

# Sectional Titles Act, 95 of 1986

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## Preamble

Date of Commencement: 1 June 1988

## ACT

To provide for the division of buildings into sections and common property and for the acquisition of separate ownership in sections coupled with joint ownership in common property; the control of certain incidents attaching to separate ownership in sections and joint ownership in common property; the transfer of ownership of sections and the registration of sectional mortgage bonds over, and real rights in, sections; the conferring and registration of rights in, and the disposal of, common property; the establishment of bodies corporate to control common property and for that purpose to apply rules; and the establishment of a sectional titles regulation board; and to provide for incidental matters.

## Definitions, Section 1

### 1 Definitions

(1) In this Act and the rules, unless the context otherwise indicates-

#### **architect**

'architect' means a person registered as an architect in terms of section 19 of the Architects' Act, 1970 (Act 35 of 1970);

#### **body corporate**

'body corporate', in relation to a building and the land on which such building is situated, means the body corporate of that building referred to in section 36 (1);

#### **building**

'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 Surveyor-General**

'Chief Surveyor-General' means the Chief Surveyor-General appointed in terms of section 2 of the Land Survey Act, 1997 (Act No. 8 of 1997);

#### **common property**

'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 26;

#### **conveyancer**

'conveyancer' means a conveyancer as defined in the Deeds Registries Act;

## **Council**

'Council' means, in relation to architects, the South African Council for Architects established in terms of the Architects' Act, 1970 (Act 35 of 1970), and, in relation to land surveyors, the South African Council for Professional Land Surveyors and Technical Surveyors established in terms of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act 40 of 1984);

## **court**

'Court' means the provincial or local division of the High Court having jurisdiction and, for the purposes of section 44, a magistrates' court having jurisdiction;

## **Deeds Registries Act**

'Deeds Registries Act' means the Deeds Registries Act, 1937 (Act 47 of 1937), and any regulation made thereunder;

## **deeds registry**

'deeds registry' means a deeds registry as defined in the Deeds Registries Act;

## **developer**

'developer' means a person who is the registered owner of land, situated within the area of jurisdiction of a local authority, on which is situated or to be erected a building or buildings which he has divided or proposes to divide into two or more sections in terms of a scheme, or the holder of the right referred to in section 25 to extend a scheme, or his successor in title, and includes-

(a) for the purposes of sections 10 and 15B (3) (c), the agent of any such person or his or her successor-in-title, or any other person acting on behalf of any of them; and

(b) for the purposes of rebuilding any building that is deemed to have been destroyed, as contemplated in section 48, the body corporate concerned;

## **development scheme**

'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 authority is or are, for the purposes of selling, letting or otherwise dealing therewith, to be divided into two or more sections, or as contemplated in the proviso to section 2 (a);

## **draft sectional plan**

'draft sectional plan' means a sectional plan prepared in accordance with the provisions of section 5, but not yet approved by the Surveyor-General; and 'draft sectional plan of subdivision', 'draft sectional plan of consolidation' and 'draft sectional plan of extension' have a corresponding meaning;

## **exclusive use area**

'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**

'land' means the land comprised in a scheme as shown on a sectional plan;

### **land surveyor**

'land surveyor' means a person registered as a professional land surveyor in the register prescribed in section 7 (4) (a) of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act 40 of 1984);

### **lease**

'lease' for the purposes of section 17(1) means a lease which-

(a) was entered into for a period of not less than ten 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 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;

### **local authority**

'local authority' means a municipality contemplated in section 151 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), exercising jurisdiction in the area in which the land is situated;

### **Minister**

'Minister' means the Minister of Land Affairs;

### **notary public**

'notary public' means a notary public as defined in the Deeds Registries Act;

### **operative town planning scheme**

'operative town planning scheme' means a town planning scheme map and accompanying town planning scheme clauses prepared in terms of any law;

### **owner**

'owner', means, in relation to-

(a) immovable property, subject to paragraph (b), the person registered as owner or holder thereof and includes the trustee in an insolvent estate, a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act No. 28 of 1966), the liquidator or a company or close corporation which is an owner, and the executor of an owner who has died, or the representative, recognised by law, of an owner who is a minor or of unsound mind or is otherwise under a disability, if such trustee, liquidator, executor or representative is acting within the scope of his or her authority;

(b) immovable property and real rights in immovable property-

(i) registered in the names of both spouses in a marriage in community of property, either one or both of the spouses;

(ii) registered in the name of only one spouse and forming part of the joint estate of both spouses in a marriage in community of property, either one or both of the spouses,

and 'owned' and 'ownership' have a corresponding meaning;

**participation quota**

'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) in respect of that section for the purposes referred to in section 32 (3), and shown on a sectional plan in accordance with the provisions of section 5 (3) (g);

**prescribed**

'prescribed' means prescribed by this Act or by regulation;

**quota**

'quota', in relation to a section or the owner of a section, means the participation quota of that section;

**registrable**

'registrable' means capable of being registered in terms of the Deeds Registries Act;

**registrar**

'registrar' means a registrar of deeds as defined in the Deeds Registries Act;

**regulation**

'regulation' means a regulation made and in force under this Act;

**rules**

'rules', in relation to a building or buildings which has or have been divided into a section or sections and common property, means the management rules and conduct rules referred to in section 35 (2) for the control, management, administration, use and enjoyment of the sections and common property;

**scheme**

'scheme' means a development scheme;

**section**

'section' means a section shown as such on a sectional plan;

**sectional mortgage bond**

'sectional mortgage bond' means a mortgage bond hypothecating-

(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; or

(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;

### **sectional plan**

'sectional plan', in relation to a scheme, means a plan approved by the Surveyor-General-

(a) which is described as a sectional plan;

(b) which shows the building or buildings and the land comprised in the scheme, as divided into two or more sections and common property; and

(c) which complies with the requirements of section 5, and includes a sectional plan of subdivision, consolidation or extension as provided for in this Act;

### **sectional title deed**

'sectional title deed' means a certificate of registered sectional title or a deed of transfer;

### **sectional title register**

'sectional title register' means the register referred to in section 12 (1) (b), and includes any sectional plan registered under this Act, and a deeds registry's duplicate of any certificate of registered sectional title deemed to be incorporated in such register;

### **special resolution**

'special resolution' means, subject to subsection (2), a resolution passed by a majority of not less than three-fourths of the votes (reckoned in value) and not less than three-fourths of the votes (reckoned in number) of members of a body corporate who are present or represented by proxy or by a representative recognized by law at a general meeting of which at least 30 days' written notice, specifying the proposed resolution, has been given, or a resolution agreed to in writing by at least 75% of all the members of a body corporate (reckoned in number) and at least 75% of all such members (reckoned in value) personally or by proxy or by a representative of any such member recognized by law: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the members of the body corporate;

### **statutory plan**

'statutory plan' means a land development objective prepared in terms of Chapter IV of the Development Facilitation Act, 1995 (Act No. 67 of 1995), an integrated development plan prepared in terms of section 10D (4) (b) or section 2 of Schedule 2A to the Local Government Transition Act, 1993 (Act No. 209 of 1993), or any other integrated plan, layout plan or package of plans in force in the area and which has or have been approved by a competent authority in terms of any law.

### **Surveyor-General**

'Surveyor-General' means a Surveyor-General appointed in terms of section 5 of the Land Survey Act, 1997 (Act No. 8 of 1997);

### **this Act**

'this Act' includes the regulations;

### **unanimous resolution**

'unanimous resolution' means, subject to subsection (3), a resolution-

(a) passed unanimously by all the members of a body corporate who are present or represented by proxy or by a representative recognized by law at a general meeting of the body corporate of which at least 30 days' written notice, specifying the proposed unanimous resolution, has been given, and at which meeting at least 80% of all the members of a body corporate (reckoned in number) and at least 80% of all the members (reckoned in value) are present or so represented: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the members of the body corporate; or

(b) agreed to in writing by all the members of the body personally or by proxy or by a representative of any such member recognized by law;

#### **undivided share in common property**

'undivided share in common property', in relation to an owner, means an undivided share of that owner in common property as determined in accordance with the quota of the section of which he is the owner and, in relation to a section, means an undivided share in common property apportioned to that section in accordance with the quota of the section;

#### **unit**

'unit' means a section together with its undivided share in common property apportioned to that section in accordance with the quota of the section.

#### **Notice procedure for Special and Unanimous Resolutions**

(2) For the purposes of the definition of 'special resolution' in subsection (1), a notice contemplated in that definition shall be deemed adequate if-

(a) it has been delivered by hand to a member not less than 30 days prior to the relevant general meeting; or

(b) it was despatched by prepaid registered post not less than 30 days prior to such meeting to the address of a member's unit in the relevant scheme, or to such other address as a member may have indicated in writing for the purposes of such notice.

