



NEW CHANGES USHERED IN THE NEW YEAR FOR THE SECTIONAL TITLES ACT

The President signed the [Sectional Titles Amendment Act](#)¹ (“the Amendment Act”) on 22 December 2022 after a couple of years of parliamentary processes.² It was a couple of years in the making. The effective date of the amendments is 5 January 2023, which is the date that the Amendment Act was published in the *Government Gazette*.

The amendments introduced by the Amendment Act are briefly set out and explained below under the relevant headings marked by the sections of the Sectional Titles Act³ (“the STA”) which were amended by the Amendment Act. Most the amendments are technical in nature and relate to the rights and obligations of developers before and after the opening of the sectional title register, and before a body corporate is established. Holders of real rights of extension and holders of registered exclusive use rights are also highlighted in these amendments.

Please refer to the footnotes in this article, for the citation of the specific provision of the STA which was amended by, or introduced by, the specific provision of the Amendment Act. The amendments are consolidated into the STA, and the current version of the STA is available [here](#), for your convenience.

The purpose of the Amendment Act is to, among other amendments discussed below, amend certain definitions found in the the STA.

Definitions

The definition of an exclusive use area now contemplates that it is a part of the common property allocated for the exclusive use of *either*, an owner or an occupant recognised by law.⁴ This is a practical and much-needed amendment, for the owner of a section may not be using and enjoying the exclusive use area, because their tenant is using and enjoying it under a lease agreement (for example, a parking bay or storage area).

The question arises whether or not an occupant occupying the premises without the authority of the owner is “recognised by law”. Imagine circumstances where an occupier who was previously a recognised tenant under a valid lease, but has been holding over (remained in occupation after the expiry of the valid lease) and is now prevented from using a parking bay or storage unit which has been allocated for the exclusive use of the owner of the section in which the occupier resides (albeit unlawfully now). Such disputes have probably brewed or are brewing. Such an “occupant” may not necessarily be a “tenant” (as there is no valid lease agreement in place, or the lease expired already) but some occupants may therefore still be “recognised by law”, such as by the Prevention of Illegal Eviction and Unlawful Occupation Act⁵ (“PIE”).

The other definition which was amended was to correct the citation of the Sectional Titles Schemes Management Act⁶ (“the STSMA”).⁷

Approval of Development Schemes

A developer must now, not only meet and answer questions put to the them by residential lessees of the building or any part thereof, but also by the agents of those lessees, when the developer seeks approval to establish a sectional title scheme on one or more pieces of land.⁸ Previously, there was no reference to agents of the lessees, so theoretically and probably in practice, developers could ignore or refuse to answer questions put to them by those agents at the requisite meeting.

¹ Act 13 of 2022.

² It was first introduced to the National Assembly on 1 November 2020. See the full history of the path the Bill took, and the submissions made in relation thereto, through the National Assembly and National Council of Provinces here: <https://pmg.org.za/bill/987/>.

³ Act 95 of 1986.

⁴ Amendment to s 1 of the STA. See s 1 of the Amendment Act.

⁵ Act 19 of 1998.

⁶ Act 8 of 2011.

⁷ Amendment to s 1 of the STA. See s 1 of the Amendment Act

⁸ Amended s 4(3) of the STA. See s 2 of the Amendment Act.



Amendment and cancellation of sectional plans

The Surveyor-General can advise the registrar, if any person could, in the Surveyor-General's opinion, be prejudiced by an incorrect sectional plan, to halt the transfer of that section, or the registration of a real right, or the cession of an exclusive use area, until that defect has been corrected, unless the relevant owner or holder of such right or cession consents in writing to the transfer being effected prior to rectification of the defect.⁹ Previously, there was no reference to cessions of exclusive use areas in this context.

The Surveyor-General can also advise the registrar and the local authority of any alteration, amendment or substitution of a sectional plan which affects not only the description or extent of a section, but also the description or extent of an exclusive use area.¹⁰ Previously, exclusive use areas were not provided for in this context either.

