsection (7), issue a certificate of real right in respect of a right of exclusive use as contemplated in section 12(1)(e)(ii), on application by the developer accompanied by the sectional mortgage bond and the written consent of any mortgagee.
- (7) A certificate of real right in respect of a right of exclusive use referred to in subsection (6) must be issued subject to any sectional mortgage bond registered against the land.
  - (8) On compliance with this subsection, this Act applies with the necessary changes in respect of that real right of exclusive use as if it had originally formed part of the application for the opening of the relevant sectional title register.
  - (9) A body corporate, duly authorised thereto by a unanimous resolution of its members, may, subject to section 7(1), request a land surveyor or architect to apply to the Surveyor-General for the delineation, in the prescribed manner, on a sectional plan of a part or parts of the common property in terms of section 7(3)(f) for the exclusive use by the owner or owners of one or more of the sections, but no such delineation may be made on the sectional plan in terms of this subsection if the delineation will encroach on a previous delineation made on the sectional plan of a part of the common property for the exclusive use by one or more of the owners.
  - (10) The body corporate, duly authorised thereto by a unanimous resolution of its members, must transfer the right to the exclusive use of a part or parts of the common property delineated on the sectional plan in terms of subsection (9) to the owner or owners on whom that right has been conferred by the body corporate, by the registration of a notarial deed entered into by the parties and in which the body corporate represents the owners of all the sections as transferor.
  - (11) An owner of a section in whose favour the right to the exclusive use of a part of the common property delineated on the sectional plan is registered may transfer his or her interest in that right to the owner of another section in the scheme by the registration by the registrar of a notarial deed of cession entered into by the parties.
  - (12) If an owner of a section ceases to be a member of the body corporate as contemplated in section 38(2), any right to an exclusive use area still registered in the name of that owner vests in the body corporate free from any mortgage bond.
  - (13) If a right to the exclusive use of a part or parts of the common property vests in a body corporate in terms of subsection (12), the body corporate must, in the prescribed form -
    - (a) apply to the registrar for the issue of a certificate of real right of exclusive use in its favour; and
    - (b) submit a certificate to the effect that the provisions of any law in connection with the vesting have been complied with.
  - (14) The registrar must, after consideration of the application under subsection (13), issue a certificate of real right of exclusive use in the prescribed form.
  - (15) A right to the exclusive use of a part of the common property delineated on the sectional plan and registered in favour of the owner of a section may, with the written consent of the mortgagee (if any) of the section in question, be cancelled by the registration by the registrar of a notarial deed of cancellation entered into by the owner of the section entitled to that right and the body corporate, duly authorised thereto by a special resolution of its members, on behalf of all the owners of sections in the scheme.
  - (16) A right to the exclusive use of a part of the common property registered in favour of the owner of a section is for all purposes deemed to be a right to urban immovable property over which a mortgage bond, lease contract or personal servitude of usufruct, usus or habitatio may be registered.
  - (17) Any person who holds two or more rights to exclusive use areas or undivided shares by one title deed may, subject to subsection (18) and other prescribed provisions, obtain a separate title deed in respect of one or more of the rights to exclusive use areas held therein.



- (18) At least one of the exclusive use areas or shares must remain held by the title deed referred to in subsection (17).
- (19) The issue of a certificate of real right of exclusive use in terms of subsection (5) or (14) does not prejudice a claim to compensation that any person may have as a result of the vesting of any such right to an exclusive use area.

## 29. Rules regarding exclusive use areas

- (1) A developer or body corporate may, subject to subsection (2), make rules that confer rights of exclusive use and enjoyment of parts of the common property on members of the body corporate.
- (2) The rules made under subsection (1) -
- (a) do not create rights contemplated in section 28(16);
  - (b) must include a layout plan to scale on which is clearly indicated -
    - (i) the locality of the distinctively numbered exclusive use and enjoyment parts of the common property;
    - (ii) the purposes for which the exclusive use and enjoyment parts referred to in subparagraph (i) may be used; and
    - (iii) such other particulars as may be prescribed; and
  - (c) must include a schedule indicating to which member each exclusive use and enjoyment part referred to in paragraph (b)(i) is allocated.
- (3) Section 37(4), (7), (8) and (9) applies with the necessary changes in respect of the making of rules pursuant to subsection (1).

## 30. Implied servitudes

- (1) There is implied -
- (a) in favour of each section -
    - (i) a servitude for the subjacent and lateral support of the section by the common property and by any other section capable of affording that support;
    - (ii) a servitude for the passage or provision of -
      - (aa) water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air; and
      - (bb) any other essential services, including telephone, radio and television services, through or by means of pipes, wires, cables or ducts existing on or under the land or in the building, to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the utilisation of the section; and
    - (iii) such other servitudes as may be prescribed; and
  - (b) against each section -
    - (i) a servitude for the subjacent and lateral support of the common property and of any other section capable of enjoying that support by the section;
    - (ii) the servitudes referred to in paragraph (a)(ii) through or by means of pipes, wires, cables or ducts existing within such section, in favour of the common property and in favour of any other section capable of enjoying those servitudes; and
    - (iii) such other servitudes as may be prescribed.

- (2) The servitudes referred to in subsection (1) -
- (a) are deemed to be incorporated in the title deeds of the owners affected thereby; and
  - (b) confer on the owners of sections the right, to be exercised by the body corporate, to have access to each section and the exclusive use areas from time to time during reasonable hours to the extent necessary to maintain, repair or renew a part of the building or any pipes, wires, cables or ducts therein, or to make emergency repairs therein necessary to prevent damage to the common property or to any other section or sections.

### **31. Creation of servitudes**

- (1) The owners of sections may by special resolution direct the body corporate -
- (a) to execute on their behalf a servitude or restrictive agreement burdening the land shown on the relevant sectional plan;
  - (b) to accept on their behalf a servitude or restrictive agreement benefiting the land shown on the relevant sectional plan.
- (2) Every servitude or agreement referred to in subsection (1) must -
- (a) be embodied in a notarial deed; and
  - (b) be registered by the registrar by noting the notarial deed referred to in paragraph (a) -
    - (i) on the schedule of servitudes and conditions referred to in section 11(3)(b); and
    - (ii) on the title deeds of every party to such servitude or restrictive agreement whose title deeds are registered in the land register.
- (3) If the land to be burdened by a servitude or restrictive agreement referred to in subsection (1)(a) is hypothecated, the written consent of every mortgagee to the registration of that servitude or restrictive agreement must be lodged with the registrar.

### **32. Ancillary servitudal rights**

All ancillary rights and obligations reasonably necessary to make servitudes effective apply in respect of servitudes implied or created under this Act.

### **33. Deeds Registries Act and implied servitudes**

- (1) The Deeds Registries Act does not apply in respect of servitudes or restrictions as to user implied under this Act.
- (2) The servitudes and restrictions referred to in subsection (1) take effect and are enforceable immediately on the establishment of the body corporate.

## **Part VIII – PARTICIPATION QUOTAS AND DEVELOPERS**

### **34. Participation quotas**

- (1) Subject to section 51, the participation quota of a section is 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.
- (2) In all cases where a developer alienates a unit in a scheme before the sectional title register is opened, the total of the participation quotas allocated to the respective sections and the participation quota of that unit must be disclosed in the deed of alienation.

