



rural development & land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF REGISTRAR OF DEEDS
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MINUTES

SECTIONAL TITLES REGULATIONS BOARD MEETING HELD ON 24 NOVEMBER 2017

1. OPENING AND INTRODUCTION

Chairperson opens the meeting and welcomes all members and observers.

2. ATTENDANCE

CCE Knoesen (Chairperson) :	Department Rural Development and Land Reform ('DRDLR')
R Abrahamse :	SA Council for Professional and Technical Surveyors
M O Reilly :	South African Council for the Architectural Profession
H Goga :	Law Society of South Africa ('LSSA')
M Bauer :	Institute of Estate Agents of South Africa ('IEASA')
C Van Heerden :	National Association of Managing Agents
P Venter :	Banking Association South Africa
M Ngakane :	DRDLR
Elbe Janse van Rensburg :	DRDLR Office of Chief Surveyor-General
AS Reynolds (observer) :	DRDLR Office of Chief Registrar of Deeds
NM Seshoka (observer) :	DRDLR Office of Chief Registrar of Deeds

APOLOGIES

D Clarke :	DRDLR Office of Chief Surveyor-General
RS Semnarayan :	Banking Association South Africa

3. CONSTRUCTING THE AGENDA

(See late items added)

4. DECISION REGISTER

Items of the minutes of the Sectional Titles Regulations Board meeting of 2016 were discussed (See Decision Register attached as Annexure A).

5. PROPOSED AMENDMENTS TO THE SECTIONAL TITLES ACT, 1986 (ACT NO. 95 OF 1986) (herein after referred to as 'the Act')

5. (A) SECTIONS

5.1. Section 11 (3) (e) – (Bloemfontein Deeds Registry)

The English and Afrikaans versions differ totally from each other.

English version: *"a certificate by the Chief Ombud stating that the rules contemplated in section 10 of the Sectional Titles Schemes Management Act have been approved"*

Afrikaans version: *"n sertifikaat deur 'n transportbesorger waarin gemeld word dat die reëls voorgeskryf ingevolge artikel 35(2) van toepassing is, en bevattende die ander reëls (as daar is) wat deur die ontwikkelaar gemaak is ter vervanging van daardie reëls soos beoog in daardie artikel".*

Resolution:

Item withdrawn.

(The Sectional Titles Schemes Management Act 8 of 2011 was promulgated in English only. The Schedule to this Act provides for the amendment of Act No. 95 of 1986. However, this amendment was done in English only. Legal Support has been in contact with the State Law Advisers and assisted them with the translation in amending the Afrikaans version of Act No. 95 of 1986. These amendments will be promulgated in the Sectional Titles Amendment Bill, 2018).

5.2. Section 11 (3) (d) – (Deeds Training)

Section 11 (3) (d) only refers to portions of land and not to shares in land. This implies that two different bonds held by co-developers over the shares

may be substituted as there is currently no authority to prevent it as is the case where different pieces of land are mortgaged under different bonds.

Resolution:

The board does not support the proposal. The definition of 'land' in the Deeds Registries Act No. 47 of 1937 includes a share in land.

5.3. Section 15B (3) (a) (i) (bb) – (National Association of Managing Agents)

If a body corporate is not deemed to be established a conveyancer must certify that no moneys are payable; this provision does not make sense as it does not specify what debts or what parties are the subject of the confirmation by the conveyancer that no moneys are payable.

Resolution:

The board resolves that section 15B (3) (a) (i) (bb) be amended to read as follows:

“(bb) [if] a body corporate is not deemed to be established [, no moneys are payable;]”.

5.4. Section 15 - (Deeds Training)

Where a developer has reserved a real right to extend, the Act does not make provision for the developer to obtain a separate certificate of real right after registration of the right, as it may only be ceded in terms of section 25 (4) (b) to a new co-developer. The Act should be amended to provide for a developer to receive a separate title for his portion of real right after reservation of the original right to extend with the opening of the register and a suitable form to be provided. Section 15B (5) (a) (iii) only makes provision for joint ownership and section 15 (5) (b) (iii) applies to a fraction of an undivided share.

Resolution:

The question is not clear and no proposed amendment has been provided.

- The matter must be referred to the Cadastral Conference for discussion.