#### **Qualifications to definition of a Unanimous Resolution**

(3) For the purposes of the definition of 'unanimous resolution' in subsection (1)-

(a) a notice contemplated in that definition shall be deemed adequate if it has been delivered to, or despatched to the address of a member, as contemplated in paragraphs (a) and (b), respectively, of subsection (2);

(b) a member present or represented at a meeting contemplated in that definition, who himself, or through a proxy or representative, as the case may be, abstains from voting on the resolution in question, shall be regarded as having voted in favour of the resolution; and

(c) where the resolution in question adversely affects the proprietary rights or powers of any member as owner, the resolution shall not be regarded as having been passed unless such member consents in writing thereto.

#### **Body Corporate right to approach court when unable to obtain a Unanimous Resolution**

(3A) If a body corporate is unable to obtain a unanimous resolution, it may, subject to the provisions of subsection (3) (c), approach the court for relief.

### **Qualification to definition of a local authority**

(4) The Minister may by notice in the Gazette declare any institution or body established by or under the provisions of any other law and which exercises powers and performs duties which, in the opinion of the Minister, correspond with the powers and duties ordinarily exercised or performed by an institution or body referred to in the definition of 'local authority', to be a local authority for the purposes of this Act.

## **PART I - Introductory Provisions, Sections 2-3**

### **2 Ownership and real rights in or over parts of buildings, and registration of title to ownership or other real rights in or over such parts**

Notwithstanding anything to the contrary in any law or the common law contained-

(a) a building or buildings comprised in a scheme and the land on which such building or buildings is or are situated, may be divided into sections and common property in accordance with the provisions of this Act: Provided that where a scheme comprises more than one building, any such building may, subject to section 5 (4), be so divided into a single section and common property;

(b) separate ownership in such sections or an undivided share therein may be acquired in accordance with the provisions of this Act;

(c) the owners of such sections shall own such common property in undivided shares in accordance with the provisions of this Act;

(d) any real right may be acquired in or over any such section or an undivided share therein or common property in accordance with the provisions of this Act; and

(e) a registrar may, in accordance with the provisions of this Act, register in a deeds registry a title deed whereby ownership in, or any lease of, or any other real right in or over, any such section or an undivided share therein or common property is acquired.

### **3 Application of Deeds Registries Act, reproduction of documents, and units deemed to be land**

(1) Save as is otherwise provided in this Act or any other law or the context otherwise indicates, the provisions of the Deeds Registries Act shall, in so far as such provisions can be so applied, apply *mutatis mutandis* in relation to all documents registered or filed or intended to be registered or filed in a deeds registry in terms of this Act.

(2) The registrar concerned may reproduce or cause to be reproduced any document referred to in subsection (1) by means of microfilming or any other process which in his opinion accurately and durably reproduces any such document, and may preserve or cause to be preserved such reproduction in lieu of such document.

(3) A reproduction referred to in subsection (2) shall, for the purposes of a deeds registry, be deemed to be the original document, and a copy obtained by means of such reproduction and which has been certified by the registrar as a true copy of such reproduction, shall be admissible in evidence and shall have all the effects of the original document concerned.

(4) A unit shall be deemed to be land.

## PART II - Development Schemes, Sectional Plans and Sectional Title Registers, Sections 4-14

### 4 Approval of development schemes

(1) A developer who intends to establish a scheme shall cause a draft sectional plan to be submitted to the Surveyor-General in terms of section 7;

(2) A scheme may relate to more than one building situated, to be erected or being in the process of erection on the same piece of land, or on more than one piece of land, whether contiguous or non-contiguous: Provided that the building or buildings to be divided into sections shall be situated only on one such piece of land or on two or more such contiguous pieces of land registered in the name of the same person and which have been notarially tied.

(3) If a part of a building which is comprised in a proposed scheme and which after a division of the building will constitute a unit therein, is wholly or partially let for residential purposes, a developer shall not cause a draft sectional plan to be submitted as contemplated in subsection (1), unless-

(a) every lessee of a part which is so let for residential purposes-

(i) has been notified in writing by the developer, by letter delivered either personally or despatched by registered post, of a date, at least 14 days after the delivery or despatch of such letter, as the case may be, of a meeting of such lessees to be held in the building in question, or in another building within a reasonable distance from the first-mentioned building, within the area of jurisdiction of the local authority concerned, at which the developer or his or her agent intends to be available to provide the lessees with-

(aa) such particulars of the relevant scheme as they may reasonably require from him or her; and

(bb) the information regarding their rights as set out in section 10 of this Act; and

(ii) has at the same time, with the notice referred to in subparagraph (i), been provided by the developer with a certificate containing the prescribed particulars in respect of the relevant building, and parts thereof or units therein, and of the relevant scheme; and

(b) a meeting contemplated in paragraph (a) (i) has been held and the developer or his or her agent has been available thereat to provide the particulars contemplated in the said paragraph, and has answered all reasonable questions put to the developer or agent by the lessees present: Provided that a developer need not comply with this subsection if all such lessees have stated in writing that they are aware of their rights which shall also be set out in such statement and that they do not wish to purchase the proposed units which they occupy and a conveyancer has certified in writing that such statements have been received in respect of all the units in question; Provided further that a share block company applying for the approval of a development scheme need not comply with the requirements of this subsection if that share block company has, within a period of two years before such application, already complied with the requirements of section 11A of the Share Blocks Control Act, 1980 (Act 59 of 1980).

(3A) For the purposes of subsection (3) 'lessee' means a lessee who is a party to a lease entered into with the developer or any of his or her predecessors in title.

(5) An architect or a land surveyor acting on behalf of a developer shall inspect the property, and, if-

(a) in regard to any matter other than the proposed use, the building to which the scheme relates does not comply with any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law at the date of approval of the building plans;

(b) in regard to matters other than buildings, there is non-compliance with any applicable condition of any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law;

(c) the building to which the scheme relates, has not been erected in accordance with any applicable building regulations or building by-laws in operation at the date of erection:

apply to the local authority concerned for the condonation of such non-compliance and the local authority may condone such non-compliance by issuing a certificate to the applicant; Provided that no certificate shall be issued for condonation of non-compliance with a national building regulation regarding the strength and stability of any building unless a deviation has been permitted or an exemption has been granted in terms of section 18 (2) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977).

## **5 Manner of preparing draft sectional plans**

(1) A draft sectional plan shall be prepared and signed by a land surveyor or an architect in accordance with the provisions of this Act, and the numerical and other data recorded thereon shall be within the prescribed limits of accuracy: Provided that the part of a draft sectional plan referred to in subsection (3) (a), and any delineation of an exclusive use area of which the boundaries are not represented by physical features of a permanent nature, shall be prepared by a land surveyor and signed by him.

(2) A draft sectional plan which has been prepared by a land surveyor or architect who has been required by the Chief Surveyor-General to sit for a prescribed examination in connection with the preparation of draft sectional plans, and which has been submitted to the Surveyor-General as required by section 7, shall not be accepted by the Surveyor-General unless the land surveyor or architect concerned has passed such examination.

(3) A draft sectional plan shall-

(a) delineate the boundaries of the land in accordance with the relevant diagram or general plan and the location of the relevant building or buildings in relation thereto: Provided that any error in such diagram or general plan in regard to the boundaries of the land shall be rectified in terms of the Land Survey Act, 1997 (Act 8 of 1997), prior to the preparation of the sectional plan: Provided further that if the Surveyor-General does not require rectification of such diagram or general plan, the land surveyor shall record his own dimensions on that part of the draft sectional plan referred to in this paragraph;

(b) indicate the name of the scheme;

(c) include a plan to scale of each storey in the building or buildings shown thereon;

(d) subject to subsections (4) and (5), define the boundaries of each section in the building or buildings, and distinguish each section by a number;

(e) show the floor area to the median line of the boundary walls of each section, correct to the nearest square metre, and the total of the floor areas of all the sections;

(f) delineate in the prescribed manner any exclusive use area;

(g) have endorsed upon or annexed to it a schedule specifying the quota of each section in accordance with section 32 (1) or (2) and the total of the quotas of all sections shown thereon; and

(h) be drawn in such manner and contain such other particulars as may be prescribed.

(4) The common boundary between any section and another section or common property shall be the median line of the dividing floor, wall or ceiling, as the case may be.

(5) For the purposes of subsection (3) (d) the boundaries of a section shall be defined-

(a) by reference to the floors, walls and ceilings thereof, or as may be prescribed; and

(b) in respect of a part of a section (such as a stoep, porch, balcony, atrium or projection) of which the boundaries cannot be defined in terms of paragraph (a) but being appurtenant to a part of that section which can be defined in terms of that paragraph, in the manner prescribed.

(6) A section may consist of non-contiguous parts of a building or buildings.