- (3) A deed of alienation in which a disclosure contemplated in subsection (2) has not been made as required by that subsection, is voidable at the option of the purchaser, and thereupon section 26(23), (24), (25), and (26) applies with the necessary changes in respect of such an alienation.
- (4) Subject to subsection (5), the participation quota of a section determines -
- (a) the value of the vote of the owner of the section, in the case where the vote is to be reckoned in value;
  - (b) the undivided share in the common property of the owner of the section; and
  - (c) subject to section 39(1)(b), the proportion in which the owner of the section -
    - (i) must make contributions for the purposes of section 39(1)(a); or
    - (ii) may in terms of section 49(1) be held liable for the payment of a judgment debt of the body corporate of which that owner is a member.
- (5) Subject to section 39(1)(b) -
- (a) the developer, when submitting an application for the opening of a sectional title register; or
  - (b) the members of the body corporate, by special resolution,
- may make rules under section 37 by which a different value is attached to the vote of the owner of a section, or the liability of the owner of a section to make contributions for the purposes of section 39(1)(a) or 49(1) is adjusted, but -
- (i) where the owner of a section is adversely affected by a such a decision of the body corporate that owner's written consent must be obtained;
  - (ii) no such change may be made by a special resolution of the body corporate until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme;
  - (iii) in the case where the developer alienates a unit before submitting an application for the opening of the sectional title register, no exercise of power to make a change conferred on the developer by this subsection is valid unless the intended change is disclosed in the relevant deed of alienation.
- (6) The specification on or in the schedule to a sectional plan of -
- (a) the participation quota of each section; and
  - (b) the total of the participation quotas of all the sections,
- in the building or buildings comprised in a scheme is for all purposes deemed to be correct in the absence of proof to the contrary.

### 35. Sale or letting of sections

Nothing in this Act or any other law contained is to be construed as preventing a developer from selling certain sections in a building and letting other sections therein or from letting all sections therein.

### 36. Shares of developers in buildings and land

- (1) The developer is the owner of a section in respect of which the ownership is not held by any other person, and the participation quota of such section or, if there is more than one such section, the total of the participation quotas of such sections determines the share of the developer in the common property.
- (2) When the ownership in every section is held by any person or persons other than the developer, the developer ceases, subject to section 26(1), to have a share or interest in the common property.
- (3) When a developer has in one transaction alienated the whole of his or her interest in the land and the building or buildings comprised in a scheme, or a share in the whole of such interest, to any other person,

the registrar must register the transaction by means of -

- (a) in the case of units, a deed of transfer; and
  - (b) in the case of rights reserved under sections 26 and 28, a bilateral notarial deed of cession.
- (4) The registrar may not register the transfer of a transaction referred to in subsection (3) unless there is produced to the registrar -
- (a) a certificate by a conveyancer confirming that, if a body corporate is deemed to have been established in terms of section 38(1), the body corporate has certified that all moneys due to the body corporate by the transferor in respect of the units in question have been paid or provision for the payment thereof has been made to the satisfaction of the body corporate;
  - (b) a conveyancer's certificate or other document, whichever may be applicable, prescribed by section 78 of the Local Authorities Act, 1992 (Act No. 23 of 1992); and
  - (c) such other documents and particulars as may be prescribed by or under this Act or any other law.

## Part IX – RULES AND BODIES CORPORATE

### 37. Rules

- (1) A scheme is, as from the date of the establishment in terms of section 38(1) of the body corporate, controlled and managed, subject to this Act, by means of rules.
- (2) The Minister -
  - (a) may make rules, on the recommendation of the sectional titles Regulation Board and subject to subsection (3); and
  - (b) must publish the rules made in terms of paragraph (a) by notice in the Gazette.
- (3) The rules made in terms of subsection (2) must provide for the control, management, administration, use and enjoyment of the sections and the common property, and must comprise -
  - (a) management rules; and
  - (b) conduct rules.
- (4) The rules referred to in subsection (3) may be substituted, added to, amended or repealed in respect of a particular scheme -
  - (a) in the case of management rules -
    - (i) by the developer, when applying to the registrar for the opening of a sectional title register, to the extent prescribed;
    - (ii) by the body corporate, from time to time by unanimous resolution of that body corporate as prescribed;
  - (b) in the case of conduct rules -
    - (i) by the developer, when applying to the registrar for the opening of a sectional title register;
    - (ii) by the body corporate, from time to time by special resolution of the body corporate, but a conduct rule substituted, added to or amended by the developer under subparagraph (i), or any substitution, addition to or amendment of the conduct rules by the body corporate under subparagraph (ii), may not be in conflict with any management rule made in terms of subsection (2).
- (5) A management rule or conduct rule made by a developer or a body corporate under subsection (4) must -
  - (a) be reasonable; and

- (b) apply equally to all owners of units used for substantially the same purpose.
- (6) Subject to subsection (9), the rules made in terms of this section apply, as from the date of the establishment in terms of section 38(1) of the body corporate, in respect of the building or buildings and land in question and binds -
  - (a) the body corporate;
  - (b) the owners of the sections; and
  - (c) any person occupying, or finding himself or herself in or on, a section for any purpose.
- (7) If the rules are substituted, added to, amended or repealed by a body corporate under subsection (4), the body corporate must furnish the registrar, in the prescribed form and manner, with particulars of that substitution, addition, amendment or repeal.
- (8) The registrar -
  - (a) may not be involved in the enforcement or application of the rules made in terms of this section; and
  - (b) is not required to examine or note or endorse any substitution, addition, amendment or repeal of the rules referred to in paragraph (a) against or on any certificate, deed or other document.
- (9) A substitution, addition, amendment or repeal contemplated in subsection (7) comes into operation on the date on which the registrar is furnished in terms of that subsection with particulars thereof.
- (10) The body corporate must, at the written request of -
  - (a) an owner of a unit or any other person having a registered real right in or over a unit; or
  - (b) any person authorised thereto in writing by the owner or other person referred to in paragraph (a), make any rules then in force available for inspection to that owner, or other or authorised person.

### 38. Bodies corporate

- (1) With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there is deemed to be established for that scheme a body corporate of which the developer and that person are members, and every person who thereafter becomes an owner of a unit in that scheme is, as from the date on which that person becomes such an owner, a member of that body corporate.
- (2) The developer ceases to be a member of the body corporate referred to in subsection (1) when the developer ceases to have a share in the common property in terms of section 36(2), and any other member of the body corporate ceases to be a member thereof when that member ceases to be the owner of a unit in the scheme in question.
- (3) A body corporate must be designated as “the Body Corporate of the ..... (name) Development Scheme, No .....”, such name and number to be inserted being the name and the distinctive number referred to in sections 7(3)(b) and 12(1)(a), respectively.
- (4) The registrar must issue a certificate of establishment, in the prescribed form, to a body corporate established in terms of subsection (1).
- (5) Subject to this Act, a body corporate is responsible for -
  - (a) the enforcement of the rules referred to in section 37; and
  - (b) the control, administration and management of the common property for the benefit of all owners.
- (6) The Companies Act, 1973 (Act No. 61 of 1973), and the Close Corporations Act, 1988 (Act No. 26 of 1988), do not apply in relation to a body corporate.

