rural development
& land reform
Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF REGISTRAR OF DEEDS
Private Bag X918, Pretoria, 0001; Tel: 012 338 7227; Fax: 012 338 7029

CHIEF REGISTRAR'S CIRCULAR NO. 13 OF 2016

AMENDMENT OF SECTIONAL TITLES ACT 95 OF 1986 BY SECTIONAL TITLES SCHEMES MANAGEMENT ACT 8 OF 2011

1. COMMENCEMENT OF ACT 8 OF 2011

It is anticipated that the Sectional Titles Schemes Management Act, 2011 (Act 8 of 2011), will come into operation on 7 October 2016.

2. PURPOSE OF ACT 8 OF 2011

The purpose of Act 8 of 2011, amongst other things, is to provide for the establishment of bodies corporate to manage and regulate sections and common property in sectional titles schemes; *to amend the Sectional Titles Act, 1986 (Act 95 of 1986)*; and to provide for matters connected therewith.

3. AMENDMENT OF THE SECTIONAL TITLES ACT 95 OF 1986, BY ACT 8 OF 2011

3.1. The Schedule to Act 8 of 2011 provides for the amendment of the Sectional Titles Act, 1986 (see section 20 of Act 8 of 2011). These amendments will come into operation on the same day as the coming into operation of Act 8 of 2011.

- *Deeds lodged on or after the commencement of Act 8 of 2011, must therefore comply with the amendments as affected by the said Act.*

3.2. Only the amendments that have an impact on deeds registration procedures are herein discussed.

Words in bold type in square brackets indicate omissions and words underlined with a solid line indicate insertions.

3.2.1. Section 11(3)(e) has been amended to read as follows:

*"(e) a certificate by **[a conveyancer]** the Chief Ombud stating that the rules **[prescribed in terms of section 35(2) are applicable, and containing the other rules (if any) substituted by the developer for those rules as contemplated in that section]** contemplated in section 10 of the Sectional Titles Schemes Management Act have been approved;"*

- It is important to note that section 10 of Act 8 of 2011 does not provide for the Chief Ombud to '*approve*' Rules. The said section, however, does provide for the Chief Ombud to '*approve the substitution, addition, amendment or repeal of Rules*'.
- A certificate issued by the Chief Ombud must therefore be lodged with the opening of a sectional title register, ***only*** in instances where a *substitution, addition, amendment or repeal* of the statutory Rules has been approved and affected.
- In instances where the statutory rules are to be made applicable to a scheme, it will be necessary for a conveyancer's certificate to be lodged to the effect that the Rules contained in Annexures 1 and 2 of the Regulations to Act 8 of 2011 are applicable.

3.2.2. Section 15B(3)(a)(i)(aa) has been amended to read as follows:

*"(i) (aa) if a body corporate is deemed to be established in terms of section **[36(1)]** 2 (1) of the Sectional Titles Schemes Management Act, that body corporate has certified that all moneys due to the body corporate by the transferor in respect of the said unit have been paid, or that provision has been made to the satisfaction of the body corporate for the payment thereof; or"*

- (A body corporate is established in terms of section 2(1) of Act 8 of 2011 and not section 36 of Act 95 of 1986, as the case previously was. The section 15B(3)(*a*)(i)(*aa*) certificate must refer to the new situation).

3.2.3. Section 25(6) has been amended to read as follows:

"(6) If no reservation was made by a developer in terms of subsection (1), or if such a reservation was made and for any reason has lapsed, the right to extend a scheme including the land contemplated in section 26, shall vest in the body corporate, which shall be entitled, subject to this section, section 5 (1) (b) of the Sectional Titles Schemes Management Act and after compliance, with the necessary changes, with the requirements of paragraphs (a), (b), (c), (d) and (g) of subsection (2), to obtain a certificate of real right in the prescribed form in respect thereof ***[:Provided that the body corporate shall only exercise or alienate or transfer such right with the written consent of all the members of the body corporate as well as with the written consent of the mortgagee of each unit in the scheme: Provided further that a member or mortgagee shall not withhold such approval without good cause in law].***"

- (The provision in respect of the written consent of owners and mortgagees is now contained section 5(1) (*b*) of Act 8 of 2011).

3.2.4. Section 27(3) has been amended to read as follows:

"(3) **[The body corporate, duly authorized thereto by a unanimous resolution of its members, shall transfer the]** A right to the exclusive use of a part or parts of the common property delineated on the sectional plan in terms of subsection (2) shall be transferred to the owner or owners on whom such 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 shall represent the owners of all the sections as transferor.

- (Reference to the unanimous resolution of the members has been deleted and the notarial deed of cession no longer needs to make reference thereto.)

3.2.5. Repeal of section 35:

Section 35 has been repealed.

- ***(Rules are no longer to be lodged with the Registrar of Deeds. Notifications in respect of the substitution, adding, amendment or repeal of Rules must now be lodged with the Chief Ombud).***

3.2.6. Section 36 has been amended by the substitution for subsections (1), (2), and (3) of the following sections:

"(1) When a unit is registered in the name of any person other than the developer, the registrar must issue a certificate in the prescribed form.

(2) The effect of the registration referred to in subsection (1) is the establishment of a body corporate for the scheme, in terms of the Sectional Titles Schemes Management Act.

(3) The registrar must lodge a copy of the certificate referred to in subsection (1) with the chief ombud.".

- (The lodgement of Form W upon the establishment of a body corporate must be continued with. However, the Form must be lodged in triplicate. The original Form W must be delivered to the Chief Ombud, one copy to the relevant conveyancer and the remaining copy must be filed on the Sectional Title File). This practice must only be followed when the first unit in a scheme is registered in the name of any person other than the developer, and not upon the transfer of all the other units

- Form W must be adapted to read along the following lines:

CERTIFICATE OF ESTABLISHMENT OF BODY CORPORATE IN TERMS OF THE PROVISIONS OF SECTION 2(1) OF THE SECTIONAL TITLES SCHEMES MANAGEMENT ACT 8 OF 2011

Prepared by me

CONVEYANCER

(State full name and surname)

I, Registrar of Deeds at ....., hereby certify that a body corporate designated as the Body Corporate of the..... scheme, No. ....., is deemed to be established with effect from .....

Signed at ..... on .....

Seal of Office

Registrar of Deeds

3.2.7. Section 21 of Act 8 of 2011 - Transitional arrangements

Section 21 of Act 8 of 2011 reads as follows:

> *"Rules prescribed under the Sectional Titles Act* ***must*** *continue to apply to new and existing schemes* ***until*** *the Minister has made regulations prescribing management rules and conduct rules referred to in section 10 (2) of this Act.".*

- ***(The Minister has promulgated Rules under Annexures 1 and 2 of the Regulations to Act 8 of 2011.)***

3.2.8. Appointment of Arbitrators

Section 10(12) of Act 8 of 2011 provides as follows:

> *"(12) Any rules made under the Sectional Titles Act are deemed to have been made under this Act.".*

- ***The Office of the Chief Registrar of Deeds will therefore, from the date of the commencement of Act 8 of 2011, discontinue the practice of appointing arbitrators, as is currently provided for in Rule 71 of Annexure 8 to the Regulations of the Sectional Titles Act 95 of 1986.***

3.2.9. Other sections repealed

Sections 1((2), 1(3), 1(3A), 19(1), 19(2), 25(3), 26(1), 27A, 32(4), 35, 36(4) to 36(7), 37 to 48, and 51 have been repealed.

CHIEF REGISTRAR OF DEEDS
DATE: 5/10/2016

REFERENCE:
RINGBINDER 68

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