## **6 Duties of land surveyors and architects and non-liability of State**

(1) A land surveyor or architect preparing a draft sectional plan shall prepare the draft sectional plan from an actual measurement undertaken by him or under his direction in such manner as well ensure accurate results, and in accordance with this Act.

(2) Neither the State nor any officer or employee in the service of the State shall be liable for any defective measurement or work appertaining thereto performed by any land surveyor or architect, notwithstanding the fact that the sectional plan relating to such measurement or work has been approved by the Surveyor-General.

## **7 Approval of draft sectional plans by Surveyor-General**

(1) When a draft sectional plan is submitted in terms of section 4, the land surveyor or architect concerned shall on behalf of the developer submit to the Surveyor-General, for his or her approval, the prescribed number of copies of the draft sectional plan.

(2) The submission of the draft sectional plan to the Surveyor-General shall be accompanied by-

(a) a certificate issued by an architect or a land surveyor stating that the proposed division into sections and common property is not contrary to any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law that may affect the development;

(b) where applicable, a certificate issued by a local authority in terms of section 4(5);

(c) .....

(d) .....

(e) if section 4(3) applies to the scheme-

(i) an affidavit by the developer stating that that section has been complied with;

(ii) a copy of the notice referred to in section 4(3)(a)(i) and the certificate referred to in section 4(3)(a)(ii); and

(iii) where applicable, a certificate from a conveyancer in terms of the proviso to section 4(3);

(f) if section 4(3) does not apply to the scheme, an affidavit by the developer to that effect.

(2A) The Surveyor-General shall not be responsible for investigating the correctness or accuracy of any document submitted to him or her in terms of subsection (2) or section 21, 24 or 25.

(3) The manner of submission of the draft sectional plan and of all other documents to the Surveyor-General, shall be as prescribed.

(4) A Surveyor-General shall not approve a draft sectional plan, unless the applicable documents have been submitted to him or her in terms of subsection (2) and such plan has been prepared in accordance with this Act.

## **8 Improper conduct of land surveyors and architects**

A land surveyor or architect shall for the purposes of the Professional Land Surveyors' and Technical Surveyors' Act, 1984 (Act 40 of 1984), and the Architects' Act, 1970 (Act 35 of 1970), as the case may be, be guilty of improper conduct, if he-

(a) signs, except as provided in such circumstances as may be prescribed, a draft sectional plan, a sectional plan or any other plan referred to in this Act, required in connection with the registration thereof, and in respect of which he or she has not carried out or supervised the measurements, and has not carefully examined and satisfied himself or herself of the correctness of the entries in any records and of the calculations in connection therewith which may have been made by any other person;

(b) signs any defective plan knowing it to be defective;

(c) repeatedly performs defective sectional title surveys in respect of which adequate checks have not been applied;

(d) makes an entry in a field record, a copy of a field record or other document which purports to have been derived from actual measurement in the field, when it was in fact not so derived;

(e) supplies erroneous information to the Surveyor-General in connection with any scheme, knowing it to be erroneous;

(f) carries out his duties in terms of this Act in a manner which the Chief Surveyor-General finds after investigation to be incompetent or unsatisfactory; or

(g) contravenes a provision of this Act or fails to comply therewith,

and in the case of land surveyors, the Director General: Land Affairs or in the case of architects, the Director-General: Public Works, or any other official authorized thereto by the Director-General concerned, may refer a complaint in this regard to the relevant Council for investigation and the taking of such steps as the Council may deem fit.

## **9 Prohibition of certain acts before opening of sectional title register .....**

## **10 Sale by developers of certain units occupied by certain lessees**

(1) A developer shall, subject to subsection (5), not offer for sale or sell any unit in that building which is occupied by a lessee who was entitled to be notified in terms of section 4 (3) (a) (i), to any person other than such lessee, unless the developer has, by letter delivered either

personally or by registered post, offered the unit for sale to the lessee and the lessee has refused the offer within a period of 90 days.

(2) If a lessee refuses an offer referred to in subsection (1) within the applicable period mentioned therein, or has at the expiration of such applicable period not accepted the offer, the developer shall not, within a period of 180 days from the date on which the lessee has refused the offer, or on which such applicable period has expired, as the case may be, offer for sale or sell the relevant unit to any person other than the lessee concerned at a price lower than the price at which it was offered for sale in terms of subsection (1) to the lessee, unless the developer has again offered the unit at that lower price for sale to the lessee and he has refused the offer within a period of 60 days from the date thereof, or has on the expiration of that period not accepted the offer.

(3) A developer-

(a) shall as from the date on which a lessee has been notified in terms of section 4 (3) (a) (i) by the developer of the meeting referred to in that section-

(i) subject to subparagraph (ii), as long as the lessee continues to occupy the relevant unit and to comply with the conditions of the relevant lease; or

(ii) after the unit has been offered for sale in accordance with subsection (1) to the lessee and the lessee has refused the offer or the relevant period referred to in subsection (1) has expired, as the case may be, until the date of expiry of the applicable period of 180 days referred to in subsection (2) or, where applicable, the period of 60 days referred to in the last-mentioned subsection, whichever date occurs last,

not require the lessee concerned to vacate the unit unless the lessee has been guilty of non-payment of rent, or has inflicted material damage to the unit, or has been guilty of conduct which is a nuisance to occupiers of other units in the building concerned; and

(b) shall in any case contemplated in paragraph (a) (ii), until the date of expiry of the applicable period of 180 days mentioned therein or, where applicable, the period of 60 days mentioned in that paragraph, whichever date occurs last, not require or permit the lessee to pay an amount of rent higher than the amount which was payable by the lessee on the date contemplated in subsection (1) on which the lessee refused the offer referred to in that subsection, or on which the relevant period referred to in that subsection expired, as the case may be:

Provided that the foregoing provisions of this subsection shall not derogate from any applicable provision of the Rent Control Act, 1976 (Act 80 of 1976).

(4) If any unit referred to in subsection (1) is controlled premises as contemplated therein and the lessee is 65 years old or older and his monthly income does not exceed the maximum amount of income from time to time mentioned in any proclamation issued under section 52 (1) of the Rent Control Act, 1976 (Act 80 of 1976), for lessees of premises in respect of which rent control is in terms of that section established by such proclamation, such unit may as long as such lessee continues to occupy the unit and his income does not exceed such maximum amount, only be offered for sale or sold to that lessee or in the case of any other person only be offered for sale or sold to that person subject to the provisions of subsection (1) and the right of that lessee to continue to occupy that unit for as long as his income does not exceed such maximum amount.

(5) (a) Any contract of purchase and sale concluded contrary to the provisions of subsection (1), (2) or (4) shall be void,

(b) A developer or any person who has performed partially or fully in terms of a contract which is void by virtue of this subsection shall have a claim against the other party to the extent of such performance.

(c) A developer may in addition claim from any such person-

(i) reasonable compensation for the use which the person may have had of the building and land in question or any part thereof; and

(ii) compensation for any damage caused to that building or land or any part thereof by the person, or any other person for whose acts or omissions such person is delictually liable;

(d) A person to whom an option has been granted or a purchaser may in addition claim from the developer-

(i) reasonable compensation for any expenses incurred by him or her with or without the authority of the developer for the preservation of the building or land, or part thereof, or in respect of any improvements which enhance the market value thereof and which were effected by him or her with the express or implied consent of the developer, and

(ii) compensation for any damage or loss suffered by him or her which he or she would otherwise have been entitled to claim from the developer on the ground of breach of contract had the contract not been void and had the developer failed to effect any transfer in accordance with the contract.

(6) A developer who-

(a) commits an act which, were it not for the provisions of subsection (5), would have constituted the sale of a unit contrary to any provision of subsection (1), (2) or (4); or

(b) contravenes any provision of subsection (3),

shall be guilty of an offence, and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment.

## **11 Applications for opening of sectional title registers**

(1) A developer may, after approval of a draft sectional plan by the Surveyor-General, apply to the registrar in charge of the deeds registry in which the land comprised in the scheme is registered, for the opening of a sectional title register in respect of the land and building or buildings in question, and for the registration of the sectional plan.

(2) When making application for the opening of a sectional title register and the registration of a sectional plan, a developer may in the schedule referred to in subsection (3) (b) impose registrable conditions.

(3) An application in terms of subsection (1) shall be accompanied by-

(a) two copies of the sectional plan;

(b) a schedule certified by a conveyancer setting out the servitudes and conditions of title burdening or benefiting the land and the other registrable conditions imposed by the developer in terms of subsection (2), as well as such other particulars as may be prescribed;

(c) the title deed of the land in question;

(d) any mortgage bond to which the land may be subject, together with the consent of the mortgagee to the opening of the sectional title register and to the endorsement of such bond to the effect that it attaches to-

(i) the sections and common property shown on the sectional plan;

(ii) the certificate of real right in respect of a right reserved by him in terms of section 25 (1); and

(iii) the certificate of real right in respect of a right of exclusive use as contemplated in section 27 (1);

Provided that section 40 (5) of the Deeds Registries Act shall apply with the necessary changes to any bond which is registered against one or more pieces of land shown on the sectional plan;

(e) a certificate by a conveyancer stating that the rules prescribed in terms of section 35 (2) are applicable, and containing the other rules (if any) substituted by the developer for those rules as contemplated in that section;

(f) certificates of registered sectional title in the prescribed form in respect of each section and its undivided share in the common property, made out in favour of the developer;

(g) such other documents and particulars as may be prescribed.

