REPUBLIC OF SOUTH AFRICA

SECTIONAL TITLES AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43722 of 18 September 2020)
(The English text is the official text of the Bill)

(MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT)

[B 31—2020]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Sectional Titles Act, 1986, so as to amend certain definitions; to provide for the developer to answer questions put to the developer by the agents of the lessees; to provide that a certificate issued by an architect or a land surveyor must also comply with section 26(2) of the Spatial Planning and Land Use Management Act, 2013; to further provide for the amendment of sectional plans in respect of exclusive use areas; to further provide for the amendment and cancellation of a sectional plan upon an order of the court; to provide for the noting of a title deed in respect of the lapsing of a reservation in terms of section 25; to provide for a lease of part of the common property with the consent of the holders of registered real rights; to amend the provisions relating to the alienation of common property; to further provide for the cancellation of a mortgaged section and mortgaged exclusive use area; to also provide for a developer to submit a plan for subdivision or consolidation to the Surveyor-General for approval to subdivide, consolidate and to extend a section; to extend the registration of subdivision of a section, the consolidation of sections, and the extension of sections to a developer; to provide for the filing of replacement documentation in respect of lost or destroyed documentation; to amend the provisions relating to the extension of a scheme; to amend the provisions relating to participation quotas of sections; to regulate the membership of the sectional titles regulations board; to amend the transitional provisions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 95 of 1986, as amended by section 1 of Act 63 of 1991, sections 1 and 11 of Act 7 of 1992, section 1 of Act 15 of 1993, section 1 of Act 44 of 1997, Proclamation No. R. 9 of 1997, section 1 of Act 29 of 2003, section 1 of Act 7 of 2005, section 1 of Act 6 of 2006, section 1 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 1 of Act 33 of 2013

1. Section 1 of the Sectional Titles Act, 1986 (Act No. 95 of 1986) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of ''exclusive use area'' of the following definition:

'' **'exclusive use area'** means a part or parts of the common property for the exclusive use by the owner or owners of one or more sections or by the occupant or occupants thereof recognised by law, as contemplated in this Act;''; and

(b) by the substitution for the definition of ''Sectional Titles Schemes Management Act'' of the following definition:

" **'Sectional Titles Schemes Management Act'** means the Sectional Titles Schemes Management Act, **[2010]** 2011 (Act No. 8 of 2011;".

Amendment of section 4 of Act 95 of 1986, as amended by section 2 of Act 63 of 1991, section 2 of Act 15 of 1993, sections 2 and 30 of Act 44 of 1997, section 2 of Act 29 of 2003 and section 2 of Act 33 of 2013

2. Section 4 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

"*(b)* a meeting contemplated in paragraph *(a)*(i) has been held and the developer has been available thereat to provide the particulars contemplated in the said paragraph, and has answered all reasonable questions put to the developer by the lessees or their respective agents present: Provided that a developer need not comply with this subsection if all such lessees have stated in writing that they are aware of their rights which shall also be set out in such statement and that they do not wish to purchase the proposed units which they occupy and a conveyancer has certified in writing that such statements have been received in respect of all the units in question: Provided further that a share block company applying for the approval of a development scheme need not comply with the requirements of this subsection if that share block company has, within a period of two years before such application, already complied with section 11A of the Share Blocks Control Act, 1980 (Act No. 59 of 1980).".

Amendment of section 7 of Act 95 of 1986, as amended by section 4 of Act 63 of 1991, section 3 of Act 44 of 1997 and section 3 of Act 29 of 2003

3. Section 7 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"*(a)* a certificate issued by an architect or a land surveyor stating that the proposed division into sections and common property—

(i) is not contrary to any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law, that may affect the development; and

(ii) complies with section 26(2) of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013);".

Amendment of section 14 of Act 95 of 1986, as amended by section 8 of Act 63 of 1991, section 4 of Act 7 of 1992, section 5 of Act 11 of 2010 and section 3 of Act 33 of 2013

4. Section 14 of the principal Act is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

"(3) If in the opinion of the Surveyor-General any person could be prejudiced by an incorrect sectional plan, he or she shall advise the registrar as to which sections or exclusive use areas are affected by any such defect in question, and thereafter no transfer of such section and its undivided share in the common property or the registration of a real right therein, or the cession of an exclusive use area, shall be registered until the defect in the sectional plan has been rectified, unless the registrar is satisfied that the delay in causing the defective sectional plan to be rectified will cause undue hardship and the person in whose favour transfer of the section and its undivided share in the common property or of a real right therein, or cession of an exclusive use area, is to be registered, consents in writing to the transfer or other registration being effected prior to the rectification of the defect.";

(b) by the substitution for subsection (5) of the following subsection:

"(5) The Surveyor-General shall advise the registrar and the local authority of any alteration, amendment or substitution of a sectional plan in terms of subsection (1) which affects the description or extent of any section or exclusive use area, and thereupon the registrar shall make the necessary endorsements reflecting any change of description or extent upon the deeds registry copy of the sectional title deed and upon any other registered document affected by such change, and shall likewise

endorse the owner's or holder's copy of that sectional title deed or any such other registered document whenever subsequently lodged at the deeds registry for any purpose.''; and

(c) by the addition in subsection (8) of the following paragraph, the existing subsection becoming paragraph *(a)*:

''*(b)* The provisions of section 49(3) to 49(5) apply, with the necessary changes, in instances where a body corporate is in existence upon cancellation of the sectional plan by an order of the Court.''.