It has also been clarified that the amendment and cancellation of a sectional plan upon an order of court, when a body corporate is already in existence, also means that ss 49(3) and 49(5) of the STA would apply.¹¹ That is, in such circumstances, the owners will cease to be separate owners of sections but shall remain co-owners of the land in undivided shares proportionate to the quotas of the respective sections previously owned by them.¹² And any sectional mortgage bond, lease or other real right or condition then registered against or affecting a unit, shall be deemed to be converted into a mortgage bond, lease or other real right or condition registered against or affecting the undivided share in the land which formed part of such unit.¹³ The land reverts to the land register since the sectional plan is being cancelled (in such a case the scheme would no longer be in the sectional title register).¹⁴ All sectional title deeds, any rights to exclusive use areas, and any rights of extension of the scheme, together with mortgage bonds over those rights, are deemed to be destroyed, and shall be surrendered to the registrar for cancellation.¹⁵ When the Surveyor-General is notified that the whole of the land has reverted to the land register, then the Surveyor-General also cancels the relevant sectional plan.¹⁶

Registration of transfer of ownership and other rights

There is also a new requirement for the registrar of deeds, when the sectional title register has been opened and the sectional plan has been registered, to note the lapsing of a real right of extension held by a developer in terms of s 25 of the STA, on the title deed of the right so reserved, either on application by the developer, or by the body corporate in cases where the developer no longer exists.¹⁷

Alienation and letting of common property

A new restriction against the registration of a lease of part of the common property, has been introduced, subject to the rights of an owner of a section thereon, *and* subject to the rights of the holders of registered real rights of extension, or rights of exclusive use of parts of the common property, *and* with their written consent.¹⁸ Previously, there was only mention of the rights of owners of sections thereon.

Another new requirement is in relation to the alienation of a portion of land on which a real right of extension exists. The registrar must have the written consent of cancellation of the right, from the holder of a real right of extension in the scheme before registering the transfer of that portion of land.¹⁹ Previously, there was no such requirement on the registrar to have this written consent to cancel the real right of extension in these circumstances.

⁹ Amended s 14(3) of the STA. See s 3(a) of the Amendment Act.

¹⁰ Amended s 14(5) of the STA. See s 3(b) of the Amendment Act.

¹¹ Amended s 14(8) of the STA. See s 3(c) of the Amendment Act.

¹² Section 49(3)(a) of the STA.

¹³ Section 49(3)(b) of the STA.

¹⁴ Section 49(3)(c) of the STA.

¹⁵ Section 49(3)(d) of the STA.

¹⁶ Section 49(5) of the STA.

¹⁷ Amended s 15B(1) of the STA, introducing new paragraph (e) thereto. See s 4 of the Amendment Act.

¹⁸ Amended s 17(4) of the STA. See s 5(a) of the Amendment Act.

¹⁹ Amended s 17(4C) of the STA. See s 5(c) of the Amendment Act.



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

It has now been clarified that sections 56 and 57 of the Deeds Registries Act²⁰ (“the Deeds Registries Act”), relating to the rights of mortgagees, applies also for the cancellation of a mortgaged section, mortgaged exclusive use area and a real right of extension.²¹

These provisions of the Deeds Registries Act provide that:

- (a) no transfer shall be registered until the bond has been cancelled or the property released from the operation of the bond with the consent of the mortgage bond holder, unless the transfer or cession is made by;
 - (i) execution of a court order or pursuant to any other law; or
 - (ii) a trustee of an insolvent estate, liquidator of a company, or executor of a deceased estate in the winding up of the relevant estate.
- (b) the debtor may be substituted in respect of the bond registered on the property with a new debtor taking transfer of the property in question.

Plans for subdivision and consolidation of sections and extensions of sections and schemes

The developer can now submit a plan for subdivision or consolidation to the Surveyor-General for approval to subdivide, consolidate and to extend a section, prior to the establishment of a body corporate.²² In addition, the STA now requires that the developer must disclose to the purchaser of a property, if no body corporate has been established yet, and prior to registration in the name of the purchaser, that the developer wishes to register a sectional plan of subdivision or consolidation of a section, or to extend the boundaries to floor areas of their section (as the case may be).²³ The amendments also concern provisions relating to the extension of a scheme such as where land is purchased or acquired by the developer to extend the common property.²⁴

And there are consequences if the above is not disclosed in the deed of alienation by the developer to the purchaser (i.e. the sale agreement is then voidable at the option of the purchaser, if not disclosed).²⁵

Extension of schemes by addition of sections and exclusive use areas or by addition of exclusive use areas only

The amendments now provide for replacement documentation to be filed in the case of loss or destruction of that documentation.²⁶

If a real right of extension is not reserved by the developer as contemplated in s 25(1) of the STA, or has lapsed for any reason, then the real right to extend the scheme vests in the body corporate which shall be entitled to obtain a certificate of real right.²⁷ However, the new proviso introduced states 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, who cannot unreasonably withhold their consent without good cause in law.²⁸

²⁰ Act 47 of 1937.