## **12 Registration of sectional plans and opening of sectional title registers**

(1) When the requirements of this Act and any other relevant law have been complied with, the registrar shall-

(a) register the sectional plan and allot a distinctive number to it;

(b) open a sectional title register in respect of the land and building or buildings thereon in the manner prescribed;

(c) keep by means of a computer or in any other manner or by means of a computer and in any other manner, such registers containing such particulars as are necessary for the purpose of carrying out the provisions of this Act or any other law and of maintaining an efficient system of registration calculated to afford security of title and ready reference to any registered deed;

(d) simultaneously with the opening of the sectional title register, issue to the developer in the prescribed form a certificate of registered sectional title in respect of each section and its undivided share in the common property, subject to any mortgage bond registered against the title deed of the land;

(e) issue to the developer, in the prescribed form, a certificate of real right in respect of any reservation made by him in terms of section 25 (1), subject to any mortgage bond registered against the title deed of the land;

(f) issue to the developer, in the prescribed form, a certificate of real right in respect of a right of exclusive use as contemplated in section 27 (1), subject to any mortgage bond registered against the title deed of the land; and

(g) make the necessary endorsements on the title deed, any mortgage bond or other document, or in his records.

(2) The registrar shall notify the Surveyor-General and the local authority of the registration of the sectional plan and furnish the local authority with a copy thereof.

### **13 Effect of registration of sectional plans**

(1) Upon the registration of a sectional plan the building or buildings and the land shown thereon shall, subject to the provisions of this Act, be deemed to be divided into sections and common property as shown on the sectional plan.

(2) A sectional plan, together with the schedule of servitudes and conditions referred to in section 11 (3) (b), shall upon the registration of such plan be deemed to be part of the sectional title deed, and an owner's title to his or her section and his or her undivided share in the common property shall be subject to or shall be benefited by the servitudes, other real rights or conditions (if any) which burden or benefit the land shown on the sectional plan, and shall also be subject to any registrable condition imposed by a developer in terms of section 11 (2).

(3) Upon the registration of a sectional plan, any mortgage bond, lease, other real right or condition then registered against or affecting the land shown on the sectional plan, shall be deemed to be converted into a bond, lease, other real right or condition registered against or affecting the sections and common property shown on the sectional plan.

### **14 Amendment and cancellation of sectional plans**

(1) The Surveyor-General may require a land surveyor or architect who has prepared a registered sectional plan to alter or amend, or the developer or the body corporate to cause to be altered or amended, any registered sectional plan found to be incorrect, or to substitute another sectional plan for the incorrect sectional plan.

(2) The body corporate may recover the costs incurred as a result of an alteration or amendment to a sectional plan, or the substitution thereof, in terms of subsection (1), from the developer, land surveyor or architect concerned.

(3) If in the opinion of the Surveyor-General any person could be prejudiced by an incorrect sectional plan, he shall advise the registrar as to which sections are affected by any such defect in question, and thereafter no transfer of such section and its undivided share in the common property or the registration of a real right therein 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 is to be registered, consents in writing to the transfer or other registration being effected prior to the rectification of the defect.

(4) The formalities for the alteration, amendment or substitution of a sectional plan in terms of subsection (1), shall be as prescribed.

(5) The Surveyor-General shall advise the registrar and the local authority of any alteration, amendment or substitution of a sectional plan in terms of subsection (1) which affects the description or extent of any section, and thereupon the registrar shall make the necessary endorsements reflecting any change of description or extent upon the deeds registry copy of the sectional title deed and upon any other registered document affected by such change, and shall likewise 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.

(6) The registrar may on application by a developer, which application shall be accompanied by a certificate by a conveyancer in which he certifies-

(a) that all the units of a scheme are registered in the developer's name;

(b) that, if applicable, the developer is the holder of a right referred to in section 25 or 27; and

(c) that no unit or right referred to in section 25 or 27 is encumbered by a sectional mortgage bond or a lease or in any other way,

close the sectional title register, and notify the Surveyor-General and the local authority that the sectional title register has been closed, whereupon the Surveyor-General shall cancel the original sectional plan and the deeds registry copy thereof.

(7) Whenever a sectional title register has been closed under subsection (6), the registrar shall make all such alterations, amendments, endorsements and entries on the developer's sectional title deeds and in the registers and records kept by him, as may be necessary to record such cancellation and the reversion of the land in question to the applicable land register, and shall in the manner prescribed cause the developer's title deed referred to in section 11 (3) (c) to be revived, or shall issue to the developer a certificate of registered title in the form prescribed under the Deeds Registries Act for the said land, subject or entitled to such servitudes, other real rights and conditions (if any) as are still applicable to or in respect of such land.

(8) A registered sectional plan shall, subject to the provisions of subsection (6) and section 17 (6), only be cancelled by an order of the Court, and the registrar shall give effect to any such cancellation by making the necessary endorsements and entries in his records, and shall notify the Surveyor-General, who shall cancel the original sectional plan and the deeds office copy thereof.

(9) The registrar shall notify the local authority of the cancellation of the registration of a sectional plan.

## **PART III - Registration and Common Property, Sections 15-19**

### **15 Preparation of deeds by conveyancer**

(1) Subject to the provisions of this Act or any other law, the registrar shall not attest, execute or register any deed of transfer, sectional mortgage bond, certificate of title or certificate of registration of any kind whatsoever, unless it has been prepared by a conveyancer.

### **15A Proof of certain facts in connection with deeds and documents by means of certain certificates**

(1) A conveyancer or any other person who is authorised thereto by or under any law, who prepares a deed or other document for the purposes of registration or filing in a deeds registry, and who signs a prescribed certificate on such deed or document, accepts by virtue of such signing the responsibility, to the extent prescribed by regulation for the purposes of this section, for the accuracy of the facts mentioned in such deed or document or which are relevant in connection with the registration or filing thereof, and which are prescribed by regulation.

(2) ...

(3) A registrar shall accept, during the course of his examination of a deed or other document in accordance with the provisions of this Act, that the facts referred to in subsection (1) in connection with the registration or filing of a deed or other document in respect of which a certificate referred to in subsection (1) or (2) has been signed, have for the purposes of such examination been conclusively proved: Provided that the foregoing provisions of this subsection shall not derogate from the obligation of a registrar to give effect to any order of court or any other notification recorded in the deeds registry in terms of this Act or a provision in any other law contained and which affects the registration or filing of such deed or other document.

### **15B Registration of transfer of ownership and other rights**

(1) When a sectional title register has been opened and the sectional plan concerned has been registered-

(a) ownership in any unit or land, or any undivided share in such unit or land, held under a sectional title deed shall, subject to the provisions of this Act or any other law, be transferred by means of a deed of transfer signed or attested by the registrar: Provided that where the State acquires all the units or land held under any sectional title deed, whether by way of expropriation or otherwise, or where a local authority by virtue of the provisions in any other law contained, acquires all the units or land held under a sectional title deed by any other such authority, the registrar shall make such alterations and entries in his registers and such endorsements on any such title deed as may be necessary to register transfer to the State or such authority, as the case may be, of the property so acquired free of charge, and that the provisions of section 31 (4) (a) of the Deeds Registries Act, 1937 (Act 47 of 1937), shall apply *mutatis mutandis* in respect of such a transfer by endorsement;

(b) the registrar shall register any notarial lease of a unit or an undivided share in a unit and any notarial cancellation or modification of such a lease by means of an endorsement made by him on the sectional title deed, and he shall register any notarial sub-lease and any notarial cession of such a lease or sub-lease and any notarial cancellation or modification of such a sub-lease by means of an endorsement made by him on the lease in question: Provided that if any such lease or sub-lease has lapsed by effluxion of time, the registrar shall cancel the registration on production of proof that the lease or sub-lease has so lapsed;

(c) the registrar shall register any sectional mortgage bond by which a unit or an undivided share in a unit or land held under a sectional title deed, or a registered lease or sub-lease of a unit or an undivided share in a unit or such land, or any registered real right in or over any such unit or undivided share in a unit or land, is hypothecated, and any cession, cancellation or modification of such bond, by means of an endorsement made by him on the sectional title deed or on the registered lease or sub-lease or bond or other deed; and

(d) the registrar shall register any other real right (which is embodied in a notarial deed) in or over a unit or an undivided share in a unit or land held under a sectional title deed, and any notarial cancellation or modification of such a real right, by means of an endorsement made by him on the sectional title deed: Provided that in the case of any registered real right which has lapsed for any reason, the registrar shall cancel the registration on production of proof that the real right has lapsed.