*[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]*

- (7) A body corporate has perpetual succession and is capable of suing and of being sued in its corporate name in respect of -
- (a) any agreement entered into by it;
  - (b) any damage to the common property;
  - (c) any matter in connection with the land or building for which the body corporate is liable or for which the members of the body corporate are jointly liable;
  - (d) any matter arising out of the exercise or non-exercise of any of its powers or the performance or non-performance of any of its duties in terms of this Act or any rule; and
  - (e) any claim against the developer in respect of the scheme if so determined by special resolution.
- (8) When a body corporate is established in terms of subsection (1), the developer must inform the local authority concerned in writing -
- (a) of the corporate name and postal address of the body corporate, within 30 days after the establishment of the body corporate; and
  - (b) of the full names, residential address and postal address of every person who purchases from the developer a unit in the scheme in question, within 30 days after the entering into of an agreement of sale.
- (9) The developer must convene a meeting of the members of the body corporate to take place not later than 60 days after the establishment in terms of subsection (1) of that body corporate, at which meeting the developer must furnish those members with -
- (a) a copy of the registered sectional plan;
  - (b) a clearance certificate issued by the local authority concerned to the effect that all rates and other payments due by the developer to that local authority in respect of the property in question, up to and including the date of the establishment of the body corporate, have been duly paid; and
  - (c) proof, in writing, of revenue and expenditure concerning the management of the scheme from the date of the first occupation of any unit in that scheme until the date of the establishment of the body corporate.
- (10) The agenda of the meeting convened in terms of subsection (9) is as prescribed in the management rules.
- (11) The developer must pay over to the body corporate, at the meeting convened in terms of subsection (9), any surplus funds as revealed by the proof of revenue and expenditure furnished in terms of paragraph (c) of that subsection.
- (12) A developer who fails to comply with a provision of subsection (8) or (9) or (11) commits an offence and is liable on conviction to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- (13) Despite anything to the contrary in this Act or any other law, a developer who fails to comply with a provision of subsection (8) is liable for the payment of the rates and taxes due to the local authority concerned in respect of the unit or units in question until such time as the developer complies with that subsection, irrespective of whether or not the developer is convicted of an offence under that subsection.

### **39. Functions of bodies corporate**

- (1) A body corporate referred to in section 38(1) must perform the functions entrusted to it by or under this Act or the rules, and those functions include -
- (a) to establish for administrative expenses a fund sufficient in the opinion of the body corporate for -
    - (i) the repair, upkeep, control, management and administration of the common property,

- including reasonable provision for future maintenance and repairs;
- (ii) subject to section 54, the payment of rates and taxes and other local authority charges in respect of the common property;
  - (iii) the payment of local authority charges or other charges for -
    - (aa) necessary maintenance with regard to the supply of electricity, gas, water and fuel; and
    - (bb) the supply of sanitary and other services, to the building or buildings and land;
  - (iv) the payment of any premiums of insurance in respect of the scheme that may become due and payable; and
  - (v) the discharge of any other duty or the fulfilment of any other obligation of the body corporate;
- (b) (i) to require the owners of sections, when necessary, to make contributions to the fund established in terms of paragraph (a) for the purposes of satisfying any claims against the body corporate;
- (ii) despite subparagraph (i), to require the owner or owners of a section or sections entitled to the right to the exclusive use of a part or parts of the common property, whether or not that right is registered or conferred by rules made under the repealed Act, to make such additional contribution to the fund referred to in that subparagraph as is estimated necessary by the body corporate to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water, unless in terms of the rules the owners concerned are responsible for the payment of those costs;
- (c) to determine from time to time the amounts to be raised for the purposes of paragraphs (a) and (b);
  - (d) to raise the amounts determined in terms of paragraph (c) by levying contributions on the owners in proportion to the participation quotas of their respective sections;
  - (e) to open and operate an account or accounts with a banking institution or a building society as may be prescribed;
  - (f) to insure the building or buildings, and keep the building or buildings insured, to the replacement value thereof against fire and such other risks as may be prescribed;
  - (g) to insure, in addition to the insurance contemplated in paragraph (f), against such other risks as the owners may determine by special resolution;
  - (h) subject to section 51 and to the rights of the holder of any sectional mortgage bond, to immediately apply any insurance money received by the body corporate in respect of damage to the building or buildings for the rebuilding and reinstatement of the building or buildings in so far as this may be effected;
  - (i) to pay the premiums on any policy of insurance effected by the body corporate in terms of paragraph (f) or (g);
  - (j) to comply with any notice or order by a competent authority requiring any repairs to, or work in respect of, the building or buildings or land in question;
  - (k) to comply with any reasonable request for the furnishing of the names and addresses of the persons who are the trustees of the body corporate in terms of the rules referred to in section 37, or who are members of the body corporate;
  - (l) to notify the registrar and the local authority concerned in writing of the domicilium citandi et executandi of the body corporate, being its address for service of any process;

- (m) to ensure compliance with any law relating to the common property or to any improvement on the land comprised in the common property;
  - (n) to properly maintain the common property (including elevators) and to keep it in a good and serviceable state of repair;
  - (o) to keep in a good and serviceable state of repair and properly maintain the plant, machinery, fixtures and fittings used in connection with the common property and sections;
  - (p) subject to the rights of the local authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the common property or in favour of one section over the common property;
  - (q) at the written request of an owner or registered mortgagee of a section, to produce to that owner or mortgagee, or a person authorised thereto in writing by that owner or mortgagee, the policy or policies of insurance effected by the body corporate in terms of paragraph (f) or (g) and the receipt or receipts for, or other written proof of, the most recent payment of the premium or premiums in respect of the policy or policies; and
  - (r) in general, to control, manage and administer the common property for the benefit of all owners.
- (2) Any contributions levied in terms of subsection (1) -
- (a) are due and payable on the passing of a resolution to that effect by the trustees of the body corporate; and
  - (b) may be recovered by the body corporate by action in any court (including a magistrate's court) of competent jurisdiction from the persons who were the owners of sections at the time when the contributions became due and payable.
- (3) Despite anything to the contrary in any other law, a magistrate's court has jurisdiction to hear any action instituted under subsection (2)(b) irrespective of the amount of the claim.
- (4) The body corporate must, on application by an owner or registered mortgagee of a section, or a person authorised thereto in writing by that owner or mortgagee, certify in writing -
- (a) the amount determined in terms of subsection (1) as the contribution payable by that owner;
  - (b) the manner in which, and the time at which, a contribution referred to in paragraph (a) is payable;
  - (c) particulars relating to the payments made by that owner in respect of the contribution referred to in paragraph (a), and the balance outstanding and payable; and
  - (d) particulars relating to, and the amount of, any rates and taxes paid by the body corporate to the local authority concerned in terms of section 54(4) and not recovered by the body corporate from the owners concerned.
- (5) The body corporate is, for the purposes of effecting any insurance in terms of paragraph (f) of subsection (1), deemed to have an insurable interest for the replacement value of the building or buildings and is, for the purposes of effecting any other insurance in terms of that subsection, deemed to have an insurable interest in the subject matter of that insurance.

#### **40. Powers of bodies corporate**

A body corporate referred to in section 38(1) may exercise the powers conferred on it by or under this Act or the rules, and those powers include the power -

- (a) to appoint, subject to the conditions determined by the body corporate, such agents and employees as the body corporate may consider appropriate;
- (b) when essential for the proper discharge of the duties of the body corporate and the proper conduct of its affairs -



- (i) to purchase or otherwise acquire, or take transfer of units in the scheme in question;
- (ii) to mortgage, sell, or give transfer of units acquired under subparagraph (i); or
- (iii) to hire units in the scheme or let units acquired under subparagraph (i);
- (c) to purchase, hire, lease or otherwise acquire movable property for the use of owners for their enjoyment or protection, or in connection with the enjoyment or protection of the common property;
- (d) to establish and maintain, where practicable and at its discretion, suitable lawns and gardens and recreation facilities on the common property;
- (e) to borrow money required by the body corporate in the performance of its functions or the exercise of its powers;
- (f) to secure the repayment of money borrowed by the body corporate, and the payment of interest thereon, by means of a negotiable instrument effected for that purpose or the hypothecation of unpaid contributions (whether levied or not), or by mortgaging any property vested in the body corporate;
- (g) to invest any money of the fund established in terms of section 39(1)(a);
- (h) to enter into an agreement with the local authority or any other person or body for procuring the supply to the building or buildings and land of electricity, gas, water, fuel, and sanitary and other services in so far as this may be necessary;
- (i) to enter into an agreement with any owner or occupier of a section for the provision of amenities or services by the body corporate to the section or to the owner or occupier thereof, including the right to let a part of the common property to any such owner or occupier by means of a lease other than a lease contemplated in section 19(1); and
- (j) to do all such other things as are reasonably necessary for the enforcement of this Act and the rules, and for the control, management and administration of the common property.

