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CHIEF REGISTRAR'S CIRCULAR NO. 1 OF 2023

SECTIONAL TITLES ACT, 1986 (ACT 95 OF 1986), AS AMENDED BY THE SECTIONAL TITLES AMENDMENT ACT, 2022 (ACT 13 OF 2022)

1. PURPOSE

- 1.1. The purpose of this Circular is to provide information regarding *registration related amendments* to the Sectional Titles Act, 1986 (Act 95 of 1986), vide the Sectional Titles Amendment Act, 2022 (Act 13 of 2022).
- 1.2. The Sectional Titles Amendment Act, 2022 was published in Government Gazette No. 47830 and came into operation on 5 January 2023.

2. DISCUSSION

2.1. Amendment of section 14

2.1.1 Section 14(3):

Section 14(3) is amended by also including “*exclusive use areas*”. Therefore, 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 of Deeds as to which sections or exclusive use areas are affected by any such defect in question. 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.

2.1.2 Section 14(5):

Section 14(5) is amended by also including “*exclusive use areas*”. Therefore, the Surveyor-General must advise the Registrar 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. Thereupon the

Registrar shall make the necessary endorsements reflecting any change of description or extent upon the deed's registry copy of the sectional title deed and upon any other registered document affected by such change.

The Registrar must 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.

2.1.3 Section 14(8):

Section 14(8) is amended by including a paragraph (b) thereto. Section 14(8) of Act 95 of 1986 provides for the cancellation of a sectional plan by a court order. The insertion of a paragraph (b) to subsection (8) clarifies the position regarding procedures to be followed in instances where a body corporate is in existence and the court makes an order for the cancellation of the sectional plan.

2.2 Amendment of section 15B:

Section 15B(1) is amended by the insertion of paragraph (e) which provides for the noting of the lapsing of a right reserved in terms of section 25 of Act 95 of 1986. An application for the noting of the lapsing of the said right must be lodged by the developer or the body corporate. The client's copy of the title must be lodged if available. If the title is not available, an affidavit by the body corporate or the developer must be submitted stating that the title is not available, and the Registrar must endorse the deeds registry duplicate to reflect the lapsing of the right. A caveat must also be noted to ensure that the client's copy be endorsed if lodged for any reason in future.

2.3 Amendment of section 17:

2.3.1 Section 17(4)(b):

According to section 17(4)(b) a Registrar may not register a lease of land, or a portion of land, comprised by a scheme if on such land or portion of land a section or part of a section is erected, unless the lease is made subject to the rights of an owner of such section or portion of a section. The said section 17(4)(b) is now amended to also provide for circumstances where such land or portion of such land is subject to real rights in terms of sections 25 and 27. In such instances the lease must also be made subject to the rights of the holder of such section 25 and 27 rights.

2.3.2 Section 17(4B):

With the registration of alienation of a portion of land comprised by a scheme on which an exclusive use area or part thereof is registered, the Registrar may not register the transfer unless the registration of the exclusive use area has been cancelled with the written consent of the holder. The Registrar must also notify the Surveyor-General and the local authority of such cancellation. Prior to the amendment the cancellation of part of an exclusive use area was permissible.

2.3.3 Section 17(4C):

The amendment of section 17(4C) is consequential to the amendment of section 17(4B) and the cancellation of part of a right to extend a scheme remains a requirement under the circumstances mentioned therein.

2.4 Amendment of section 18:

Section 18 of Act 95 of 1986 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. Section 18, however, is silent in respect of the cancellation, under section 17, of a mortgaged section, exclusive use area, and real rights of extension. Section 18 now also makes the provisions of sections 56 and 57 of the Deeds Registries Act, 1937 applicable to the cancellation, under section 17, of any mortgaged section and exclusive use area, and real right under section 25.

2.5 Amendment of section 21:

Section 21 of Act 95 of 1986 is amended by the insertion of subsection (1A) regarding developers that, 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.

2.6 Amendment of section 22:

2.6.1 Insertion of section 22 (1A):

Section 22 of Act 95 of 1986 is amended by the insertion of subsection (1A) regarding developers that, prior to the establishment of a body corporate, wishes to register a sectional plan of subdivision of a section. Provision is thus made for developers to apply for the registration of sectional plans of subdivision of a section or sections, *prior* to the establishment of a body corporate.