Amendment of section 15B of Act 95 of 1986, as amended by section 10 of Act 63 of 1991, section 10 of Act 44 of 1997, section 2 of Act 6 of 2006, section 6 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 4 of Act 33 of 2013

5. Section 15B of the principal Act is hereby amended by the deletion in subsection (1) of the word ''and'' at the end of paragraph *(c)*, the insertion of the word ''and'' at the end of paragraph *(d)* and the addition of the following paragraph:

''*(e)* the registrar must note the lapsing on the title deed of the right so reserved, if available, where a right in respect of a reservation in terms of section 25 has lapsed, on application by the developer or by the body corporate in instances where the developer is no longer in existence: Provided that where the title deed of the right is not available, an affidavit must be submitted by the developer or by the body corporate, as the case may be, to the effect that the title deed to such right is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original title deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon.''.

Amendment of section 17 of Act 95 of 1986, as amended by section 11 of Act 63 of 1991, section 11 of Act 44 of 1997, section 53 of Act 24 of 2003, section 4 of Act 29 of 2003, section 1 of Act 11 of 2005, section 5 of Act 6 of 2006, section 20 of Act 8 of 2011 and section 5 of Act 33 of 2013

6. Section 17 of the principal Act is hereby amended—

(a) by the substitution in subsection (4) for paragraph *(b)* of the following paragraph:

''*(b)* Where pursuant to subsection (1) it is sought to let land which forms part of the common property or a portion thereof on which a section or part of a section is erected, the registrar shall not register the lease, unless it is made subject to any right which the owner of the section or part of the section may have, as well as the rights of holders of real rights in terms of sections 25 and 27.'';

(b) by the substitution for subsection (4B) of the following subsection:

''(4B) *(a)* Where in terms of subsection (1) it is sought to alienate a portion of land on which an exclusive use area or part thereof is registered, the registrar shall not register the transfer, unless the registration of the exclusive use area **[or part thereof]** has been cancelled with the written consent of the holder.

(b) The registrar shall notify the Surveyor-General and the local authority when the registration of an exclusive use area **[or part thereof]** has been cancelled in terms of paragraph *(a)*, and on receipt of such a notice the Surveyor-General shall make the necessary amendments on the original sectional plan and on the deeds registry copy of the sectional plan.''; and

(c) by the substitution for subsection (4C) of the following subsection:

''(4C) **[The provisions of subsection (4B) shall apply with the necessary changes where,]** Where in terms of subsection (1), it is sought to alienate a portion of land on which a real right of extension in terms of section **[25]** 25(1) or any part of such right is registered, the registrar shall not register the transfer, unless the registration of such real right or part thereof has been cancelled with the written consent of the holder thereof.''.

Substitution of section 18 of Act 95 of 1986, as amended by section 6 of Act 33 of 2013

7. The following section is hereby substituted for section 18 of the principal Act:

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

18. The provisions of sections 56 and 57 of the Deeds Registries Act shall apply with the necessary changes to the transfer of any mortgaged unit or undivided share in a unit, the cession of any mortgaged lease of a unit or undivided share in a unit, the cession of any mortgaged real right in or over a unit or an undivided share in a unit, the cession of any mortgaged real right under sections 25 and 27 of this Act or an undivided share therein, **[and]** the transfer under section 17 of this Act of any mortgaged common property or land or an undivided share therein and the cancellation under section 17 of any mortgaged section and exclusive use area, and real right under section 25.".

Amendment of section 21 of Act 95 of 1986, as amended by section 14 of Act 44 of 1997 and section 20 of Act 8 of 2011

8. Section 21 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) The provisions of subsection (1) apply with the necessary changes where a developer, prior to the establishment of a body corporate, intends to subdivide his or her section or to consolidate two or more sections registered in his or her name.".