#### **41. Functions and powers of bodies corporate to be performed or exercised by trustees**

- (1) The functions and powers of a body corporate must, subject to this Act, the rules and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the body corporate holding office in terms of the rules, subject thereto that -
  - (a) the majority of trustees must be owners of sections;
  - (b) a trustee or an alternate trustee is elected annually at the annual general meeting in terms of the rules, but is not required to be the owner of a section, or the nominee of an owner which is a juristic person;
  - (c) owners of sections may be represented by their spouses on the body corporate; and
  - (d) the management agent or any of his or her employees, or any employee of the body corporate does not qualify for appointment as trustee.
- (2) For the purposes of an agreement in respect of the beacons and boundaries of the common property required in terms of the Land Survey Act, the trustees of the body corporate are deemed to be the owner of the land in question.

#### **42. Fiduciary position of trustees**

- (1) Each trustee of a body corporate stands in a fiduciary relationship to the body corporate.
- (2) Without prejudice to the generality of the expression “fiduciary relationship”, subsection (1) implies that a trustee -
  - (a) must in relation to the body corporate act honestly and in good faith, and in particular -

- (i) must exercise such powers as he or she may have to manage or represent the body corporate in the interest and for the benefit of the body corporate and its members; and
    - (ii) may not -
      - (aa) act without having the powers; or
      - (bb) exceed the powers, contemplated in subparagraph (i); and
  - (b) must avoid any material conflict between his or her own interests and the interests of the body corporate, and in particular -
    - (i) may not derive any personal economic benefit to which if he or she is not entitled by reason of his or her office as trustee of the body corporate, from the body corporate or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the body corporate; and
    - (ii) must notify in writing every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest that he or she may have in any agreement entered into by the body corporate.
- (3) A trustee of a body corporate whose mala fide or negligent act or omission has breached any duty arising from his or her fiduciary relationship to the body corporate is liable to the body corporate for -
- (a) any loss suffered as a result thereof by the body corporate; or
  - (b) any economic benefit derived by that trustee by reason thereof.
- (4) Any loss or economic benefit referred to in paragraph (a) or (b), respectively, of subsection (3) may be recovered by the body corporate by action in any court (including a magistrate's court) of competent jurisdiction from the trustee who is liable to the body corporate in terms of that subsection.
- (5) Despite anything to the contrary in any other law contained, a magistrate's court has jurisdiction to hear any action instituted under subsection (4) irrespective of the amount of the claim.
- (6) Where a trustee fails to comply with subsection (2)(b)(ii) and it becomes known to the body corporate that the trustee has an interest referred to in that subsection in an agreement entered into by the body corporate, that agreement is, at the option of the body corporate but subject to subsections (7) and (8), voidable.
- (7) The option contemplated in subsection (6) must, by written notice to that effect given to the other party or parties to the agreement, be exercised by the body corporate within 30 days after the body corporate became aware of the trustee's interest in the agreement in question.
- (8) Where the body corporate under subsection (6) chooses not to be bound by the agreement in which a trustee has an interest, the Court may, on application by an interested person -
- (a) if the Court is of the opinion that in the circumstances it is fair to order that that agreement is nevertheless binding on the parties, make an order to that effect;
  - (b) make any further order in respect of that agreement which the Court may consider appropriate, including an order as to costs.
- (9) A particular conduct of a trustee, except a conduct with regard to his or her duty referred to in subsection (2)(a)(i), does not constitute a breach of a duty arising from his or her fiduciary relationship to the body corporate, if such conduct was preceded or followed by the written approval of all the members of the body corporate where all those members were or are aware of all the material facts relating to that conduct.

#### 43. Proceedings on behalf of bodies corporate

- (1) When an owner of a section is of the opinion that he or she and the body corporate have suffered damages or loss or have been deprived of any benefit in respect of any matter mentioned in section 38(7) and the body corporate has not instituted proceedings for the recovery of such damages, loss or benefit, or where the body corporate does not take the necessary action against any such owner who does not comply with the rules, that owner may initiate proceedings on behalf of the body corporate in the manner prescribed in this section.
- (2) An owner who under subsection (1) intends to initiate proceedings must serve a written notice on the body corporate -
  - (a) calling on the body corporate to institute such proceedings within 30 days from the date of service of the notice; and
  - (b) stating in the notice -
    - (i) full particulars of the proceedings to be instituted; and
    - (ii) that if the body corporate fails to institute proceedings in compliance with paragraph (a), an application under subsection (3) will be made to the Court.
- (3) If the body corporate fails to institute proceedings within the period of 30 days mentioned in subsection (2)(a), the owner referred to in that subsection may apply to the Court for an order appointing a *domicilium citandi et executandi* for the body corporate for the purposes of instituting and conducting proceedings on behalf of the body corporate.
- (4) The Court may on an application under subsection (3), if the Court is satisfied -
  - (a) that the body corporate has not instituted the proceedings to which the application relates;
  - (b) that there are prima facie grounds for instituting the proceedings referred to in paragraph (a); and
  - (c) that an investigation into the grounds referred to in paragraph (b) and into the desirability of the institution of the proceedings referred to in paragraph (a) is justified,make a provisional order -
  - (i) appointing a provisional curator ad litem for the body corporate; and
  - (ii) directing the provisional curator ad litem appointed under paragraph (i) -
    - (aa) to conduct the investigation referred to in paragraph (c); and
    - (bb) to report to the Court on the return day of the provisional order on the investigation conducted in terms of subparagraph (aa).
- (5) On the return day of the provisional order made under subsection (4), and after having considered the report of the provisional curator ad litem referred to in subsection (4)(ii)(bb), the Court may -
  - (a) discharge that provisional order; or
  - (b) confirm the appointment of the curator ad litem for the body corporate, and issue such directions as the Court may consider necessary as to the institution of proceedings in the name of the body corporate and the conduct of such proceedings on behalf of the body corporate by the curator ad litem.

#### **44. Powers of curatores ad litem**

*[The plural of curator ad litem is curators ad litem.]*

- (1) A provisional curator ad litem appointed by the Court under section 43(4) and a curator ad litem whose appointment is confirmed by the Court under section 43(5) have, in addition to the powers expressly granted by the Court in connection with the investigation, proceedings and enforcement of a judgment, such powers as may be prescribed.

- (2) If the disclosure of any information about the affairs of a body corporate to a provisional curator ad litem or a curator ad litem would in the opinion of the body corporate be harmful to the interests of the body corporate, the Court may on an application for relief by that body corporate, and if the Court is satisfied that that information is not relevant to the investigation, grant the relief sought.