2.6.2 Insertion of section 22 (2) (cA):

Section 22(2) provides for the lodgement of the relevant title deeds for purposes of endorsement in terms of section 22(5). It, however, omits reference to leases and the lodgement of leases are now covered by section 22(2)(cA).

2.6.3 Amendment of section 22(2)(d) and the deletion of section 22(2)(e):

Section 22(2)(d) of Act 95 of 1986 currently 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 after the issuing of the certificate of registered sectional titles.

2.6.4 Insertion of section 22 (2A):

The purpose of subsection (2A) is to protect the rights of persons who purchased units, or who were parties to a donation or exchange of a unit, in the event of a developer subdividing any section in a scheme prior to the establishment of a body corporate.

When application is made by a developer for the subdivision of a section prior to the establishment of a body corporate, such application must be accompanied by an affidavit by the 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 a section(s). A deed of alienation in which the subdivision has not been disclosed, shall be voidable at the option of the acquirer.

2.7 Amendment of section 23:

Section 23 deals with consolidation of sections and items 2.6.1, 2.6.2 and 2.6.4 above apply with the necessary changes.

2.8 Amendment of section 24:

Section 24 deals with extension of a section in a scheme and items 2.6.1, 2.6.2 and 2.6.4 above apply with the necessary changes.

2.9 Amendment of section 25:

2.9.1 Insertion of section 25 (2A):

In terms of subsection (2A) a Registrar must, if any of the documentation referred to in section 25 (2) (a), (b), (c), (d) or (g) have 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.

The Minister must still, upon recommendation of the Sectional Titles Regulation Board, prescribe the form for the application. The procedures to be followed are contained in regulation 25A.

2.9.2 Amendment of section 25 (5A) (a):

Section 25(5A)(a) provided that if a right reserved in terms of section 25(1), namely a right to extend a scheme, is exercised, the developer or his or her successor in title must immediately after completion of the relevant unit apply for the registration of the relevant plan of extension and the inclusion of such unit in the relevant sectional title register. In terms of the amended section 25(5A)(a), the same will now also apply to exclusive use areas.

2.9.3 Amendment of section 25 (6):

In terms of the amended section 25(6) a Body Corporate may only exercise, alienate or transfer the right to extend a scheme that vest in it, 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.

2.9.4 Amendment of sections 25 (10) (c) and 25 (10) (dA):

Sections 25(10)(c) and 25(10)(dA) are amended to eliminate the duplication therein which provides for the lodgement and endorsement of mortgage bonds registered against the certificate of real right of extension.

The amendment of sections 25(10)(dA) (i) and (ii) is of a cosmetic nature.

2.10 Amendment of section 26 by addition of subsections (8) and (9):

The addition of subsection (8) to section 26 enables developers to acquire, prior to the establishment of a body corporate, additional land and to incorporate such land in the scheme as contemplated by section 26.

The purpose of subsection (9) is to protect the rights of persons who purchased units, or who were parties to a donation or exchange of a unit, in the event of a developer acquiring land contemplated by section 26 prior to the establishment of a body corporate. When application is made by a developer for the extension of a scheme in terms of section 26 prior to the establishment of a body corporate, such application must be accompanied by an affidavit by the 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 a plan of extension of the common property.

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

2.11 Amendment of section 27 by the insertion of subsection (5A):

The newly inserted section 27(5A) provides for developers to, prior to the establishment of a body corporate, cancel a right to exclusive use of part of the common property registered in its favour. Such right may be cancelled, with the written consent of the mortgagee of the exclusive use area, by the developer by means of the registration of a unilateral notarial deed of cancellation.

3. IMPLEMENTATION OF AMENDMENTS TO ACT 95 OF 1986

- 3.1 The Sectional Titles Amendment Act, 2022 was published in Government Gazette No. 47830 and came into operation on 5 January 2023 (see item 1.2 above).
- 3.2 The amended provisions to the Act must be applied only to deeds lodged after the date of issue of this circular. However, the amended provisions may also be applied to deeds lodged prior to the date of this Circular, but on or after the date of the coming into operation of the Amendment Act.



CHIEF REGISTRAR OF DEEDS

DATE: 18 January 2023

REFERENCE: 14/P
RINGBINDER 55

CHIEF REGISTRAR OF DEEDS
REGISTRARS OF DEEDS
DEEDS TRAINING

DIRECTOR: LAW SOCIETY OF SOUTH AFRICA : PRETORIA
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