Amendment of section 22 of Act 95 of 1986, as amended by section 12 of Act 63 of 1991 and section 15 of Act 44 of 1997

9. Section 22 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

"(1A) The provisions of subsection (1) apply with the necessary changes where a developer, prior to the establishment of a body corporate, wishes to register a sectional plan of subdivision of a section.";

(b) by the insertion in subsection (2) of the following paragraph after paragraph *(c)*:

"*(c*A*)* any lease or other deed embodying any other real right registered against the section at the time of subdivision, if available: Provided that where the lease or other deed embodying the real right is not available, an affidavit must be submitted by the owner or developer, as the case may be, to the effect that the lease or other deed is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original lease or other deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon;";

(c) by the substitution in subsection (2) for paragraph *(d)* of the following paragraph:

"*(d)* certificates of registered sectional title in the prescribed form for each of the new sections and their undivided shares in the common property created by the subdivision, made out in favour of the owner **[or, in the case of a partition, in favour of the persons entitled thereto in terms of the partition agreement]**;";

(d) by the deletion in subsection (2) of paragraph *(e)*; and

(e) by the insertion after subsection (2) of the following subsection:

"(2A) *(a)* Where an application as contemplated in subsection (1) is made by a developer, such application must also be accompanied by an affidavit by such developer to the effect that at the date of the application, no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the

developer had disclosed in writing to the acquirer thereof that application has been made for the registration of the sectional plan of subdivision of the relevant section.

(b) A deed of alienation in which the subdivision has not been disclosed, shall be voidable at the option of the acquirer.''.

Amendment of section 23 of Act 95 of 1986, as amended by section 13 of Act 63 of 1991 and section 16 of Act 44 of 1997

10. Section 23 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

''(1A) The provisions of subsection (1) apply with the necessary changes where a developer, prior to the establishment of a body corporate, wishes to register a sectional plan of consolidation of two or more sections.'';

(b) by the insertion in subsection (2) of the following paragraph after paragraph *(c)*:

''*(c*A*)* any lease or other deed embodying any other real right registered against the section at the time of consolidation, if available: Provided that where the lease or other deed embodying the real right is not available, an affidavit must be submitted by the owner or developer, as the case may be, to the effect that the lease or other deed is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original lease or other deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon;''; and

(c) by the insertion after subsection (2) of the following subsection:

''(2A) *(a)* Where an application as contemplated in subsection (1) is made by a developer, such application must also be accompanied by an affidavit by such developer to the effect that at the date of the application, no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the developer had disclosed in writing to the acquirer thereof that application has been made for the registration of the sectional plan of consolidation of the relevant sections.

(b) A deed of alienation in which the consolidation has not been disclosed, shall be voidable at the option of the acquirer.''.

Amendment of section 24 of Act 95 of 1986, as amended by section 14 of Act 63 of 1991, sections 17 and 29 of Act 44 of 1997, section 5 of Act 29 of 2003, section 2 of Act 7 of 2005, section 7 of Act 11 of 2010 and section 20 of Act 8 of 2011

11. Section 24 of the principal Act is hereby amended—

(a) by the insertion after subsection (3) of the following subsection:

''(3A) The provisions of subsection (3) apply with the necessary changes where a developer, prior to the establishment of a body corporate, intends to extend the boundaries or floor area of his or her section.'';

(b) by the deletion in subsection (6) of the word ''and'' at the end of paragraph *(d)* and the insertion of the following paragraph after paragraph *(d)*:

''*(d*A*)* any lease or other deed embodying any other real right registered against the section at the time of extension, if available: Provided that where the lease or other deed embodying the real right is not available, an affidavit must be submitted by the owner or developer, as the case may be, to the effect that the lease or other deed is not available, whereupon the registrar must endorse the deeds registry duplicate thereof, and, if the original lease or other deed is at any time lodged with the registrar, he or she must make a similar endorsement thereon; and''; and

(c) by the insertion after subsection (6A) of the following subsection:

(6AA) *(a)* Where an application as contemplated in subsection (6) is made by a developer, such application must also be accompanied by an affidavit by such developer to the effect that at the date of the application,

no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the developer had disclosed in writing to the acquirer thereof that application has been made for the registration of the sectional plan of extension of the relevant section.

(b) A deed of alienation in which the extension has not been disclosed, shall be voidable at the option of the acquirer.''.

Amendment of section 25 of Act 95 of 1986, as amended by section 15 of Act 63 of 1991, section 6 of Act 7 of 1992, section 18 of Act 44 of 1997, section 6 of Act 29 of 2003, section 3 of Act 7 of 2005, sections 8 and 20 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 8 of Act 33 of 2013

12. Section 25 of the principal Act is hereby amended—

(a) by the insertion after subsection (2) of the following subsection:

''(2A) A registrar of deeds must, if any of the documentation referred to in subsection (2) *(a)*, *(b)*, *(c)*, *(d)* or *(g)* has been lost or destroyed, on written application by the body corporate or if a body corporate has not been established, on written application by the developer, and in the prescribed form and manner, file such replacement documentation in the relevant sectional title register.'';

(b) by the substitution in subsection (5A) for paragraph *(a)* of the following paragraph:

''*(a)* If the right reserved in terms of subsection (1) is exercised, the developer or his or her successor in title shall immediately after completion of the relevant unit or exclusive use area apply for the registration of the relevant plan of extension and the inclusion of such unit or exclusive use area in the relevant sectional title register.'';

(c) by the substitution for subsection (6) of the following subsection:

''(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 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, alienate or transfer such right with the written consent of all the members of the body corporate, the mortgagees of the units and real rights over the units, and the holders of registered real rights over the units in the scheme and who shall not withhold such consent without good cause in law.'';

(d) by the substitution in subsection (10) for paragraph *(c)* of the following paragraph:

''*(c)* the certificate of real right by which the reservation in terms of subsection (1) or (6) 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 depicted on the sectional plan of extension and their undivided shares in the common property, as security in lieu of the real right held under the certificate of real right mortgaged under the bond]**;'';

(e) by the substitution in subsection (10)*(d*A*)* for the words preceding subparagraph (i) of the following words:

''any mortgage bond **[which may be affected by]** registered against the certificate of real right, together with the consent of the mortgagee to the registration of the extension of the scheme and the endorsement of such bond to the effect that it is attached to—''; and

(f) by the substitution in subsection (10)*(d*A*)* for subparagraphs (i) and (ii) of the following subparagraphs respectively:

''(i) each section **[shown on the sectional plan]** and its undivided share in the common property as well as all exclusive use areas, shown on the sectional plan;

(ii) the certificate or certificates of real right **[in respect of a right of exclusive use]** as contemplated by subsection (10)*(d)* and section 27(1); and''.

Amendment of section 26 of Act 95 of 1986, as amended by section 16 of Act 63 of 1991, section 19 of Act 44 of 1997, section 7 of Act 29 of 2003, section 3 of Act 6 of 2006 and section 20 of Act 8 of 2011

13. Section 26 of the principal Act is hereby amended by the addition of the following subsections:

''(8) The provisions of subsections (4) to (7) apply with the necessary changes to instances where land, to extend the common property, is purchased or acquired by the developer.

(9) *(a)* Where a developer purchases or otherwise acquires land to extend the common property, an affidavit by such developer must be submitted to the registrar, to the effect that at the date of purchase or acquisition of such land no unit in the scheme has been sold, donated or exchanged, or if a unit was so alienated but not yet registered in the name of the acquirer, the developer had disclosed in writing to the acquirer thereof that application has been made for the registration of a plan of extension of the common property.

(b) A deed of alienation in which the extension has not been disclosed, shall be voidable at the option of the acquirer.''.

Amendment of section 27 of Act 95 of 1986, as amended by section 17 of Act 63 of 1991, section 20 of Act 44 of 1997, section 8 of Act 29 of 2003, section 4 of Act 7 of 2005, section 9 of Act 11 of 2010, section 20 of Act 8 of 2011 and section 9 of Act 33 of 2013

14. Section 27 of the principal Act is hereby amended by the insertion after subsection (5) of the following subsection:

''(5A) The provisions of subsection (5) apply with the necessary changes to the cancellation of a right to exclusive use of part of the common property registered in favour of a developer: Provided that such right may be cancelled by the developer prior to the establishment of a body corporate, with the written consent of the mortgagee of the exclusive use area, by means of the registration of a unilateral notarial deed of cancellation.''.

Amendment of section 32 of Act 95 of 1986, as amended by section 30 of Act 44 of 1997 and section 20 of Act 8 of 2011

15. Section 32 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

''(1) Subject to the provisions of section **[48]** 17 of the Sectional Titles Schemes Management Act, in the case of a scheme for residential purposes only as defined in any applicable operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law the participation quota of a section shall be 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.''; and

(b) by the substitution in subsection (2) of the words preceding paragraph *(a)* of the following words:

''(2) Subject to the provisions of section **[48]** 17 of the Sectional Titles Schemes Management Act, in the case of a scheme other than a scheme referred to in subsection (1), the participation quota of a section shall be a percentage expressed to four decimal places, as determined by the developer: Provided that—''.

Amendment of section 54 of Act 95 of 1986, as amended by section 22 of Act 63 of 1991, section 11 of Act 7 of 1992, section 26 of Act 44 of 1997, section 13 of Act 11 of 2010 and section 8 of Act 4 of 2011

16. Section 54 of the principal Act is hereby amended—

(a) by the substitution in subsection (2)*(c)* for the words preceding subparagraph (i) of the following words:

"*(c)* **[seven]** nine members appointed by the Minister, who shall consist of the following persons—";

(b) by the substitution in subsection (2)*(c)* for subparagraph (i) of the following subparagraph:

"(i) **[a conveyancer]** two conveyancers nominated by the **[Executive Council of the Law Society of the Republic of]** South **[Africa]** African Legal Practice Council;";