#### **45. Security for costs by applicants for appointment of curatores ad litem**

*[The plural of curator ad litem is curators ad litem.]*

The Court may, if it appears that there is reason to believe that an applicant in respect of an application under section 43(3) will be unable to pay the costs of the respondent body corporate if successful in its opposition, require sufficient security to be given by the applicant for those costs and the costs of the provisional curator ad litem before a provisional order is made.

### **Part X – OWNERS, ADMINISTRATORS AND BUILDINGS**

#### **46. Duties of owners**

- (1) An owner must -
- (a) permit a person authorised thereto in writing by the body corporate, at all reasonable hours and on reasonable notice (except in case of emergency, when no notice is required), to enter his or her section or exclusive use area for the purposes of -
    - (i) inspecting the section or exclusive use area;
    - (ii) maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and capable of being used in connection with the enjoyment of any other section or common property; or
    - (iii) ensuring that this Act and the rules are being complied with;
  - (b) immediately perform all work that may be ordered by any competent public or local authority in respect of his or her section, except such work as may be for the benefit of the building in general;
  - (c) repair and maintain his or her section in a good state of repair and, in respect of an exclusive use area, keep it in a clean and neat condition;
  - (d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other owners or other persons lawfully on the premises;
  - (e) not use his or her section or exclusive use area, or permit it to be used, in such a manner or for such purpose as may cause a nuisance to an occupier of another section;
  - (f) notify the body corporate immediately in writing of any change of ownership in his or her section and of any mortgage or other dealing in connection with his or her section;
  - (g) when the purpose for which a section is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit that section to be used for any other purpose, but with the written consent of all owners that section may be used for another purpose; and
  - (h) pay, when due, all charges (including contributions), expenses and assessments that may become payable in respect of his or her section.
- (2) An owner who is of the opinion that the refusal by another owner of a section to give the consent required in terms of subsection (1)(g) for using his or her section for a purpose other than the intended purpose, is unfairly prejudicial, unjust or inequitable to him or her may, within 30 days after the refusal of consent, make an application in terms of this subsection to the Court.
- (3) An owner who makes an application under subsection (2) to the Court, must at the same time serve a copy of the application on the owner against whose refusal of consent the application is brought.

- (4) If, on application made under subsection (2), the Court -
- (a) is satisfied that the refusal of consent to which the application relates is unfairly prejudicial, unjust or inequitable to the applicant; and
  - (b) considers it just and equitable in the circumstances,
- the Court may with a view to bringing the dispute to an end make such order as the Court considers appropriate, including -
- (i) an order that it is deemed that the requirement of consent contemplated in subsection (1)(g) is met;
  - (ii) an order that section 14 applies, to the extent determined by the Court, in respect of the amendment of the registered section plan in question;
  - (iii) any other supplementary order; and
  - (iv) an order as to costs.

#### **47. Insurance by owners**

- (1) Despite the existence of a valid policy of insurance effected by the body corporate in terms of section 39(1)(f), an owner of a section may effect a policy of insurance in respect of any damage to his or her section arising from risks covered by the policy of insurance effected by the body corporate.
- (2) Where a policy of insurance contemplated in subsection (1) is in force, and -
- (a) where the damage to the section is made good by the body corporate in terms of section 39(1)(h), the insurer is not liable in terms of the policy of insurance effected by the owner of the section;
  - (b) where the damage to the section is covered by the policy of insurance effected by the body corporate in terms of section 39(1)(f), but is not made good by the body corporate in terms of section 39(1)(h), the insurer is liable in terms of the policy of insurance effected by the owner of the section; or
  - (c) where the damage to the section is not covered by the policy of insurance effected by the body corporate in terms of section 39(1)(f), the terms and conditions of the policy of insurance effected by the owner of the section apply and the insurer is liable in terms of that policy of insurance.
- (3) Nothing in this section limits the rights of an owner of a section to insure against risks other than damage to his or her section.

#### **48. Appointment of administrators**

- (1) A body corporate, a local authority, a judgment creditor of the body corporate for an amount of not less than the prescribed amount, or any owner or any person having a registered real right in or over a unit in the scheme in question, may apply to the Court for the appointment of an administrator to replace the body corporate.
- (2) The Court may, on application under subsection (1) and at its discretion, appoint an administrator for an indefinite or a fixed period on such terms and conditions as to remuneration as the Court may consider appropriate.
- (3) The remuneration and expenses of the administrator are administrative expenses within the meaning of section 39(1)(a).
- (4) The administrator appointed under subsection (2) have, to the exclusion of the body corporate, the powers and functions of the body corporate or such of those powers and functions as the Court may direct.
- [The verb "have" should be "has" to be grammatically correct.]*
- (5) The Court may at its discretion -

- (a) on application by any person or body referred to in subsection (1), remove from office or replace the administrator appointed under subsection (2);
  - (b) on application by the administrator referred to in paragraph (a), replace that administrator.
- (6) The Court may, with regard to an application under this section, make such order as to costs as the Court considers appropriate.

#### **49. Recovery from owners of unsatisfied judgment against bodies corporate**

- (1) If a creditor of a body corporate has obtained judgment against the body corporate, and that judgment, despite the issue of a writ, remains unsatisfied for a period of at least 60 days after it was obtained, the judgment creditor -
- (a) may, without prejudice to any other remedy the judgement creditor may have but subject to subsection (2), apply to the Court that gave the judgment for the joinder of the members of the body corporate in their personal capacities as joint judgment debtors in respect of the judgment debt; and
  - (b) on the joinder referred to in paragraph (a), may recover the amount of the judgment debt still outstanding from those members of the body corporate on a pro rata bases in proportion to their respective participation quotas or a determination made in terms of section 34(4).

*[The word "basis" is misspelt in the Government Gazette, as reproduced above.]*

- (2) A member of the body corporate who, before judgment is obtained against the body corporate, paid the contributions due by him or her in terms of section 39(1) to the body corporate in respect of the same debt may not be joined as a joint judgment debtor in respect of that judgment debt.

#### **50. Non-liability of bodies corporate for debts and obligations of developers**

No debt or other obligation arising from an agreement entered into between a developer and any other person, including an owner of a section, is enforceable against a body corporate.

#### **51. Destruction of or damage to buildings**

- (1) The building or buildings comprised in a scheme is or are, for the purposes of this Act, deemed to be destroyed -
- (a) on the physical destruction of the building or buildings;
  - (b) when -
    - (i) the owners by unanimous resolution so determine; and
    - (ii) all holders of registered sectional mortgage bonds and persons with registered real rights concerned agree thereto in writing; or
  - (c) when the Court is satisfied that, having regard to all the circumstances, it is just and equitable that the building or buildings is or are deemed to have been destroyed, and the Court makes an order to that effect.
- (2) Where the Court makes an order under subsection (1)(c), the Court may impose such conditions and give such directions as it considers appropriate for the purpose of adjusting the effect of the order -
- (a) between the body corporate and the owners; and
  - (b) mutually among the owners, the holders of registered sectional mortgage bonds and persons with registered real rights.
- (3) Where the building or buildings is or are damaged or is or are destroyed within the meaning of subsection (1), the owners may by unanimous resolution, or the Court may by order, authorise a scheme -

