

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

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It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 8 of 2011: Sectional Titles Schemes Management Act, 2011.



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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.
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(English text signed by the President)
(Assented to 11 June 2011)

ACT

To provide for the establishment of bodies corporate to manage and regulate sections and common property in sectional titles schemes and for that purpose to apply rules applicable to such schemes; to establish a sectional titles schemes management advisory council; and to provide for matters connected therewith.

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

ARRANGEMENT OF ACT

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Definitions

1. (1) In this Act and the rules, unless the context otherwise indicates—
 - “**Advisory Council**” means the Sectional Titles Schemes Management Advisory Council established by section 18;
 - “**body corporate**”, in relation to a building and the land in a sectional title scheme, means the body corporate of that building referred to in section 2(1);
 - “**building**” means a structure of a permanent nature erected or to be erected and which is shown on a sectional plan as part of a scheme;
 - “**chief ombud**” means chief ombud as defined in section 1 of the Community Schemes Ombud Service Act, 2010;
 - “**common property**”, in relation to a scheme, means—
 - (a) the land included in the scheme;
 - (b) such parts of the building or buildings as are not included in a section; and
 - (c) land referred to in section 5(1)(d);
 - “**competent authority**” means a person or organisation that has the legally delegated authority or power to perform a designated function;
 - “**Court**” means the High Court having jurisdiction;
 - “**deeds registry**” means a deeds registry as defined in the Deeds Registries Act, 1937 (Act No. 47 of 1937);
 - “**Department**” means the Department of Human Settlements;
 - “**developer**” means a person who is the registered owner of land, situated within the area of jurisdiction of a local municipality, on which is situated or to be erected a building or buildings which he or she has divided or proposes to divide into two or more sections in terms of a scheme, or his or her successor in title and includes, for the purposes of rebuilding any building that is deemed to have been destroyed as contemplated in section 17, the body corporate concerned;
 - “**development scheme**” means a scheme in terms of which a building or buildings situated or to be erected on land within the area of jurisdiction of a local municipality is or are, for the purposes of selling, letting or otherwise dealing therewith, to be divided into two or more sections;
 - “**Director-General**” means the Director-General of Human Settlements;
 - “**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;
 - “**lease**”, for the purposes of section 5(1)(a), means a lease which—
 - (a) was entered into for a period of not less than 10 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 at the will of the lessee indefinitely or for periods which, together with the first period, amount in all to not less than 10 years;
 - “**local municipality**” means local municipality as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
 - “**Minister**” means the Minister of Human Settlements;
 - “**ombud**” means ombud as defined in section 1 of the Community Schemes Ombud Service Act, 2010;
 - “**owner**”, in relation to a unit or a section or an undivided share in the common property forming part of such unit, means, subject to subsection (5), the person in whose name the unit is registered at a deeds registry in terms of the Sectional Titles Act or in whom ownership is vested by statute, including the trustee in an insolvent estate, the liquidator of a company or close corporation which is an owner, the

executor of an owner who has died, or the representative of an owner, who is a minor or of unsound mind, recognised by law, 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 the provisions of section 32(1) or (2) of the Sectional Titles Act in respect of that section for the purposes referred to in section 32(3) of that Act, and shown on a sectional plan in accordance with the provisions of section 5(3)(g) of that Act; 5

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

“**quota**”, in relation to a section or the owner of a section, means the participation quota of that section; 10

“**registrar**” means a registrar of deeds as defined in the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**regulation**” means a regulation made under this Act;

“**rules**”, in relation to a building which is divided into sections and common property, means the management rules and conduct rules referred to in section 10(2)(a) and (b), respectively; 15

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

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

“**sectional mortgage bond**” means a mortgage bond hypothecating— 20

- (a) a unit or an exclusive use area, land or an undivided share in such unit, area or land held under a separate sectional title deed; or
- (b) a registered lease or sub-lease of any such unit, exclusive use area or land or an undivided share in such unit, area or land which when it was entered into, was for a period of not less than 10 years or for the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee indefinitely or for periods which together with the first period amount in all to not less than 10 years; or 25

- (c) any other registered real right in or over any such unit or undivided share in a unit or common property or the rights referred to in sections 25 and 27 of the Sectional Titles Act; 30

“**sectional plan**”, in relation to a scheme, means a plan approved by the Surveyor-General which—

- (a) is described as a sectional plan;
- (b) shows the building or buildings and the land comprised in the scheme, as divided into two or more sections and common property; and 35
- (c) complies with the requirements of section 5 of the Sectional Titles Act, and includes a sectional plan of subdivision, consolidation or extension as provided for in the Sectional Titles Act;

“**Sectional Titles Act**” means the Sectional Titles Act, 1986 (Act No. 95 of 1986), as amended; 40

“**special resolution**” means a resolution—

- (a) passed by at least 75% calculated both in value and in number, of the votes of the members of a body corporate who are represented at a general meeting; or
- (b) agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes; 45

“**this Act**” includes regulations;

“**unanimous resolution**” means a resolution—

- (a) passed unanimously by all the members of the body corporate at a meeting at which— 50

- (i) at least 80% calculated both in value and in number, of the votes of all the members of a body corporate are present or represented; and
- (ii) all the members who cast their votes do so in favour of the resolution; or
- (b) agreed to in writing by all the members of the body corporate. 5
- (2) For the purposes of the definition of owner—
- (a) if a unit is subject to a lease for a period of 99 years or longer or for the life of the building or buildings concerned and registered in a deeds registry, the holder of such lease is considered to be the owner for the duration of that lease; and
- (b) if a unit is registered in a deeds registry— 10
 - (i) in the names of both spouses in a marriage in community of property; or
 - (ii) in the name of only one spouse and forms part of the joint estate of both spouses in a marriage in community of property,
 either one or both of the spouses are considered to be the owner.

Bodies corporate 15

2. (1) With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there shall be deemed to be established for that scheme a body corporate of which the developer and such person are members, and any person who thereafter becomes an owner of a unit in that scheme is a member of that body corporate. 20

(2) The developer ceases to be a member of the body corporate when he or she ceases to have a share in the common property as contemplated in section 34(2) of the Sectional Titles Act.

(3) Any other member of the body corporate ceases to be a member thereof when such member ceases to be the owner of a unit in the scheme in question. 25

(4) The body corporate must be designated as the “Body Corporate” and must have the name and number contemplated in sections 5(3)(b) and 12(1)(a) of the Sectional Titles Act, respectively.

(5) The body corporate is, subject to the provisions of this Act, responsible for the enforcement of the rules and for the control, administration and management of the common property for the benefit of all owners. 30

(6) The provisions of the Companies Act, 2008 (Act No. 71 of 2008), do not apply in relation to the body corporate.

(7) The body corporate has perpetual succession and is capable of suing and of being sued in its corporate name in respect of— 35

- (a) any contract entered into by the body corporate;
- (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 owners are jointly liable;
- (d) any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties under this Act or any rule; and 40
- (e) any claim against the developer in respect of the scheme if so determined by special resolution.

(8) (a) A developer must convene a meeting of the members of the body corporate not more than 60 days after the establishment of the body corporate. 45

(b) The agenda for the meeting is as prescribed in the management rules for the meeting.

(c) At such meeting the developer must furnish the members with—

- (i) a copy of the sectional plan;
- (ii) a certificate from the local authority to the effect that all rates due by the developer up to the date of the establishment of the body corporate have been paid; and 50