(c) by the deletion in subsection (2)*(c)* of the word "and" at the end of subparagraph (v), the insertion of the word "and" at the end of subparagraph (vi), and the addition of the following subparagraph:

"(vii) an officer occupying an office mentioned in section 2(1)*(b)* of the Deeds Registries Act, alternatively, an officer contemplated in section 2(1)*(c)* of the said Act.";

(d) by the substitution for subsection (5) of the following subsection:

"(5) When any nomination in terms of subsection (2)*(c)*(i), (ii), (iii), **[or]** (iv), or (v) becomes necessary, the body concerned shall at the request of the Director-General of Rural Development and Land Reform furnish the nomination required for appointment to the regulation board, within a period of 60 days from the date of such request, failing which the Minister may appoint, subject to the provisions of that subsection, any suitable person as a member in place of the person he or she would have appointed if the said body had not so failed to nominate a person."; and

(e) by the insertion after subsection (9) of the following subsection:

"(9A) The provisions of subsections (6), (7), (8) and (9) are, with the necessary changes, applicable to the appointment of an alternate member.".

Amendment of section 55 of Act 95 of 1986, as amended by section 23 of Act 63 of 1991, section 10 of Act 7 of 1992, section 3 of Act 15 of 1993, section 17 of Act 170 of 1993, section 27 of Act 44 of 1997 and section 20 of Act 8 of 2011

17. Section 55 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) Regulations made by the Minister shall be published in the *Gazette* at least one month before the date specified in the relevant notice as the date of commencement thereof.".

Amendment of section 60 of Act 95 of 1986, as amended by section 25 of Act 63 of 1991, section 4 of Act 15 of 1993, section 28 of Act 44 of 1997, section 14 of Act 11 of 2010 and section 20 of Act 8 of 2011

18. Section 60 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) *(a)* Where an owner has, prior to the commencement of this Act, acquired in terms of an agreement or been granted in terms of rules made under the Sectional Titles Act, 1971, the right to the exclusive use of a part or parts of common property, the body corporate concerned shall, if so requested after the commencement date by the owner, **[transfer]** cede such right to the owner by the registration of a notarial deed entered into by the parties, in which the body corporate shall represent the owners of all relevant sections as transferor.

(b) The notarial deed of the cession of the right to exclusive use as referred to in paragraph *(a)*, must be accompanied by a sectional plan on which is delineated, in the manner prescribed in terms of section 5(3)*(f)*, a part or parts of the common property for the exclusive use by the owner or owners of one or more sections: Provided that no such delineation shall be made on the sectional plan in terms of this subsection if such delineation will encroach upon a prior delineation on the

sectional plan of a part of the common property for the exclusive use by one or more of the owners.''.

Short title and commencement

19. This Act is called the Sectional Titles Amendment Act, 2020, and comes into operation on the date of publication in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SECTIONAL TITLES AMENDMENT BILL, 2020

1. OBJECTS OF BILL

The Sectional Titles Amendment Bill, 2020 (''the Bill''), seeks to amend the Sectional Titles Act, 1986 (Act No. 95 of 1986) (''the Act''), to—

(a) amend certain definitions;
(b) provide for the developer to answer questions put to the developer by the agents of the lessees;
(c) provide that a certificate issued by an architect or a land surveyor must also comply with section 26(2) of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) (''Spatial Planning and Land Use Management Act'');
(d) further provide for the amendment of sectional plans in respect of exclusive use areas;
(e) further provide for the amendment and cancellation of a sectional plan upon an order of the court;
(f) provide for the noting of a title deed in respect of the lapsing of a reservation in terms of section 25;
(g) provide for a lease of part of the common property with the consent of the holders of registered real rights;
(h) amend the provisions relating to the alienation of common property;
(i) further provide for the cancellation of a mortgaged section and mortgaged exclusive use area;
(j) also provide for a developer to submit a plan for subdivision or consolidation to the Surveyor-General for approval to subdivide, consolidate and to extend a section;
(k) extend the registration of subdivision of a section, the consolidation of sections, and the extension of sections to a developer;
(l) provide for the filing of replacement documentation in respect of lost or destroyed documentation;
(m) amend the provisions relating to the extension of a scheme;
(n) amend the provisions relating to participation quotas of sections;
(o) regulate the membership of the sectional titles regulations board;
(p) amend the transitional provision; and
(q) provide for matters connected therewith.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1

2.1.1 Clause 1 seeks to amend section 1 of the Act.

2.1.2 The current wording of the definition of ''exclusive use area'' makes reference to the exclusive use by only the ''owner or owners of one or more sections''. The definition can also be interpreted in a manner which may exclude any person other than the owner from using the exclusive use area, such as a lessee, usufructuary or even the owner's spouse or other member of the owner's household. The proposed amendment in clause 1*(a)* of the Bill aims to clarify the position.