- (a) for the rebuilding and reinstatement, in whole or in part, of the building or buildings;
  - (b) for the transfer of the interests of owners of sections that have been wholly or partially destroyed to the other owners.
- (4) In the exercise of their powers under subsection (3), the owners may pass such resolution, or the Court may make such order, as they or it may consider necessary or expedient to give effect to the scheme authorised under that subsection, in connection with among other things -
- (a) the application of insurance money received by the body corporate in respect of damage to, or the destruction of, the building or buildings;
  - (b) the payment of money by or to the body corporate, or by or to the owners, or by or to one or more of them;
  - (c) an amendment of the sectional plan so as to include in the common property an addition thereto or subtraction therefrom;
  - (d) the variation of the participation quota of a section;
  - (e) the imposition of conditions;
  - (f) such other matters relating to that scheme as may be prescribed.
- (5) An application may, for the purposes of this section, be made to the Court by -
- (a) the body corporate;
  - (b) an owner of a section in the scheme;
  - (c) a holder of a registered sectional mortgage bond or a registered lease;
  - (d) an insurer who has effected a policy of insurance in respect of the building or buildings or a section therein; or
  - (e) the local authority.
- (6) An insurer who has effected a policy of insurance in respect of the building or buildings or a part thereof (being insurance against destruction of sections or damage to the building or buildings) has, when an application is made to the Court under this section, the right to intervene in the proceedings.
- (7) The Court may, on application by -
- (a) a body corporate or a member thereof;
  - (b) a holder of a registered real right; or
  - (c) a judgment creditor of the body corporate for an amount of not less than the prescribed amount,
- by order make provision for the winding-up of the affairs of the body corporate.
- (8) The Court may, by the order referred to in subsection (7) or by a subsequent order, declare the body corporate dissolved as from a date specified in that order.
- (9) The Court may, with regard to an application under this section, make such order as to the payment of costs as the Court considers appropriate.
- (10) Where two or more buildings are comprised in a scheme and only one or part of one of those buildings is damaged or destroyed, this section applies with the necessary changes as if those buildings were one building and part of such one building had been damaged or destroyed.

## 52. Disposal on destruction of buildings

- (1) When -
- (a) in terms of section 51(1) the building or buildings comprised in a scheme is or are deemed to be

- destroyed; and
- (b) the owners have by unanimous resolution resolved not to rebuild the building or buildings referred to in paragraph (a),
- the body corporate must lodge with the registrar -
- (i) a notification of the destruction of the building or buildings in question, in such form as the registrar may determine in writing; and
- (ii) a copy of the relevant resolution of the owners, certified by two trustees of the body corporate as a true copy.
- (2) On receipt of a notification in terms of subsection (1), the registrar must make an entry thereof in the relevant sectional title register.
- (3) When an entry in terms of subsection (2) has been made in the relevant sectional title register -
- (a) the owners cease to be separate owners of sections but remain, subject to any conditions imposed or directions given under section 51(2), co-owners of the land in undivided shares proportionate to the participation quotas of the respective sections previously owned by them;
- (b) a sectional mortgage bond, lease or other real right or condition then registered against or affecting a unit is deemed to be converted into a mortgage bond, lease or other real right or condition registered against or affecting the undivided share in the land that formed part of that unit;
- (c) the land reverts to the land register; and
- (d) the sectional title deeds of units that are in terms of section 51(1) deemed to be destroyed as well as the title deeds regarding any right to an exclusive use area and any right to the extension of a scheme referred to in section 26, together with any mortgage bond registered against any such rights, must be surrendered to the registrar for cancellation.
- (4) On the reversion in terms of subsection (3)(c) of the land to the land register, the registrar must -
- (a) cancel the title deeds referred to in subsection (3)(d);
- (b) issue to each of the owners of a unit that is in terms of section 51(1) deemed to be destroyed a certificate of registered title, in the form prescribed under the Deeds Registries Act, for his or her undivided share in the land, subject or entitled to such servitudes, mortgage bonds, other real rights and conditions that are applicable to or in respect of that land;
- (c) make suitable endorsements on any sectional mortgage bond, lease or other real right to reflect the conversion referred to in subsection (3)(b);
- (d) re-register the sectional mortgage bond, lease or other real right referred to in subsection (3)(b) as a mortgage bond, lease or real right in terms of the Deeds Registries Act;
- (e) make an endorsement on the schedule referred to in section 11(3)(b) to reflect that reversion of the land to the land register;
- (f) notify the Surveyor-General and the local authority concerned in writing of that reversion of the land to the land register; and
- (g) cancel the relevant registered sectional plan when the whole of the land has so reverted to the land register.

### **53. Unencumbered sections destroyed by State or local authority**

- (1) Where the State or a local authority is the owner of a section in a building that is not encumbered with a mortgage bond, lease or other real right, and that section is destroyed to give effect to a project or scheme for the benefit of the public, the State or that local authority may, after having advised the body corporate concerned in writing of its intention to do so, notify the registrar to this effect and apply for the



cancellation of the relevant sectional title deed.

- (2) An application under subsection (1) must be accompanied by -
  - (a) the owner's copy of the relevant sectional title deed; and
  - (b) an amended schedule referred to in section 7(3)(g), prepared by a land surveyor or architect.
- (3) On receipt of an application referred to in subsection (2), the registrar must -
  - (a) cancel the deeds registry copy and the owner's copy of the relevant sectional title deed;
  - (b) make the necessary consequential entries in his or her records with regard to the cancellation of the sectional title deed in terms of paragraph (a);
  - (c) notify the Surveyor-General and the local authority concerned in writing of the cancellation of the sectional title deed; and
  - (d) amend the registered sectional plan to give effect to the cancellation of the relevant sectional title deed.
- (4) When a sectional title deed is cancelled in terms of subsection (3)(a), the undivided share in the common property that was held under that sectional title deed vests in the owners of the remaining sections in the building proportionately to their respective participation quotas.

#### **54. Valuation of land and buildings and recovery of rates by local authorities**

- (1) When a local authority causes land and buildings comprised in a scheme to be valued for the purposes of Parts XIV and XV of the Local Authorities Act, 1992 (Act No. 23 of 1992), each unit in the scheme is, for the purposes of valuation and the levying and recovery of rates by a local authority, deemed to be a separate rateable property.
- (2) When valuing land and buildings comprised in a scheme, the value of each unit in the scheme must be determined separately in accordance with section 67 of the Local Authorities Act, 1992 (Act No. 23 of 1992), and for that purpose any reference in that section to -
  - (a) the land portion of rateable property, is to be construed as a reference to the undivided share in the common property apportioned to a particular section in accordance with the participation quota of that section;
  - (b) improvements on land, is to be construed as a reference to each separate section in the scheme.
- (3) Rates on land and buildings comprised in a scheme must be levied separately on each unit in the scheme.
- (4) Rates levied by a local authority on a unit is payable by, and recoverable from, the owner of the unit.  
*[The verb "is" should be "are" to be grammatically correct.]*
- (5) A local authority may not recover the rates levied on a unit, or any part of such rates, from the body corporate, except when the body corporate is the owner of a unit in the scheme.
- (6) A body corporate may not apportion and collect rates levied by a local authority on units in the scheme from the owners of those units.
- (7) Nothing in subsections (3), (4), (5) and (6) is to be construed as affecting the liability of a body corporate to a local authority, nor of the owner of a unit to the body corporate, for rates levied before the commencement date on land and buildings comprised in a scheme.