5.5. Section 21 (1) – (National Association of Managing Agents)

If an owner of a section proposes to subdivide his or her section or to consolidate two or more sections registered in his or her name, he or she shall if authorised in terms of section 7 (2) of the Sectional Titles Schemes Management Act No. 8 of 2011.... The aforesaid subsection would imply that the owner is obligated, if authorised, to proceed with the subdivision or

consolidation, however, this must clearly not be the intention of the legislature to compel an owner to proceed with such consolidation/subdivision whichever may be the case.

Resolution:

The board does not support the amendment.

- This matter, as well as all other provisions in Act No. 95 of 1986 that make reference to Act 8 of 2011, must be referred to the Cadastral Conference for discussion and possible amendment of Act No. 95 of 1986 to remove such references.

5.6. Section 24 (6) (d) (i) and (6A) – (R Green)

It is proposed that the percentage in section 24 (6) (d) and (6A) be increased from 10 per cent to 20 per cent.

- (a) If authorised by a special resolution passed in terms of section 5 (1) (h) of the Sectional Titles Schemes Management Act No. 8 of 2011 a body corporate must approve an extension of boundaries or floor area. Accordingly any extension of a section so authorised is unlikely to be prejudicial to a mortgagee. Nonetheless consent by the mortgagee is furnished.
- (b) The extension of the section is even more unlikely to affect mortgagees of other sections, particularly in a multi-unit scheme or in a scheme in which units are free standing.
- (c) Even though the extension of a section may have no impact on a mortgagee, on receipt of the notice referred to in section 24 (6A) a mortgagee generally requires copies of the sectional plans of extension and may instruct conveyancers to advise on whether the proposed extension will affect the security of the mortgagee.
- (d) The above results in extra costs for the owner because the bank may require fees to be paid and also the fees of the conveyancer. In a large scheme the costs could be prohibitive.
- (e) In a small residential unit the addition of a garage easily can result in a deviation of more than 10%. However the addition has no impact on other mortgagees in a scheme.
- (f) What sometimes happens is that a body corporate authorises an extension, the section is extended and the sectional plans of extension drawn and approved by the surveyor general. The owner is then faced with the logistical difficulty of ascertaining the names and contact details and loan account numbers of the mortgagees. In a 100 unit scheme this can take time. The owner then abandons the attempt to register the extension in the deeds office. Because of the expense the trustees of the body corporate are reluctant to compel the owner to proceed with registration.

- (g) Reducing the requirement of giving notice to all mortgagees will enhance compliance with section 24 (6).

Resolution:

See resolution made under item 5.7.

5.7. Section 24 (6A) – (H Goga)

- (a) The motivation to increase the deviation from 10 per cent to 20 per cent is set out in a submission from Roger Green dated 31 July 2017.
- (b) It is generally not possible for a mortgagor to obtain reference numbers of the mortgage loan passed over other sections in the sectional scheme.
- (c) It is practice to serve documents on entities/financial institutions at their registered office or their principal place of business.
- (d) It should be permissible to send notices by electronic mail. The delivery of notices sent by registered mail is no longer a preferred method to serve notices.
- (e) The 30 day period is too long and should be reduced to 21 days.

Resolution:

The board resolves that section 24(6A) be amended as follows:

“(6A) The applicant must, if there is a deviation of more than ~~[10]~~ 20 per cent as a result of the extension, send a notice by registered post or electronic mail to each mortgagee or where a mortgagee is a financial institution, to its ~~[headquarters]~~ head office or principal place of business, giving details of-

- (a) the mortgage bond;*
- (b) the name and identity/registration number of the mortgagor and the reference number of the mortgage loan (if [any] available);*
- (c) the proposed extension of the section in relation to its size and location; and*
- (d) the impact on the security of such mortgagee as to the diminution of the participation quota allocated to the mortgaged unit:*

Provided that if a response to the notice is not received by the applicant within ~~[30]~~ 21 days of the date of the posting of the notice by registered post or from the date on which the notice was transmitted electronically, as the case may be, it shall be deemed that the mortgagee does not have any objection to the proposed extension and that the mortgagee consents thereto.”

- The Banking Association reserves its right to refer this matter again to the board at future meetings for discussion.