2.1.3 The definition of ''Sectional Titles Schemes Management Act'' incorrectly makes reference to it being a 2010 Act. The proposed amendment in clause 1*(b)* of the Bill corrects the citation of the ''Sectional Titles Schemes Management Act''.

2.2 Clause 2

Clause 2 seeks to amend section 4 of the Act, which deals with the approval of development schemes and provides for the developer to have a meeting with every lessee of a building in instances where part of such building is to be wholly or partially let for residential purposes. Section 4(3)*(b)* provides for

the developer to answer all reasonable questions of lessees that are present at such meeting. A need has been identified to also provide for a lessee's representative to act on behalf of such a lessee in instances where a lessee is absent from a meeting.

2.3 Clause 3

Clause 3 seeks to amend section 7 of the Act, which deals with the approval of the draft sectional plans by Surveyors-General and provides, amongst other things, for the submission of a certificate by an architect or land surveyor stating that the proposed division into sections and common property is not contrary to any operative town planning scheme. However, the interpretation of section 7(2)*(a)* is ambiguous and difficult to interpret, and the certificate is usually submitted without the architect or land surveyor giving any thought or consideration to its implications. The amendment proposed in clause 3 seeks to address the situation by providing that an architect or a land surveyor must comply with the provisions of section 26(2) of the Spatial Planning and Land Use Management Act.

2.4 Clause 4

2.4.1. Clause 4 seeks to amend section 14 of the Act, which deals with the amendment and cancellation of sectional plans.

2.4.2. Section 14 only provides for matters pertaining to sections that are affected by incorrect sectional plans. A need also exists to extend the ambit of section 14 to include exclusive use areas that are affected by incorrect sectional plans. The amendments proposed in clauses 4*(a)* and *(b)* of the Bill seek to address the situation.

2.4.3. Section 14(8) of the Act provides for the cancellation of a sectional plan by a court order. The proposed amendment seeks to clarify the position in instances where a body corporate is in existence and the court makes an order for the cancellation of the sectional plan.

2.5 Clause 5

Clause 5 seeks to amend section 15B of the Act, which provides for the registration of the transfer of ownership in a sectional title scheme. Section 15B of the Act is silent on the noting of the lapsing of a right reserved in terms of section 25(1) of the Act. The addition of subsection 1*(e)*, as proposed in clause 5 of the Bill, seek to provide for the noting of the relevant title deed upon application by the developer, or by the body corporate in instances where the developer is no longer in existence.

2.6 Clause 6

2.6.1. Clause 6 seeks to amend section 17 of the Act, which deals with the alienation and letting of the common property. In terms of section 17(4)*(b)*, the registrar shall not register a lease over land which forms part of the common property, unless such lease is made subject to all the rights of the owner of the section. Section 17 does not provide for the lease to be subjected to the rights of holders of real rights in terms of sections 25 and 27. The amendment of section 17(4)*(b)*, as proposed in clause 6*(a)* of the Bill, seeks to give effect to this.

2.6.2. Section 17(4B) provides for the alienation of a portion of the common property on which an exclusive use area or part thereof is registered. However, registration of the transfer of the common property can only be affected after cancellation of the exclusive use area, or the part thereof, that is situated on the common property that is to be transferred. The Act does not provide for dealings with a part of an

exclusive use area. The proposed amendment of section 17(4B)*(a)* and *(b)*, as contained in clause 6*(b)* of the Bill, seeks to rectify the position.

2.6.3. The amendment proposed to section 17(4C), as contained in clause 6*(c)* of the Bill, is consequential to the amendment of section 17(4B), referred to in paragraph 2.6.2.

2.7 Clause 7

Clause 7 seeks to amend section 18 of the Act which makes the provisions of sections 56 and 57 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), applicable with the transfer of a mortgaged unit and mortgaged common property, and the cession of a mortgaged lease of a unit and mortgaged real right over a unit. The said section, however, is silent in respect of the cancellation, under section 17, of a mortgaged section, exclusive use area, and real rights of extension. Clause 7 seeks to provide for the necessary inclusion.

2.8. Clause 8

Section 21 of the Act provides for the approval of sectional plans for the subdivision and consolidation of sections. Section 21 does not provide for a developer, prior to the establishment of the body corporate, to cause a land surveyor or architect to submit a draft sectional plan of subdivision or consolidation, as the case may be, to the Surveyor-General for approval. Clause 8 seeks to insert section 21(1A) in the Act, to provide for a developer, prior to the establishment of the body corporate, to cause a land surveyor or architect to submit a draft sectional plan of subdivision or consolidation, as the case may be, to the Surveyor-General for approval.

2.9 Clause 9

2.9.1. Clause 9 seeks to amend section 22 of the Act, which deals with the registration of a subdivision of a section. The proposed insertion of sections 22(1A) and 22(2A), seeks to provide for a developer to apply for the registration of a sectional plan of subdivision of a section, prior to the establishment of a body corporate.