### **Part XI – MISCELLANEOUS**

#### **55. Sectional Titles Regulation Board**

- (1) There is established a board to be known as the Sectional Titles Regulation Board (in this section referred

- to as the Regulation Board) which must -
- (a) make recommendations to the Minister concerning the making of regulations relating to any matter specified in section 56 and the making of rules under section 37;
  - (b) regularly review this Act, the regulations and the rules so as to ensure the proper functioning and implementation thereof, and make recommendations to the Minister relating to any proposed amendments to this Act or the regulations or rules, or relating to any other measure or procedure that may assist in the proper functioning and implementation thereof; and
  - (c) make recommendations to the Minister on any matter relating to this Act or to sectional titles in general referred to it by the Minister.
- (2) The members of the Regulation Board are -
- (a) the registrar, who is a member ex officio and who acts as chairperson at meetings of the Regulation Board at which he or she is present;
  - (b) the Surveyor-General, who is a member ex officio; and
  - (c) three other persons appointed in writing by the Minister, who must consist of -
    - (i) a conveyancer, nominated by the Law Society of Namibia established by section 40 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995);
    - (ii) a registered professional land surveyor, nominated by the relevant Council; and
    - (iii) an architect, nominated by the relevant Council.
- (3) For every member of the Regulation Board appointed in terms of subsection (2)(c) there must be an alternate member appointed in the same manner as that member, and an alternate member so appointed acts in the place of the member in respect of whom he or she has been appointed as alternate member, during that member's absence or inability to act as a member of the Regulation Board.
- (4) The registrar and the Surveyor-General must each designate one person from their respective offices to act in their place at meetings that they are unable to attend.
- (5) When a nomination in terms of subsection (2)(c)(i), (ii) or (iii) becomes necessary -
- (a) the registrar must in writing request the body that is required in terms of that subsection to make a nomination to nominate a person for appointment as a member of the Regulation Board; and
  - (b) the body requested in terms of paragraph (a) to furnish the nomination required for appointment to the Regulation Board must, within 30 days of receipt of that request, furnish the registrar in writing with the nomination so requested.
- (6) On receipt of a nomination in terms of subsection (5)(b), the registrar must immediately forward the nomination to the Minister.
- (7) The Minister must inform the chairperson of the Regulation Board in writing of any appointment to the Regulation Board made in terms of this section.
- (8) If a body referred to in subsection (5)(a) fails to furnish in terms of subsection (5)(b) the nomination required for appointment to the Regulation Board, the Minister may appoint, subject to subsection 2(c), a suitable person as a member in place of the person the Minister would have appointed if that body had not failed to nominate a person.
- (9) Subject to subsection (11), a member of the Regulation Board appointed by the Minister in terms of subsection (2)(c) or (8) holds office for a period of three years.
- (10) A member of the Regulation Board referred to in subsection (9) whose term of office has expired may be reappointed in accordance with subsection (2)(c) and subject to subsection (9).
- (11) The Minister may at any time before the expiration of the term of office of a member of the Regulation

- Board referred to in subsection (9), by written notice addressed to that member, terminate that member's appointment if there is sufficient reason for the Minister to do so, and after having given that member an opportunity to be heard.
- (12) If a member of the Regulation Board appointed by the Minister, including a member appointed under this subsection, dies or vacates office before the expiration of that member's term of office, the Minister may appoint, subject to subsection (2)(c), a person to fill the vacancy for the unexpired portion of the period for which that member was appointed.
- (13) A member of the Regulation Board, excluding a member who is in the full-time employment of the State, must, in respect of the time during which he or she is engaged in the business of the Regulation Board, be paid by the Ministry of Lands and Resettlement such remuneration and travelling and subsistence allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.
- (14) Payments in terms of subsection (13) must be made from moneys appropriated by Parliament for that purpose.
- (15) In the absence of the chairperson of the Regulation Board, the Surveyor- General, despite subsection (4), acts as chairperson of the Regulation Board.
- (16) Subject to subsection (17), the Regulation Board meets from time to time at such times and venues as the chairperson may determine.
- (17) The Minister may at any time direct the chairperson of the Regulation Board by notice in writing to convene a meeting of that Board at a time and venue, and for the purposes, specified by the Minister in the notice.
- (18) Four members of the Regulation Board, one of whom must be a member referred to in subsection (2)(a) or (b), constitute a quorum for a meeting of that Board.
- (19) A decision of a majority of the members of the Regulation Board present at any meeting thereof is a decision of that board.
- (20) In the event of an equality of votes on any matter the chairperson or other member of the Regulation Board presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (21) No decision of the Regulation Board is invalid by reason only of -
- (a) a vacancy on the Regulation Board; or
  - (b) the fact that a person who was not entitled to sit as a member of the Regulation Board sat as such a member at the time when the decision was taken, if the decision was taken by the required majority of such members who were present at the time and entitled to sit as such members and to vote.
- (22) The Regulation Board -
- (a) may determine the proceedings at its meetings as it may consider appropriate;
  - (b) must cause minutes of the proceedings at its meetings to be kept; and
  - (c) must, within 14 days after every meeting, furnish the Minister with a copy of the minutes of that meeting.
- (23) The Regulation Board may contract, with the written approval of the Minister and in such manner and, subject to subsection (24), on such terms and conditions and for such period as the Regulation Board may consider appropriate, a competent person to assist the Regulation Board in the performance of its functions in terms of this Act.
- (24) Subsection (13) applies to a person contracted under subsection (23) as if that person were a member of the Regulation Board.

## 56. Regulations

- (1) The Minister may, on the recommendation of the Sectional Titles Regulation Board, make regulations relating to -
- (a) the form of sectional title registers to be opened and kept by the registrar, and the particulars to be included in, or filed with, that register;
  - (b) the form of any deed or document to be registered or filed in the deeds registry in terms of this Act;
  - (c) the procedures to be followed in the deeds registry to give effect to this Act;
  - (d) the manner and format in which a draft sectional plan is to be prepared, including the conditions and requirements with which such a plan must comply, and the particulars and information to be recorded on such a plan;
  - (e) the manner and the unit of measure in which measurements must be taken in the preparation or amendment of a draft sectional plan or sectional plan, including -
    - (i) the manner and form in which the records of those measurements must be prepared and lodged with the Surveyor-General or local authority concerned;
    - (ii) the degree of accuracy to be obtained, and the limit of error to be allowed, in the taking of a measurement in the preparation or amendment of a draft sectional plan or sectional plan; and
    - (iii) the steps to be taken by the Surveyor-General and the registrar -
      - (aa) to examine the correctness or accuracy of measurements of which the results are recorded on a draft sectional plan or sectional plan or other plan relating thereto; and
      - (bb) to cause defective sectional plans and relative title deeds to be amended in the event of any measurement thereon or in relation thereto being inaccurate or incorrect;
  - (f) the minimum or maximum dimensions of a draft sectional plan or sectional plan or other plan relating thereto, including -
    - (i) the scale according to which, and the manner in which, the draft sectional plan or sectional plan or other plan must be prepared and the information to be recorded thereon;
    - (ii) the number of copies of a draft sectional plan or sectional plan or other plan to be furnished in terms of this Act; and
    - (iii) the circumstances in which the Surveyor-General or the registrar may authorise a departure from a regulation made under this paragraph if it is found that compliance with that regulation is impossible or unpractical;
  - (g) the method according to which sectional title registers, draft sectional plans and sectional plans, and buildings and sections shown in such registers or on any such plans, must be numbered;
  - (h) the fees of office (if any) to be charged in respect of any act required or permitted to be done in or in relation to, or any matter relating to, the deeds registry or the office of the Surveyor-General, including any report made to the Court by the registrar or the Surveyor-General relating to any application or action to which he or she is not a party;
  - (i) the fees and charges of -
    - (i) conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration or filing in a deeds registry; and
    - (ii) any other legal practitioners in connection with the preliminary work required for the purpose of any such deed or other document,and the manner in which and the person by whom such fees and charges must be taxed, the cost of that taxation and by whom they must be borne;