²¹ Amended s 18 of the STA. See s 6 of the Amendment Act.

²² Amended sections 21 to 24 of the STA, and introduced new subsections. See sections 7 to 10 of the Amendment Act.

²³ New ss 22(2A) of the STA. See s 8(e) of the Amendment Act.

²⁴ New ss 26(8) and (9) of the STA. See s 12 of the Amendment Act.

²⁵ New ss 22(2A)(b), 23(2A)(b), 24(6AA) and 26(9)(b) of the STA. See ss 8(e), 9(c), 10(c) and 12 of the Amendment Act.

²⁶ New s 25(2A) of the STA. See s 11(a) of the Amendment Act.

²⁷ Section 25(6) of the STA.

²⁸ See the new proviso to s 25(6) of the STA. See s 11(c) of the Amendment Act.



Rights of exclusive use of parts of common property

A right to exclusive use of part of the common property registered in favour of the developer may now be cancelled, with the written consent of the mortgagee of the exclusive use area, and holder of the registered real right, and by the registration of a bilateral notarial deed of cession entered into between the holder of the exclusive use right and the body corporate authorised by special resolution of its members.²⁹

Participation quotas

The provisions relating to participation quotas of sections were only amended to the extent that it now refers to s 17 of the STSMA, and not the formerly repealed s 48 of the STA.³⁰

Sectional titles regulation board

The membership and alternate membership, and composition, of the sectional titles regulations board has changed.³¹

- (a) Now, two conveyancers can be nominated for members by the SA Legal Practice Council, and not one conveyancer, as was the case previously.³²
- (b) It is no longer possible for the Minister of Rural Development and Land Reform (“the Minister”) to nominate “two persons having special knowledge of sectional title development schemes” to the sectional titles regulations board.³³
- (c) An officer contemplated in the Deeds Registries Act can now be nominated by the Minister.³⁴
- (d) The Minister may now also terminate the appointment of alternate members, may appoint new alternate members if an alternate member dies or vacates office, and an alternate member may be reappointed if their period of office expires.³⁵
- (e) Alternate members may also be paid remuneration and travelling subsistence allowances as concurred with the Minister of Finance.³⁶

Regulations

Interestingly, the Minister is now obliged to publish Regulations in the *Gazette* at least one month before the commencement date of those new Regulations.³⁷

While these amendments are welcomed and practical adaptations, the industry would also welcome some much needed proposals and amendment to some of the tricky and less practical provisions of the STSMA, and its Regulations, and perhaps also to the Community Schemes Ombud Service Act and its Regulations.

If you have any thoughts on this, please do not hesitate to write to us.

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²⁹ New s 27(5A) of the STA. See s 13 of the Amendment Act.

³⁰ Amended ss 32 (1) and (2) of the STA. See s 14 of the Amendment Act.

³¹ Amended and introduced new provisions in s 54(2) of the STA, and introduced new ss 54(9A) of the STA. See s 15 of the Amendment Act.

³² Amended s 54(2)(c)(i) of the STA. See s 15(a) of the Amendment Act.

³³ Section 15(b) of the Amendment Act.

³⁴ New ss 54(2)(c)(vii) of the STA. See s 15 (c) of the Amendment Act. After the deletion of ss 54(2)(c)(v) of the STA though, subparagraph (vi) should become the new subparagraph (v) and the new subparagraph (vii) should be the new subparagraph (vi). This appears to be an oversight.

³⁵ New s 54(9A) of the STA. See s 15(d) of the Amendment Act.

³⁶ New s 54(9A) of the STA. See s 15(d) of the Amendment Act.

³⁷ New s 55 (2) of the STA. See s 16 of the Amendment Act.