



SUBMISSIONS BY THE LAW SOCIETY OF SOUTH AFRICA ON THE SECTIONAL TITLES AMENDMENT BILL

The Law Society of South Africa (LSSA) has considered the Sectional Titles Amendment Bill [B31-2020] (the Bill) and wishes to comment as follows:

1. CLAUSE 1:

The LSSA does not support the proposed amendment in clause 1(a) of the Bill. It will cause uncertainty and create confusion. A definition, by its very nature, should be precise and not speculative. Who are “occupant or occupants thereof recognised by law, as contemplated in this Act”? Will unlawful occupiers also be considered as occupants? There is simply no relationship between the meaning of “exclusive use area” and “occupant or occupants”. The lawfulness or otherwise of occupation of an exclusive use area is a matter of law.

2. CLAUSE 8:

A developer, prior to the establishment of the body corporate, would be the owner and therefore, the proposed Section 21(1A) is not supported.

3. CLAUSE 9:

A developer, prior to the establishment of the body corporate, would be the owner and therefore the proposed Sections 22(1A) and 22(2A) are not supported.

4. CLAUSE 10:

A developer, prior to the establishment of the body corporate, would be the owner and therefore the proposed Sections 23(1A) and 23(2A) are not supported

5. CLAUSE 16:

5.1 The proposed substitution in subsection (2)(c) from seven to nine members is not supported.

5.2 The management of sectional title schemes now falls under the purview of the Sectional Title Schemes Management Act and no longer the Sectional Titles Act which primarily deals with registration issues.

5.3 The composition of the Regulations Board should accordingly be decreased instead of being increased, especially in view of cost constraints. State resources must be utilised efficiently.

5.4 It is respectfully submitted that the Board should comprise the Chief Registrar of Deeds, the Chief Surveyor-General, two practicing conveyancers (nominated by the Law Society of South Africa), a professional land surveyor, a Registrar of Deeds/Deputy Registrar of Deed/Assistant Registrar of Deeds and an official from the Department of Rural Development and Land Reform. The Board should therefore comprise of 7 members in total i.e. the Chief Registrar of Deeds, the Chief Surveyor-General and 5 other members.

6. CLAUSE 18:

6.1 The amendment of Section 60 by the substitution for subsection 3 by the proposed subsection (3)(a) and (b) is not supported.

6.2 The owner has the right to take transfer of the exclusive use area by the registration of a notarial deed.

6.3 It was never contemplated that the delineation of the exclusive use area on the sectional plan would be a prerequisite for the transfer thereof.

6.4 The right that accrued to the owner is established in law and it may not be lawful to circumvent such right by imposing an additional obligation that never existed.

7. GENERAL – AMENDMENT OF SECTION 24(6A):

7.1 An extract of items 5.6 and 5.7 of the minutes of the Sectional Titles Regulations Board meeting held on 24 November 2017 is attached.

7.2 The amendment of Section 24(6A) is of critical importance and is arguably more important than any of the proposed amendments in the Bill.

7.3 There are sound reasons for the proposed amendment and it is accordingly submitted that Section 24(6A) be amended along the lines set out in the Resolution.