- (j) the fees to be paid to land surveyors and architects for a draft sectional plan or sectional plan or other plan, the manner in which and the person by whom such fees may be taxed, the costs of that taxation and by whom they must be borne;
  - (k) the establishment, constitution and functions of a sectional titles examination committee to facilitate the conducting of the examination referred to in section 7(2)(a);
  - (l) the syllabus for the examination referred to in section 7(2)(a), the manner in which that examination must be conducted, the requirements for passing that examination and any other matter incidental to that examination;
  - (m) the conditions subject to which copies of sectional plans may be issued by the registrar for any purposes, and the fees payable for the issue of such copies;
  - (n) the form of any certificate to be issued in terms of this Act;
  - (o) the furnishing of such information as may be prescribed, including a set of the applicable rules, to every owner of a section;
  - (p) any matter required or permitted to be prescribed by regulation in terms of this Act; and
  - (q) generally, any matter that the Minister considers necessary or expedient to prescribe for the purpose of attaining the objectives of this Act.
- (2) A regulation made under subsection (1) may prescribe a penalty, not exceeding a fine of N\$4 000 or imprisonment for a period of one year or not exceeding both such fine and such imprisonment, for the contravention of or failure to comply with any provision thereof.

## 57. Notice of applications to Court

- (1) Before an application is made to the Court for an order affecting the performance of an act in the deeds registry or office of the Surveyor-General, the applicant must give notice in writing to the registrar or Surveyor-General at least 21 days before the hearing of the application.
- (2) The registrar or Surveyor-General may submit to the Court such report on an application contemplated in subsection (1) as he or she may consider necessary.

## 58. Appointment of arbitrators

- (1) A body corporate may by unanimous resolution appoint an arbitrator, being a legal practitioner of not less than 10 years' standing, to settle any dispute between the body corporate and any of its members.
- (2) the powers and duties of arbitrators appointed under subsection (1) and the procedure to be followed in arbitration proceedings under this Act are as prescribed.

*[The word "the" at the beginning of subsection (2) should be capitalised.]*

## 59. Exemption from liability

No act or omission of the registrar or Surveyor-General or any local authority, or of an official who is employed in the deeds registry or an office of the Surveyor-General or local authority, in the course of the administration of this Act, renders the State or the registrar, Surveyor-General or local authority, or that official liable for damages suffered by anyone in consequence of that act or omission, unless that act or omission was in bad faith or constituted negligence.

## 60. Repeal of laws

The laws specified in the Schedule are repealed to the extent set out in the third column of the Schedule.

## 61. Savings and transitional provisions

- (1) Despite the repeal of the repealed Act by section 60 -
  - (a) the registration of a sectional plan and the opening of a sectional title register in respect of a development scheme that had, before the commencement date, already been approved by a local authority in terms of the repealed Act -
    - (i) must be completed or performed in terms of the repealed Act, as if that Act had not been so repealed; and
    - (ii) such sectional plan or sectional title register must be registered or opened in the deeds registry within 24 months after the commencement date, or such extended period as may be prescribed, failing which the approval lapses;
  - (b) a certificate of real right contemplated in section 26 must be issued -
    - (i) on application by the developer in respect of a right of extension of a building acquired in terms of section 18 of the repealed Act; and
    - (ii) on compliance with section 26, and this Act applies as if the reservation had been made in terms of this Act,  
  
but a certificate of real right in terms of section 18 of the repealed Act, may only be issued if the right of extension still vests in the developer;
  - (c) the registrar may not issue a certificate of real right as contemplated in paragraph (b), unless a certificate is provided by a conveyancer stating that the consent of all the owners of units in the scheme and of all the mortgagees in respect of the proposed extension has been obtained, which consent may not unreasonably be withheld;
  - (d) the developer must obtain a certificate of real right referred to in paragraph (b) within 24 months after the commencement date, or such extended period as may be prescribed, failing which the right lapses.
- (2) Section 34(1) does not affect the participation quota of any section as shown on the relevant sectional plan that was registered in terms of the repealed Act before the commencement date.
- (3) Where an owner of a section, before the commencement date -
  - (a) acquired in terms of a written agreement; or
  - (b) was granted in accordance with rules made under the repealed Act,  
  
the right to the exclusive use of a part or parts of common property, the body corporate concerned must, if so requested by that owner after the commencement date, transfer that right to that owner by the registration of a notarial deed entered into by the parties concerned, in which the body corporate must represent the owners of all sections in question as transferor.
- (4) Nothing in this Act affects -
  - (a) any vested right in respect of any exclusive use by an owner of a section of a part or parts of common property conferred before the commencement date by rules made under the repealed Act; or
  - (b) any other vested right granted or obtained in terms of the repealed Act, or arising from any agreement entered into with regard thereto, before the commencement date.
- (5) Any reference in any law or document to a body corporate established in terms of the repealed Act, as a “Controlling Body” referred to in section 28(3) of that Act, is, after the commencement date, to be construed as a reference to a “Body Corporate” referred to in section 38(3).
- (6) Rules decided on by unanimous resolution under the repealed Act before the commencement date replacing the rules contained in Schedule 1 to that Act, and at that date not yet lodged with the registrar as required by section 27(3) of that Act, may be so lodged in terms of that section within six months after the commencement date as if that Act had not been repealed.

- (7) If the rules referred to in subsection (6) are not lodged with the registrar within the period of six months prescribed in that subsection, those rules lapse and are deemed to have been repealed, subject to addition, amendment or repeal as contemplated in subsection (4)(a) of section 37, by management rules made in terms of subsection (2) of that section.
- (8) Subject to subsection (4) -
- (a) unaltered rules in Schedule 1 to the repealed Act, and applying immediately before the commencement date in respect of any scheme, lapse on that date, and those rules are deemed to have been replaced, subject to addition, amendment or repeal as contemplated in subsection (4)(a) of section 37, by management rules made in terms of subsection (2) of that section; and
  - (b) unaltered rules in Schedule 2 to the repealed Act, and applying immediately before the commencement date in respect of any scheme, lapse on that date, and those rules are deemed to have been replaced, subject to addition, amendment or repeal as contemplated in subsection (4)(b) of section 37, by conduct rules made in terms of subsection (2) of that section.
- (9) Subject to subsection (4) and subsection (10), rules other than rules referred to in subsection (8), applying immediately before the commencement date in respect of a scheme, remain, subject to such substitution, addition, amendment or repeal as contemplated in paragraph (a) or (b) of section 37(4), in force after that date, except to the extent that any such rule may be in conflict with any management rule made in terms of section 37(2), in which event the management rule in question applies.
- (10) Any rules referred to in subsection (9) are as from the commencement date deemed to have been supplemented by any rule for which those rules do not make provision but for which provision is made in the rules made in terms of section 37(2).
- (11) Subject to this section, anything done under a provision of a law repealed by section 60, and which could have been done under a provision of this Act, is deemed to have been done under the corresponding provision of this Act.

## 62. Short title and commencement

This Act is called the Sectional Titles Act, 2009, and comes into operation on a date determined by the Minister by notice in the Gazette.

### Schedule

#### LAWS REPEALED

##### (Section 60)

No. and year of law	Short title	Extent of repeal
Act No. 66 of 1971	Sectional Titles Act, 1971	The whole
Act No. 62 of 1973	General Law Amendment Act, 1973	Section 44
Act No. 94 of 1974	Second General Law Amendment Act, 1974	Section 49
Act No. 57 of 1975	General Law Amendment Act, 1975	Sections 38 and 39
Act No. 1 of 1977	Sectional Titles Amendment Act, 1977	The whole