5.8. Section 25 (1) – (Deeds Training)

Section 25 (1) allows for a bilateral notarial deed between body corporate and the developer to extend the real right prior to lapsing of the right. If there is no body corporate the developer cannot extend and has to cancel and register a new right (see RCR 66/2011). Section 25 should therefore be amended to provide for the developer to extend the duration of his/her right unilaterally where the body corporate has not been established yet.

Resolution:

The board does not support the proposal. The developer must cancel the existing right and register a new right. RCR66/2011 is supported.

5.9. Section 25 (5) – (Legal Support)

Section 25 (5) must be amended to clearly indicate that the cession of the Exclusive Use Area within the twelve month period will not be necessary where the developer is an owner of a section(s) in the scheme. The section must also clearly provide that the 12 month period comes effective on the date of registration of the real right and ends on the date of attestation of the deed of cession.

Resolution:

The board does not support the proposal.

5.10. Section 25 (5A) (b) – (Deeds Training)

Reference in section 25 (5A) (b) to section 3 (1) (b) of the Sectional Titles Schemes Management Act No. 8 of 2011 is incorrect and must refer to section 3 (1) (d).

Resolution:

The board resolves that section 25 (5A) (b) be amended to read as follows:

“(b) If the developer or his or her successor in title fails to take such steps and fails to register the relevant plan of extension within 90 days of completion for occupation of the unit, the developer or his or her successor in title shall be liable to the body corporate for the amounts payable in terms of section 3 (1) [(b)] (d) of the Sectional Titles Schemes Management Act as if the unit has been included in the relevant sectional title register on the date of completion.”

5.11. Section 25 (14) – (National Association of Managing Agents)

This section requires the disclosure in a sale agreement of a unit of a section 25 right held by the developer or body corporate. This disclosure obligation should apply to any person holding a section 25 right as the risk to an uninformed purchaser may be greater where the holder has no other interest in the scheme. Further, the consumer protection is frustrated by the fact that estate agents or owners are often not sure whether or not such a right exists, and to ensure compliance with section 25 (14) a standard clause is inserted into estate agency deeds of sale to disclose the existence of such a right in general terms, whether such right exist or not.

Resolution:

The board does not support the proposal.

- The *section 11(3)(b) Schedule of Conditions* must be scanned into the system in all deeds registries;
- The matter must be referred to Branch Management Meeting for discussion.

5.12. Section 26 – (National Association of Managing Agents)

The alienation of land acquired by a body corporate under this section in the Act is not specifically dealt with. With reference to general powers of the trustees, section 4 (i) of the Sectional Titles Schemes Management Act No. 8 of 2011 read with section 7 (1) of this Act, it can be argued that the trustees can take and therefore implement a decision to alienate land in the absence of any restriction imposed by owners and any contrary provision in the scheme's rules.

In addition, while acquired land remains registered in the name of the body corporate it can, in principle, be mortgaged. However, the Act does not address the aforesaid. Again, it can be argued under the general powers of the trustees that the trustees can take and implement a decision to mortgage such land in the absence of any restriction imposed by owners and any contrary provision in the scheme's rules.

Resolution:

The board does not support the resolution.

5.13. Section 27 (2) – (Deeds Training)

Reference to section 5 (1) (d) in section 27 (2) is incorrect and must be amended to refer to section 5 (1) (e) of the Sectional Titles Schemes Management Act No. 8 of 2011.

Resolution:

The board resolves that section 27 (2) must be amended to read as follows:

"(2) A body corporate may, subject to the provisions of section 5 (1) of this Act and section 5 (1) [(d)] (e) of the Sectional Titles Schemes Management Act, request an architect..."

5.14. Section 27 (5) – (National Association of Managing Agents)

A special resolution is required in terms of section 24 (3) read with section 5 (1) (h) of the Sectional Titles Schemes Management Act No. 8 of 2011 where an owner wishes to extend a section while a unanimous resolution must be obtained for the cancellation and creation of new exclusive use areas the aforesaid is not practical.

Resolution:

The board does not support the proposal. The matter may be referred to the Board established in terms of Act 9 of 2011 for possible amendment to Act 8 of 2011.

5.15. Section 29 – (Legal Support)

- (a) This section does not provide for a developer, prior to the establishment of the body corporate, to enter into a servitude benefiting or restricting the common property. Is it the intention that the developer does not have such right, or is it his/its common law right?
- (b) Section 29 (3) does not make provision for the lodgement of bonds and consents of mortgagees where servitudes which benefits the common property are cancelled. How should this matter be dealt with?