(2) Notwithstanding anything to the contrary in any other law contained, it shall not be necessary to annex a diagram to any sectional title deed under which a unit or an undivided share in a unit is held, if reference is made in such deed to the registered sectional plan.

(3) The registrar shall not register a transfer of a unit or of an undivided share therein, unless there is produced to him-

(a) a conveyancer's certificate confirming that as at date of registration-

(i) (aa) if a body corporate is deemed to be established in terms of section 36 (1), that body corporate has certified that all moneys due to the body corporate by the transferor in respect of the said unit have been paid, or that provision has been made to the satisfaction of the body corporate for the payment thereof; or

(bb) if a body corporate is not deemed to be established, no moneys are payable;

(ii) no real right of extension of a scheme as contemplated in section 25 is registered in favour of a developer or the body corporate or, if such right is so registered, that it is disclosed in the deed of alienation to the transferee as contemplated in section 25 (14) or, if it is not so disclosed, that the transferee after the conclusion of the deed of alienation has in writing exercised his or her option in terms of section 25 (15) and that he or she has elected not to annul the alienation on the ground of the said defect;

(b) a clearance certificate from the local authority that all rates and moneys due to such local authority under any law in respect of the land and buildings of the scheme have been paid if-

(i) provision is made by law for the separate rating of units; or

(ii) the transfer will result in the establishment of a body corporate in terms of section 36;

(c) if the transferor is a developer, an affidavit by the developer in which it is declared whether the relevant unit is a unit to which the provisions of section 10 apply or not and, if those provisions so apply, that the transfer is effected in terms of a contract which is not contrary to any provision of that section.

(4) A unit shall be capable of being held by two or more persons in joint ownership.

(5) (a) Any person who is -

(i) the joint owner of a unit or

(ii) the joint holder of a right to an exclusive use area or

(iii) the joint holder of a right referred to in section 25(1),

held by such person and one or more other persons under one sectional title deed, certificate of real right or notarial deed of cession, as the case may be, may, upon application to the registrar in the prescribed manner, obtain a certificate of registered sectional title or a certificate of real right in the prescribed form in respect of his or her undivided share in such unit, right to an exclusive use area or right referred to in section 25(1).

(b) No transfer or cession of a fraction of an undivided share -

(i) in a unit or

(ii) right to an exclusive use area; or

(iii) right referred to in section 25(1),

and no hypothecation or lease of the whole or fraction of such undivided share shall be registered in a deeds registry unless a certificate of registered sectional title or certificate of real right in respect of such undivided share is produced to the registrar..

## **16 Ownership of common property**

- (1) The common property shall be owned by owners of sections jointly in undivided shares proportionate to the quotas of their respective sections as specified on the relevant sectional plan.
- (2) A sectional title deed in respect of a section shall, in a separate paragraph, describe the undivided share in the common property of the owner of the section as an undivided share in the common property apportioned to the section in accordance with the quota of the section.
- (3) A section and its undivided share in the common property shall together be deemed to be one unit, and no section shall be disposed of or be otherwise dealt with apart from its appurtenant undivided share in the common property nor, subject to section 17, shall an undivided share in the common property be disposed of or be otherwise dealt with apart from the section to which it is appurtenant.
- (4) Any insurance of a section shall be deemed also to insure the undivided share in the common property of the owner of the section, even if no express reference is made to such share.

## **17 Alienation and letting of common property**

- (1) The owners and holders of a right of extension contemplated in section 25 may by unanimous resolution direct the body corporate on their behalf to alienate common property or any part thereof, or to let common property or any part thereof under a lease, and thereupon the body corporate shall, notwithstanding any provisions of section 20 of the Deeds Registries Act, but subject to compliance with any law relating to the subdivision of land or to the letting of a part of land, as the case may be, have power to deal with such common property or such part thereof in accordance with the direction, and to execute any deed required for the purpose: Provided that if the whole of the right referred to in section 25 or section 60 (1) (b) is affected by the alienation of common property, such right shall be cancelled by the registrar with the consent of the holder thereof on submission of the title to the right.
- (2) Any transaction in pursuance of a resolution referred to in subsection (1) shall be accompanied by a copy of the relevant resolution, certified by two trustees of the body corporate: Provided that where the transaction in question requires to be notarially executed, such resolution so certified shall be produced to the notary public concerned and be retained by him in his protocol.
- (3) The registrar shall-
  - (a) register the transfer of land comprised in the common property, and thereupon the land shall revert to the land register and the registrar shall make an appropriate endorsement and entry on such title deed and in his or her records to give effect thereto: Provided that if a portion only of the land comprised in the common property and on which no section or part of a section is erected, is so transferred, no endorsement thereof shall be made on the sectional title deeds of the owners of units: Provided further that in such a case where a portion only of the land comprised in the common property is transferred, a diagram of such portion approved by the Surveyor-General in terms of the Land Survey Act, 1997 (Act 8 of 1997), shall be annexed to the said title deed;
  - (b) notify the Surveyor-General and local authority of any reversion of any land to the land register under paragraph (a), and upon receipt of such notification the Surveyor-General shall

make an appropriate endorsement on the original sectional plan and the deeds registry copy thereof; and

(c) register a notarial lease of land comprising common property by making an appropriate endorsement against the schedule of conditions referred to in section 11 (3) (b), and no endorsement thereof shall be made on the sectional title deeds of the units: Provided that where a lease is registered over a portion only of the land comprised in the common property, a diagram of such portion approved in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), shall be annexed to the deed of lease.

(4) (a) Where, pursuant to subsection (1), it is sought to alienate a portion of the common property on which a section is erected, the registrar shall not register the transfer unless the registration of the section in question has been cancelled with the written consent of the owner.

(b) Where pursuant to subsection (1) it is sought to let land which forms part of the common property or a portion thereof on which a section or part of a section is erected, the registrar shall not register the lease, unless it is made subject to any right which the owner of the section or part of the section may have.

(c) When the registration of a section is cancelled under paragraph (a), the quota of the section shall lapse and the quotas of the remaining sections shall be proportionately adjusted.

(d) The registrar shall notify the Surveyor-General and the local authority whenever the registration of a section has been cancelled under paragraph (a), and upon receipt of such notification the Surveyor-General shall effect the necessary amendments to the original sectional plan, the deeds registry copy of the sectional plan and the schedule thereto specifying the quota of each section.

(4A) (a) Where part of a section is erected on a portion of the common property the unaffected part or parts of the section in the scheme shall be substituted in accordance with an amended participation quota schedule, which shall be referred to the surveyor-General for approval

(b) The Surveyor-General shall notify the registrar of a change or amendment of a sectional plan in terms of paragraph (a) which affects the description or extent of a section, and thereupon the registrar shall, simultaneously with the registration of the transfer of the part of the land included in the scheme, make the necessary endorsement against the title deeds in question: Provided that the registrar shall not register the transfer of the common property, unless the sectional title deed of the affected section is endorsed with the new extent as reflected in the amended participation quota schedule.

(c) the registrar shall notify the Surveyor-General and the local authority whenever an endorsement has been made in terms of paragraph (b), and on receipt of such notice the Surveyor- General shall make the necessary amendments on the original sectional plan, the deeds registry copy of the sectional plan and the schedule thereto specifying the quota of each section.

(4B) (a) Where in terms of subsection (1) it is sought to alienate a portion of land on which an exclusive use area or part thereof is registered, the registrar shall not register the transfer, unless the registration of the exclusive use area or part thereof has been cancelled with the written consent of the holder.

(b) The registrar shall notify the Surveyor-General and the local authority when the registration of an exclusive use area or part thereof has been cancelled in terms of paragraph (a), and on receipt of such a notice the Surveyor-General shall make the necessary amendments on the original sectional plan and on the deeds registry copy of the sectional plan.

(5) When the whole of the land comprised in the common property shown on the sectional plan is transferred by the body corporate pursuant to this section, the sectional title deeds of the owners of units and the title deeds of the holders of any registered real rights in the units, and the title deeds of the holders of exclusive use areas shall be surrendered to the registrar for cancellation, and the title deed of any other registered real right in the land, excluding mineral rights, shall be surrendered to the registrar for endorsement and the registrar shall close the sectional title register and notify the Surveyor-General and the local authority that the sectional title register has been closed.

(6) Upon receipt of the notification referred to in subsection (5), the Surveyor-General shall cancel the original sectional plan and the deeds registry copy of the sectional plan.