2.9.2. Section 22(5) provides for the endorsement of deeds that have been registered against the title deed of the section in order to reflect such subdivision. However, section 22(2) that provides for the lodgement of the relevant title deeds for purposes of endorsement, omits reference to the lease. Clause 9 seeks to insert section 22(2)*(c*A*)* in order to provide for the inclusion of a lease.

2. 9.3. Clauses 9*(c)* and *(d)* seeks to amend section 22(2)*(d)* and delete section 22(2)*(e)* of the Act. Section 22(2)*(d)* of the Act provides for the issuing of certificates of registered sectional titles in favour of the persons entitled thereto in terms of a partition agreement. However, the correct position upon subdivision is for the certificates of registered sectional title to be issued in the names of the joint owners of the original unit. Partition transfers may then be registered subsequent to the issuing of the certificate of registered sectional titles.

2.10 Clause 10

2.10.1 Section 23 of the Act deals with the registration of a consolidation of sections. Clause 10 seeks to amend section 23 of the Act, by inserting sections 23(1A) and 23(2A) in order to provide for a developer, prior to the establishment of the body corporate, to apply for the registration of a sectional plan of consolidation of two or more sections.

2.10.2 Section 23(2) of the Act provides for the endorsement of deeds that have been registered against the title deed of the section to reflect such consolidation. Clause 10 seeks to amend section 23(2) of the Act, by inserting section 23(2)*(c*A*)*, in order to provide for the lodgement of the relevant title deeds for purposes of endorsement, to include the reference to the lease.

2.11 Clause 11

2.11.1 Clause 11 seeks to amend section 24 of the Act, which deals with the registration of an extension of a section in a scheme.

2.11.2 The proposed insertion of sections 24(3A) and 24 (6AA) seeks to provide for a developer, prior to the establishment of the body corporate, to cause a land surveyor or an architect to submit a draft sectional plan of extension of a section, to the Surveyor-General for such approval.

2.11.3 Clause 11 also seeks to amend section 24(6) of the Act, which provides for the documentation that must accompany an application to the registrar for the registration of a sectional plan of extension of a section, by including a lease in the list of documentation that must accompany the said application.

2.12 Clause 12

2.12.1 Clause 12 seeks to amend section 25 of the Act, which deals with the extension of a scheme by the addition of sections and exclusive use areas.

2.12.2 Section 25(2) of the Act provides for the filing in a deeds registry of, amongst others, a plan to scale showing the part of the common property affected by the reservation to extent the scheme, a plan to scale showing the manner in which buildings are to be subdivided into sections and exclusive use areas, and a schedule indicating the estimate participation quotas of all the sections. The proposed insertion of section 25(2A), seeks to provide for replacement documentation to be filed in instances where such documentation has been lost or destroyed.

2.12.3 Section 25(5A)*(a)* of the Act only makes reference to the inclusion of a unit in the relevant sectional title register. Clause 12 seeks to amend section 25(5A)*(a)*, to also include an exclusive use area.

2.12.4 Section 25(6) of the Act provides for a body corporate to apply for the extension of a scheme in instances where no reservation was made by a developer in terms of section 25(1), or if such a reservation was made, and had lapsed. Such a right may be exercised by the body corporate with the written consent of all the members of the body corporate and bondholders of all units in the scheme. The proposed amendment to section 25(6) seeks to insert a proviso 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, the mortgagees of the units and real rights over the units, and the holders of registered real rights over the units in the scheme and who shall not withhold such consent without good cause in law.

2.12.5 The proposed amendments of sections 25(10)*(c)* and 25(10)*(d*A*)* of the Act, seeks to eliminate the duplication in sections 25(10)*(c)* and section 25(10)*(d*A*)*, which provides for the lodgement and endorsement of mortgage bonds registered against the certificate of real right of extension.

2.13 Clause 13

Clause 13 seeks to amend section 26 of the Act, which deals with the extension of schemes by the addition of land to the common property. Clause 13 seeks to provide for the addition of subsections (8) and (9), in order to provide for a developer, prior to the establishment of the body corporate, to apply for the registration of a plan of extension of the common property.

2.14 Clause 14

Clause 14 seeks to amend section 27 of the Act, by the insertion of subsection (5A), in order to make it possible for a developer, prior to the establishment of the body corporate, to cancel its rights to the exclusive use of parts of the common property. The Act is silent in respect of the cancellation of rights to exclusive use by developers.

2.15 Clause 15

Clause 15 seeks to amend section 32 of the Act, which deals with the participation quotas of sections. Sections 32(1) and (2) contain provisions pertaining to the determination of participation quotas and make such provisions subject to section 48 of the Act. Section 48 of the Act has been repealed by the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011). Clause 15 seeks to substitute the reference to section 48 of the Act, with the reference to section 17 of the Sectional Titles Schemes Management Act.