Resolution:

- (a) The Board resolves that section 29 be amended as follows:
 - by the substitution for the heading of the following heading:

"Creation and cancellation of servitudes".

- by the addition of the following subsections:

"(4) (a) The provisions of subsections (2) and (3) shall apply, with the necessary changes, to a developer who, prior to the establishment of a body corporate, wishes to execute a servitude or restrictive agreement burdening or benefitting the land shown on the relevant sectional plan.

(b) The notarial deed contemplated in subsection (2) must be accompanied by a conveyancer's certificate or an affidavit by the developer, certifying that at the date of the execution or acceptance of the servitude or

agreement, 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 a notarial deed as contemplated in subsection (2) has been executed.

- (b) The board does not support an amendment to the Act in this regard.

5.16. Section 36 – (Deeds Training)

The issue of existence of the body corporate after termination of the scheme needs to be dealt with.

A body corporate cannot exist after termination of the scheme as it resolves into cessation of separate ownership of sections as shown on the sectional plan, reversion of the land to the land register and cancellation of the sectional plan (see section 49 (2) (a) and (3) (c) and section 49 (5)). It is proposed that where a body corporate is a registered owner of a unit in a scheme, the participation quota of all sections must be varied because the body corporate is in essence also unit owners.

The cancellation of all sectional title deeds as contemplated in subsection 4 (a) and issuance of certificate of registered title to each of the owners of the units results in contractual capacity challenges in case of dealings with the undivided share registered in the name of the body corporate, since section 2(6) of the Sectional Titles Schemes Management Act No. 8 of 2011 provides that the provisions of the Companies Act No. 71 of 2008 shall not apply to the body corporate. A body corporate can therefore not be liquidated and deregistered in terms of the Companies Act. It is therefore proposed that legislative intervention must provide for insertion of an express statutory provision for the dissolution of the body corporate in the Sectional Titles Act and variation of the Participation quota of all unit owners.

Resolution:

The proposal is not supported.

(The matter is dealt with in section 17(6) of Act 8 of 2011 which provides for the Court to make an order in respect of the winding-up of the affairs of a body corporate and to also declare the body corporate dissolved as from a date specified in such court order. The matter should therefore not be addressed in Act No. 95 of 1986).

5. (B) REGULATIONS

5.17. Regulation 6 (g) - (Legal Support)

The amendment of Regulation 6, as published in Government Notice No. R. 427 of Government Gazette No. 40842, dated 12 May 2017, was an

oversight. A submission was tabled for discussion at the Sectional Titles Regulations Board meetings in 2014 and 2015, for the proposed amendment of regulation 6. However, such proposal was not supported and was withdrawn at the Board's meeting in 2016.

Resolution:

The board resolves that regulation 6 (g) be deleted.

5.18. Regulation 6 - (The Banking Association South Africa)

We were disappointed to note that Regulation 6 (g) of the Act was suspended by Chief Registrar's Circular No. 9 of 2017, as published by the Deeds Registry in June 2017.

From a mortgagee's perspective, the need for a draft sectional plan to be submitted to the Surveyor-General by a Land Surveyor/Architect is an important regulation as this provides mortgagees with the knowledge that:

- (a) The sectional scheme has been approved by the local authority;
- (b) The draft sectional plan is identical to that which has been approved by the local authority;
- (c) The scheme is not in conflict with any building restrictions appearing in the relevant title deeds.

These three items are central to the reliance that a mortgagee is able to place on the property in support of the long term loan provided to an owner.

Increasingly, we are experiencing problems relating to a professional signing the required certificate prior to the units even having being "pegged", with the result that we were forced to raise a complaint with the Institute of Land Surveyors earlier this year, requesting that their members should comply with this regulation.

Outside of this, a trend which has developed over the past few years is for duets to be constructed. Duets are proving to be particularly problematic for mortgagees and owners alike. Developers are registering the sectional scheme with the Deeds Registry, but they submit freehold plans to the local authority, with the result that alterations are undertaken by owners without the necessary consent from the other unit holder. Not only does this result in disparate plan approvals but problems are encountered when one party makes extensions which result in the maximum coverage being reached and the second home owner, when they too wish to undertake an extension, are prevented from doing so. As such alterations are illegal; these pose collateral challenges for mortgagees.