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

The provisions of sections 56 and 57 of the Deeds Registries Act shall apply *mutatis mutandis* with reference to the transfer of any mortgaged unit or undivided share in a unit, the cession of any mortgaged lease of a unit or undivided share in a unit, the cession of any mortgaged real right in or over a unit or an undivided share in a unit, and the transfer under section 17 of this Act of any mortgaged common property or land or an undivided share therein.

### **19 Expropriation of common property or rights therein**

(1) Whenever the whole or any part of, or any right in, the common property is expropriated under the provisions of any law, service of a notice of expropriation on the body corporate shall be deemed to be service thereof on the registered owner of every section in the building or buildings concerned, and each such owner shall be deemed to have appointed the trustees of the body corporate concerned as his duly authorized agents and representatives-

(a) to negotiate and settle the compensation payable to him, and to that end to employ attorneys, advocates and other experts; and

(b) on his behalf to receive and give valid acquittance for any compensation moneys paid.

(2) Any compensation moneys received by the trustees on behalf of the owners in terms of subsection (1), shall be paid to the owners in accordance with their participation quotas after they have received notice of such distribution in writing: Provided that an owner may notify the trustees before such moneys are so distributed that he considers such a distribution inequitable, in which event the compensation moneys shall be distributed-

(a) in accordance with a division approved by unanimous resolution; or

(b) in accordance with a division approved by an arbitrator, being a practising advocate of not less than ten years' standing or a practising attorney of not less than ten years' standing, nominated by the trustees.

(3) The provisions of section 17 (3) (a) and (b) of this Act and sections 31 (4) and 32 (4) of the Deeds Registries Act shall apply *mutatis mutandis* to a transfer pursuant to an expropriation of land or a servitude or other real right in land comprising common property.

(4) When land comprising common property on which a section or a part of a section is erected is transferred pursuant to an expropriation, the registrar shall cancel the registration of such section in his records and shall endorse the deeds registry copy of the relevant title and any bond, lease or other registered document affected, to reflect the cancellation of the section, and shall in like manner endorse the owner's copy of the title deed or the holder's copy of the bond, lease or other document whenever subsequently lodged at the deeds registry for any purpose.

(5) The provisions of section 17 (4) (b) and (c), (4A), (4B) and (5), shall apply with the necessary changes to the cancellation of a section in terms of subsection (4).

## **PART IV - Subdivision, Consolidation and Extension of Sections, Sections 20-24**

### **20 .....**

#### **21 Approval of plan of subdivision or consolidation by Surveyor-General**

(1) 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 with the consent of the trustees of the body corporate, which consent shall not unreasonably be withheld, cause the land surveyor or architect concerned to submit the draft sectional plan of subdivision or consolidation, as the case may be, to the Surveyor-General for approval.

(2) The submission of the draft sectional plan of subdivision or consolidation to the Surveyor-General shall be accompanied by-

(a) the documents referred to in section 7 (2), suitably adjusted;

(b) in the case of a subdivision, a schedule specifying, in the manner prescribed, the apportionment of the participation quota of the section between the new sections created;

(c) in the case of a consolidation, a schedule specifying, in the manner prescribed, the participation quota of the new section created, being the aggregate of the quotas of the sections that are to be consolidated.

(3) The provisions of section 7 (3) and (4) shall apply *mutatis mutandis* to the preparation and submission of a draft sectional plan of subdivision or consolidation to the Surveyor-General, and to the approval of such plan by him.

#### **22 Registration of subdivision of section**

(1) An owner may, after approval of a sectional plan of subdivision of a section, apply to the registrar of the deeds registry in which the section is registered, to register the sectional plan of subdivision.

(2) An application under subsection (1) shall be accompanied by-

(a) two copies of the sectional plan of subdivision;

(b) the sectional title deed in respect of the section to be subdivided;

(c) any sectional mortgage bond to which the section may be subject, together with the consent of the mortgagee to the cancellation of the bond or to the release of the section from

the bond or to the subdivision and substitution of the new sections in lieu of such section as security under the bond;

(d) certificates of registered sectional title in the prescribed form for each of the new sections and their undivided shares in the common property created by the subdivision, made out in favour of the owner or, in the case of a partition, in favour of the persons entitled thereto in terms of the partition agreement;

(e) the partition agreement (if any), if the section is owned by more than one owner; and

(f) such other documents and particulars as may be prescribed.

(3) When the requirements of this section and any other relevant law have been complied with, the registrar shall register the sectional plan of subdivision referred to in subsection (1), furnish a copy of the sectional plan of subdivision to the local authority concerned and notify the Surveyor-General of the registration of the sectional plan of subdivision, and thereupon the Surveyor-General shall amend the original sectional plan and the deeds office copy of the sectional plan to reflect such subdivision.

(4) Upon registration of the sectional plan of subdivision, the portions in question shall be deemed to be separated from one another and shall each be deemed to be a separate section.

(5) Simultaneously with the registration of the sectional plan of subdivision the registrar shall, in lieu of the sectional title deed referred to in subsection (2) (b), issue the certificates of registered sectional title referred to in subsection (2) (d), and make such endorsements on the superseded and newly issued certificates of registered sectional title, any sectional mortgage bond, lease or other deed embodying any other real right registered against the section at the time of subdivision, and entries in the deeds registry records, as he may deem necessary to give effect to the provisions of this section.

(6) A sectional plan of subdivision shall upon the registration thereof be deemed to be incorporated in the sectional plan registered in terms of section 12 (1) (a), and the provisions of section 13 (2) shall apply *mutatis mutandis* to such plan and the certificates of registered sectional title issued in terms of subsection (5).

### **23 Registration of consolidation of sections**

(1) An owner may, after approval of a sectional plan of consolidation of two or more sections, apply to the registrar of the deeds registry in which the sections are registered, to register the sectional plan of consolidation.

(2) An application under subsection (1) shall be accompanied by-

(a) two copies of the sectional plan of consolidation;

(b) the sectional title deeds in respect of the sections to be consolidated;

(c) any sectional mortgage bond registered against the sections, together with the consent of the mortgagee to the registration of the sectional plan of consolidation;

(d) a certificate of registered sectional title in the prescribed form in respect of the new section reflected on the sectional plan of consolidation, and its undivided share in the common property, made out in favour of the owner of the sections to be consolidated; and

(e) such other documents and particulars as may be prescribed.

(3) When the requirements of this section and any other relevant law have been complied with, the registrar shall register the sectional plan of consolidation referred to in subsection (1), furnish a copy of the sectional plan of consolidation to the local authority concerned and notify the Surveyor- General of the registration of the sectional plan of consolidation, and thereupon the Surveyor- General shall amend the original sectional plan and deeds office copy of the sectional plan to reflect such consolidation.

(4) Upon registration of the sectional plan of consolidation, the sections in question shall be deemed to be consolidated into a single section as depicted on the sectional plan of consolidation.

(5) Simultaneously with the registration of the sectional plan of consolidation, the registrar shall, in lieu of the sectional title deeds referred to in subsection (2) (b), issue the certificate of registered sectional title referred to in subsection (2) (d), and thereupon the provisions of subsection (5) of section 22 relating to the endorsements and entries to be made in the deeds registry records, and of subsection (6) of that section, shall apply *mutatis mutandis*.

(6) The provisions of section 40 (5) of the Deeds Registries Act shall apply *mutatis mutandis* with reference to any mortgage bond registered over one or more component sections of the section represented on the sectional plan of consolidation.

## 24 Extension of sections

(1) ...

(2) ...

(3) If an owner of a section proposes to extend the boundaries or floor area of his or her section, he or she shall with the approval of the body corporate, authorized by a special resolution of its members, cause the land surveyor or architect concerned to submit a draft sectional plan of the extension to the Surveyor-General for approval.

(4) The submission of the draft sectional plan of extension of a section to the Surveyor-General, shall be accompanied by-

(a) the documents referred to in section 7 (2), suitably adjusted; and

(b) in the case of the floor area of the section in question being increased by the extension, a revised schedule, in substitution for the schedule referred to in section 7 (2) (b), reflecting the participation quotas of all the sections as modified after taking the increased floor area of the section in question into account.

(5) The provisions of section 7 (3) and (4) shall apply *mutatis mutandis* to the preparation and submission of a draft sectional plan of extension of a section to the Surveyor-General, and to the approval of such plan by him.

(6) An application to the registrar for the registration of a sectional plan of extension of a section, shall be accompanied by-

(a) two copies of the sectional plan of extension of a section;

(b) ...

(c) the sectional title deed in respect of the section to be extended;

(d) any sectional mortgage bond to which the section may be subject, together with a certificate by a conveyancer stating that there is not a deviation of more than 10 per cent in the

participation quota of any section as a result of the extension, or if there is a deviation of more than 10 per cent, that the mortgagee of each section in the scheme has consented to the registration of the sectional plan of extension of a section; and

(e) such other documents and particulars as may be prescribed.