2.16 Clause 16

2.16.1 Clause 16 seeks to amend section 54 of the Act. The Executive Council of the Law Society of the Republic of South Africa ('LSSA') nominates one conveyancer for appointment by the Minister as member of the Sectional Titles Regulations Board. However, the LSSA is represented by two conveyancers on the Deeds Registries Regulations Board, established in terms of section 9 of the Deeds Registries Act. The amendment of section 54(2)*(c)*(i), in clause 16*(b)* of the Bill is necessary and is in line with the provisions of section 9 of the Deeds Registries Act. The amendment in clause 16*(a)* is consequential to the amendments proposed in clauses 16*(b)* and *(c)*.

2.16.2 There is a need for a representative of the board to have practical knowledge on matters pertaining to the registration of sectional title units and the opening of sectional title registers. The insertion of section 54(2)*(c)*(vii) as proposed in clause 16*(c)* seeks to address this matter by providing for the appointment of a registrar of deeds, deputy registrar of deeds, or assistant registrar of deeds with the necessary practical knowledge, as the ninth member of the board. The amendment is also in line with the provisions of section 9 of the Deeds Registries Act.

2.16.3 Section 54(2)*(c)*(i) of the Act refers to the Executive Council of the Law Society. Section 118 of the Legal Practice Act, 2014 (Act No. 28 of 2014) (''LPA''), commenced on 1 November 2018. Section 4 of the LPA established the South African Legal Practice Council whose objects include the promotion and protection of the public interest as well as to regulate all legal practitioners. Section 118 of the LPA provides for the interpretation and reference to certain laws, subject to the provisions of the LPA. Section 118*(e)* of the LPA also provides that a reference to the Law Society of South Africa made in any law repealed by the LPA must be construed as a reference to the South African Legal Practice Council. Although the Act is not repealed by the LPA, we have substituted the reference to the Executive Council of the Law Society with the South African Legal Practice Council as established in the LPA.

2.16.4. The amendment of section 54(5), as proposed in clause 16*(d)*, is consequential to the amendment of section 54(2)*(c)*.

2.16.5. The conditions applicable to the appointment of members of the board must also apply to the appointment of alternate members of the board. The insertion of section 54(9A) as proposed in clauses 16*(e)* is a necessary step.

2.17 Clause 17

Clause 17 seeks to provide for the addition of section 55(2) in order to provide for Regulations to be published in the *Gazette* at least one month before the date specified in the relevant notice as the date of commencement thereof.

2.18 Clause 18

Clause 18 seeks to amend section 60 of the Act which deals with savings and transitional provisions in respect of transactions registered in terms of the Sectional Titles Act, 1971 (Act No. 66 of 1971). Section 60 (3) provides for an owner who has acquired a right to the exclusive use of parts of the common property, to request the body corporate to transfer such right to the owner by means of a notarial deed. However, those rights were not delineated on the 1971 sectional plans; it was created in the rules. The body corporate cannot cede the rights without causing it to be delineated on the plans. The amendment of section 60(3), as proposed in clause 18 of the Bill, seeks to provide for the body corporate to have exclusive use areas depicted on sectional plans and to cede it to the relevant owners.

2.19 Clause 19

Clause 19 contains the short title.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. DEPARTMENTS/ BODIES/ PERSONS CONSULTED

The Law Society of South Africa
The South African Council for the Architectural Profession
The South African Council for Professional and Technical Surveyors
Banking Association of South Africa
The Institute of Estate Agents of South Africa
The National Association of Managing Agents

5. CONSTITUTIONAL IMPLICATIONS

None.

6. COMMUNICATION IMPLICATIONS

To be undertaken by the Department of Agriculture, Land Reform and Rural Development.

7. PARLIAMENTARY PROCEDURE

7.1 Parliament is vested with national legislative authority and has the legislative authority to enact the Bill.

7.2 In *Tongane v Minister of Agriculture and Land Affairs,* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held in paragraph 70 of that judgment, that the ‘‘test for determining how a Bill is to be tagged must be broader than that for determining legislative

competence''. The Court held that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 to the Constitution, and not on whether any of its provisions are incidental to its substance.

7.3 We have considered all the provisions in the Bill in light of Schedule 4 and 5 to the Constitution, and found that the purpose and effect of the Bill does not in a substantial manner deal with any of the matters listed in Schedule 4 or 5 to the Constitution. The primary objective of the Bill is to further provide for matters pertaining to sectional titles and the registration thereof.

7.4 The State Law Advisers and the Department of Rural Development and Land Reform are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, since the Bill does not in a substantial measure pertain to matters listed in Schedules 4 and 5 to the Constitution.

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