Another problem being encountered is that due to the non-disclosure or incorrect interpretation of the makeup of the property, customers are not aware of their roles and responsibilities regarding living in a sectional title scheme and so they are in contravention of the Sectional Title Schemes Management Act No. 8 of 2011.

In many cases owners believe that their stand has been sub-divided. The owners, mostly unaware of the functions and responsibilities of living in a sectional title property, therefore do not take comprehensive body corporate insurance. Some customers even incorrectly assume that the mortgagee provides default home owners' comprehensive (HOC) insurance, as they believe that they have bought into a sub-divided stand. This places the customer and mortgagee at risk should any damage be caused to the property. Alternatively owners may take out normal HOC with insurance companies that do not specialize in sectional title insurance. The customer and the mortgagee will therefore again be at risk if the property is not adequately insured, especially in respect of cover for improvements on common areas.

Resolution:

The board does not support the proposal.

- The matter must be investigated by the OCSG for possible amendment to regulation 6.

5.19. Regulation 15 - (Surveyor-General)

The Survey regulation makes provision for the withdrawal of approved diagrams or general plans of unregistered properties on the request of either the owner or the responsible land surveyor. The Sectional Title Regulations should contain a similar provision to provide for unregistered Sectional title Plans. These plans are still being withdrawn under the provisions of Chief Surveyor General Circular 4/1995 even though this particular circular does not mention sectional Titles at all.

Resolution:

The board resolves that regulation 15 be amended by addition of regulation 15A:

"15A Alterations, amendments or withdrawal of unregistered sectional plan

(1) An approved sectional plan may be amended, prior to the registration thereof, only by the Surveyor-General who shall in the appropriate circumstances notify the architect or land surveyor thereof.

(2) Alterations to any sectional plan under examination shall be initialled by either the land surveyor or architect who prepared the plan, or in special circumstances the Surveyor-General, who shall, in appropriate circumstances, notify the architect or land surveyor thereof.

(3) An approved sectional plan shall be withdrawn, prior to the registration thereof, by the Surveyor-General at the written request of the architect or land surveyor concerned or the registered owner of the land."

5. (C) FORMS

5.20. Forms C, D, F, G, H, J, O, P, Q, R, Z, AG, AH, and AO - (Legal Support)

The amendment to Form D and the footnotes to Forms C, F, G, H, J, O, P, Q, R, Z, AG, AH, and AO, in order to provide for reference to be made to "*the description of the land as indicated on the sectional plan*" appears to be problematic to implement.

Resolution:

The board resolves that reference to the words "*the description of the land as indicated on the sectional plan*" as contained in form C, D, F, G, H, J, O, P, Q, R, Z, AG, AH, and AO be substituted by the words:

"State name of township or suburb and local authority / in the case of a farm, state the description of the farm"

5. (D) LATE PROPOSAL

5.21. Sectional Titles Act (The Banking Association South Africa)

When the Electronic Deeds Registration Systems Bill came under deliberation at Nedlac, one of the matters which business highlighted was that this Bill as well as the Sectional Titles Act and the Deeds Registries Act were unconstitutional in the way that Regulations are effected i.e a Board of subject matter experts deliberates on what changes to the Acts and Regulations are required and thereafter the Minister simply agrees to the suggested changes to the Regulations, without these being opened for public consultation.

Resolution:

The board resolves that the Act be amended to provide for Regulations to be published for comment prior to it being gazetted for commencement.

5.22. Sectional Titles Regulation Board: (Chief Registrar of Deeds)

Due to the coming into operation of the Sectional Titles Schemes Management Act 8 of 2011, the composition of the Sectional Titles Regulation Board must be reviewed.

Resolution:

The board resolves that the composition of the Sectional Titles Regulation Board be reviewed.

6. CLOSURE

The Chairperson thanks all members and observers for their input. Meeting closes at 15:03.

- *The Chairperson indicated that members of the Board must also be paid for hours spend for travelling and parking. Remuneration Allowance forms must be submitted to Legal Support by Courier.*

I hereby certify that these Minutes constitute a true reflection of the proceedings of the meeting

SIGNED

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CHIEF REGISTRAR OF DEEDS

DATE: 11/12/2017