(7) When the requirements of this section and of any other relevant law have been complied with, the registrar shall register the sectional plan of extension of a section, and shall make an appropriate endorsement on the title referred to in subsection (6) (c), if the floor area of the section is increased by the extension, and such consequential endorsements against any deed registered against the title deed as may be necessary, and he shall furnish a copy of the sectional plan of extension to the local authority concerned and notify the Surveyor-General of the registration of the sectional plan of extension, and thereupon the Surveyor-General shall amend the original sectional plan and the deeds office copy of the sectional plan to reflect such extension of a section.

(8) A sectional plan of extension of a section shall upon the registration thereof be deemed to be incorporated in the sectional plan registered in terms of section 12 (1) (a), and the provisions of section 13 (2) shall apply *mutatis mutandis* to such plan.

## PART V - Extension of Schemes, Sections 25-26

### 25 Extension of schemes by addition of sections and exclusive use areas

(1) A developer may, subject to the provisions of section 4 (2), in his application for the registration of a sectional plan, reserve, in a condition imposed in terms of section 11 (2), the right to erect and complete from time to time, but within a period stipulated in such condition, for his personal account-

- (a) a further building or buildings;
- (b) a horizontal extension of an existing building;
- (c) a vertical extension of an existing building,

on a specified part of the common property, and to divide such building or buildings into a section or sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners of one or more sections.

(2) In the event of a reservation in terms of subsection (1), the application for the registration of the sectional plan shall, in addition to the documents referred to in section 11 (3), be accompanied by-

- (a) a plan to scale of the building or buildings to be erected and on which-
    - (i) the part of the common property affected by the reservation;
    - (ii) the siting, height and coverage of all buildings;
    - (iii) the entrances and exits to the land;
    - (iv) the building restriction areas, if any;
    - (v) the parking areas; and
    - (vi) the typical elevation treatment of all buildings,
- are indicated;

(b) a plan to scale showing the manner in which the building or buildings to be erected are to be divided into a section or sections and any exclusive use areas;

(c) a schedule indicating the estimated participation quotas of all the sections in the scheme after such section or sections have been added to the scheme;

(d) particulars of any substantial difference between the materials to be used in the construction of the building or buildings to be erected and those used in the construction of the existing building or buildings;

(e) particulars of such applicable expenses as are specified in section 37 (1) (a), which will be borne by the developer from the date of establishment of the body corporate until the sectional plan of extension is registered;

(f) the certificate of real right which is to be issued in terms of section 12 (1) (e); and

(g) such other documents and particulars as may be prescribed.

(3) The developer shall promptly on demand pay any moneys due in terms of subsection (2) (e) to the body corporate.

(4) A right reserved in terms of subsection (1) or vested in terms of subsection (6), and in respect of which a certificate of real right has been issued-

(a) shall for all purposes be deemed to be a right to urban immovable property which admits of being mortgaged; and

(b) may be transferred by the registration of a notarial deed of cession in respect of the whole, a portion or a share in such right: Provided that in the case of a cession affecting only a portion of the land comprising the scheme only such portion shall be identified to the satisfaction of the Surveyor-General.

(5) A right reserved in terms of subsection (1) may be exercised by the developer or his successor in title thereto, even though the developer or his successor in title, as the case may be, has no other interest in the common property.

(5A) (a) If the right reserved in terms of subsection (1) is exercised the developer or his or her successor in title shall 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 .

(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 37 (1) as if the unit had been included in the relevant sectional title register on the date of completion .

(c) The certificate contemplated in section 15B (3) (a) (i) (aa) shall not be issued unless the amounts in question are paid to the body corporate.

(6) If no reservation was made by a developer in terms of subsection (1), or if such a reservation was made and for any reason has lapsed, the right to extend a scheme including the land contemplated in section 26, shall vest in the body corporate, which shall be entitled, subject to this section and after compliance, with the necessary changes, with the requirements of paragraphs (a), (b), (c), (d) and (g) of subsection (2), to obtain a certificate of real right in the prescribed form in respect thereof: Provided that the body corporate shall only exercise or

alienate or transfer such right with the written consent of all the members of the body corporate as well as with the written consent of the mortgagee of each unit in the scheme: Provided further that a member or mortgagee shall not withhold such approval without good cause in law.

(6A) If no reservation has been made by a developer in terms of subsection (1) and the body corporate has not yet been established, the registrar may issue a certificate of real right of extension as contemplated in section 12 (1) (e) on application by the developer accompanied by the sectional mortgage bond and written consent of any bondholder and such of the documents contemplated in subsection (2) as are applicable.

(6B) Upon compliance with subsection (6A) this Act shall apply with the necessary changes to such real right as if it had originally formed part of the application for the opening of the sectional title register and such certificate of real right shall be issued subject to any sectional mortgage bond against the land.

(8) The provisions of sections 5, 6 and 7 shall apply *mutatis mutandis* to the submission of a draft sectional plan of extension to the Surveyor- General in terms of this section and the approval thereof by him: Provided that the draft sectional plan of extension submitted to the Surveyor- General shall be accompanied by a revised schedule specifying the participation quota of each section in the building or buildings depicted on the sectional plan and the sectional plan of extension, calculated in accordance with the provisions of section 32 as if the plan of extension formed part of the sectional plan when it was registered, and the Surveyor- General shall file such revised schedule with the sectional plan in lieu of the schedule referred to in section 7 (2) (b).

(9) A developer or his successor in title to a right reserved in terms of subsection (1), or the body corporate in terms of subsection (6), as the case may be, may, after approval of a sectional plan of extension by the Surveyor-General in terms of this section, apply to the registrar for the registration of such plan of extension and the inclusion of the additional section or sections in the relevant sectional title register.

(10) An application under subsection (9) shall be accompanied by-

(a) two copies of the sectional plan of extension;

(c) the certificate of real right by which the reservation in terms of subsection (1) or (6) is held, together with any sectional mortgage bond registered against the certificate of real right and the consent of the mortgagee to the substitution of the sections depicted on the sectional plan of extension and their undivided shares in the common property, as security in lieu of the real right held under the certificate of real right mortgaged under the bond;

(d) certificates of registered sectional title in the prescribed form in favour of the developer, his successor in title or the body corporate, as the case may be, in respect of each section reflected on the plan of extension;

(dA) any mortgage bond which may be affected by the right, together with the consent of the mortgagee to the registration of the extension of the scheme and the endorsement of such bond to the effect that it is attached to—

(i) each section shown on the sectional plan and its undivided share in the common property;

(ii) the certificate of real right in respect of a right of exclusive use as contemplated by section 27 (1); and

(iii) if applicable, the certificate of real right in respect of the remainder of the right reserved in terms of subsection (1); and

(f) such other documents and particulars as may be prescribed.

(11) When the requirements of this section and of any other law have been complied with, the registrar shall-

(a) register the sectional plan of extension;

(b) extend the sectional title register to include the sections depicted on the plan of extension;

(c) simultaneously with the registration of the sectional plan of extension issue to the developer, his or her successor in title or the body corporate, as the case may be, a certificate of registered sectional title in respect of each section depicted on the sectional plan of extension and its undivided share in the common property, subject to any mortgage bond registered against the title deed of the right of extension, furnish the local authority concerned with a copy of such plan of extension and notify the Surveyor-General of the registration of such plan of extension, and thereupon the Surveyor-General shall amend the original sectional plan and the deeds office copy of the sectional plan to reflect such extension; and

(d) make such entries in his records and endorsements on the certificates of registered sectional title referred to in paragraphs (c), any certificate of real right referred to in subsection (10) (c), and any sectional mortgage bond registered against the certificate of real right, as are necessary to give effect to this section.

(12) Upon registration of a sectional plan of extension referred to in subsection (11) (a)-

(a) the owners of sections in the building or buildings in the scheme that is being extended, the mortgagees of sectional mortgage bonds and the holders of any real rights registered over such sections, shall be divested of their share or interest in the common property to the extent that an undivided share in the common property is vested in the developer, his successor in title or the body corporate, as the case may be, by the issue of the certificates of registered sectional title referred to in subsection (11) (c);

(b) a sectional mortgage bond whereby a real right held by a certificate of real right referred to in subsection (10) (c) is mortgaged, shall be deemed to be a sectional mortgage bond over the sections depicted on the sectional plan of extension and their undivided share in the common property and registered against the certificates of sectional title issued in terms of subsection (11) (c); and

(c) the sectional plan of extension shall be deemed to be incorporated in the sectional plan registered in terms of section 12 (1) (a), and thereupon the provisions of section 13 (1) and (2) shall apply *mutatis mutandis*.

(13) A developer or his successor in title who exercises a reserved right referred to in subsection (1), or a body corporate exercising the right referred to in subsection (6), shall be obliged to erect and divide the building or buildings into sections strictly in accordance with the documents referred to in subsection (2), due regard being had to changed circumstances which would make strict compliance impracticable, and an owner of a unit in the scheme who is prejudiced by his failure to comply in this manner, may apply to the Court, whereupon the

Court may order proper compliance with the terms of the reservation, or grant such other relief, including damages, as the Court may deem fit.

(14) In all cases where a developer or a body corporate has a real right to extend a scheme as contemplated in this section, such right shall be disclosed in the deed of alienation to every purchaser of a section in the scheme concerned.

(15) (a) A deed of alienation in which a real right has not been disclosed as contemplated in subsection (14), shall be voidable at the option of the purchaser.

(b) After notice by any such purchaser to the seller that he or she annuls the alienation, the alienation shall be void, and thereupon the provisions of section 10 (5) shall apply with the necessary changes.

## **26 Extension of schemes by addition of land to common property**

(1) A body corporate, authorized thereto in writing by all of its members, may purchase or otherwise acquire land to extend the common property and such land must be registered in the name of the body corporate in terms of this Act and the Deeds Registries Act.

(2) Land purchased or otherwise acquired by and registered in the name of a body corporate in terms of subsection (1) shall be deemed to be owned by the owners of the sections in the building concerned in the same proportion as their participation quota as reflected on the relevant sectional plan.

(4) The provisions of section 7 (2), (3) and (4) shall apply with the necessary changes to the preparation and submission to the Surveyor-General of a draft plan of extension of the common property, and the approval of such plan by him or her.

(5) The registrar shall, upon the submission of the prescribed documents, register a plan of extension of the common property in terms of this section by making an endorsement on the relevant title deed to reflect that the land concerned has been incorporated in the sectional plan, shall make such further endorsements and entries in his or her records as may be necessary to give effect thereto, and shall furnish a copy of the sectional plan of extension to the local authority concerned and notify the Surveyor-General of the registration of such plan of extension, and thereupon the Surveyor-General shall amend the original sectional plan and deeds office copy of the sectional plan to reflect such extension.

(6) The registrar shall not register a plan of extension in terms of this section if the additional land to be incorporated as common property is subject to a mortgage bond.

(7) Upon the registration of a plan of extension of the common property in terms of this section, such plan shall be deemed to be incorporated in the sectional plan registered in terms of section 12 (1) (a), and the land to which such sectional plan of extension relates shall be deemed to be incorporated as common property in such registered sectional plan.

## **PART VI - Exclusive Use of Common Property and Servitudes, Sections 27-31**

### **27 Rights of exclusive use of parts of common property**

(1) (a) If a part or parts of common property is or are delineated on a sectional plan in terms of section 5 (3) (f), the developer may, for a specific purpose when making application for the opening of a sectional title register and the registration of the sectional plan, impose a

condition in terms of section 11 (2) in the schedule referred to in section 11 (3) (b), by which the right to the exclusive use of such part or parts of the common property delineated for this purpose on the sectional plan, is conferred upon the owner or owners of one or more of the sections.

(b) A developer shall cede the right to the exclusive use of part or parts of the common property to the owner or owners of units in the scheme, by the registration of a unilateral notarial deed in their favour.

(c) If a developer ceases to be a member of the body corporate as contemplated in section 36 (2), any right to an exclusive use area still registered in his or her name vests in the body corporate free from any mortgage bond.

(d) If a right to the exclusive use of a part or parts of the common property vests in a body corporate in terms of paragraph (c), the body corporate shall, in the prescribed form—

(i) apply to the registrar for the issuing of a certificate of real right of exclusive use in its favour; and

(ii) submit a certificate of compliance with any law dealing with vesting.

(e) The registrar shall, after consideration of the application in paragraph (d), issue such certificate in the prescribed form.

(1A) Notwithstanding section 27 (1) (a), if no reservation was made by a developer in terms of subsection (1) and the body corporate has not yet been established, the registrar may issue a certificate of real right in respect of a right of exclusive use as contemplated in section 12 (1) (f) on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder.

(1B) Upon compliance with subsection (1A) this Act shall apply with the necessary changes to such real right as if it had originally formed part of the application for the opening of the sectional title register and such certificate of real right shall be issued subject to any sectional mortgage bond against the land.

(2) A body corporate, duly authorized thereto by a unanimous resolution of its members, may, subject to the provisions of section 5 (1), request an architect or land surveyor to apply to the Surveyor-General for the delineation on a sectional plan in the manner prescribed of a part or parts of the common property in terms of section 5 (3) (f) for the exclusive use by the owner or owners of one or more sections: Provided that no such delineation shall be made on the sectional plan in terms of this subsection if such delineation will encroach upon a prior delineation on the sectional plan of a part of the common property for the exclusive use by one or more of the owners.

(3) The body corporate, duly authorized thereto by a unanimous resolution of its members, shall transfer the right to the exclusive use of a part or parts of the common property delineated on the sectional plan in terms of subsection (2) to the owner or owners on whom such right has been conferred by the body corporate, by the registration of a notarial deed entered into by the parties and in which the body corporate shall represent the owners of all the sections as transferor.

(4) (a) An owner of a section in whose favour the right to the exclusive use of a part of the common property delineated on the sectional plan is registered, may transfer his or her interest

in such right to the owner of another section in the scheme by the registration by the registrar of a notarial deed of cession entered into by the parties,

(b) If an owner ceases to be a member of the body corporate as contemplated in section 36 (2), any right to an exclusive use area still registered in his or her name vests in the body corporate free from any mortgage bond.

(c) If a right to the exclusive use of a part or parts of the common property vests in a body corporate in terms of paragraph (b), the body corporate shall, in the prescribed form—

(i) apply to the registrar for the issuing of a certificate of real right of exclusive use in its favour; and

(ii) submit a certificate to the effect that the provisions of any law in connection with the vesting have been complied with.

(d) The registrar must issue such certificate in the prescribed form.

(5) A right to the exclusive use of a part of the common property delineated on the sectional plan registered in favour of an owner of a section may with the written consent of the mortgagee of the relevant section be cancelled by the registration by the registrar of a notarial deed of cancellation entered into by the owner of the section entitled to such right and the body corporate, duly authorized by a special resolution of its members, on behalf of all the owners of sections in the scheme.

(6) A right to the exclusive use of a part of common property registered in favour of an owner of a section, shall for all purposes be deemed to be a right to urban immovable property over which a mortgage bond, lease contract or personal servitude of usufruct, *usus* or *habitatio* may be registered.

(7) (a) Any person who holds two or more rights to exclusive use areas or undivided shares by one title deed may, subject to the provisions prescribed, obtain a separate title deed in respect of one or more of the rights to exclusive use areas held therein.

(b) At least one of the exclusive use areas or shares shall remain held by such title deed.

### **Rules regarding exclusive use areas**

27A A developer or a body corporate may make rules which confer rights of exclusive use and enjoyment of parts of the common property upon members of the body corporate: Provided that such rules shall-

(a) not create rights contemplated in section 27 (6);

(b) include a layout plan to scale on which is clearly indicated-

(i) the locality of the distinctively numbered exclusive use and enjoyment parts; and

(ii) the purposes for which such parts may be used;

(c) include a schedule indicating to which member each such part is allocated.

### **28 Implied servitudes**

(1) There shall be implied-

(a) in favour of each section-

(i) a servitude for the subjacent and lateral support of the section by the common property and by any other section capable of affording such support;

(ii) a servitude for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts existing on or under the land or in the building, to the extent to which such pipes, wires, cables or ducts are capable of being used in connection with the utilization of the section; and

(b) against each section-

(i) a servitude for the subjacent and lateral support of the common property and of any other section capable of enjoying such support;

(ii) the servitudes referred to in paragraph (a) (ii) through or by means of any pipes, wires, cables or ducts existing within such section, in favour of the common property and in favour of any other section capable of enjoying such servitudes.

(2) The servitudes referred to in subsection (1)-

(a) shall be deemed to be incorporated in the title deeds of the owners affected thereby; and

(b) shall confer on the owners of sections the right, to be exercised by the body corporate, to have access to each section and the exclusive use areas from time to time during reasonable hours to the extent necessary to maintain, repair or renew any part of the building or any pipes, wires, cables or ducts therein, or for making emergency repairs therein necessary to prevent damage to the common property or any other section or sections.

## **29 Creation of servitudes**

(1) The owners may by special resolution direct the body corporate-

(a) to execute on their behalf a servitude or restrictive agreement burdening the land shown on the relevant sectional plan;

(b) to accept on their behalf a servitude or restrictive agreement benefiting the said land.

(2) Every such servitude or agreement shall be embodied in a notarial deed and shall be registered by the registrar by noting such deed on the schedule of servitudes and conditions referred to in section 11 (3) (b) and on the title deeds of any party to such servitude or restrictive agreement whose title deeds are registered in the land register.

(3) If the land to be burdened by a servitude or restrictive agreement is hypothecated, the written consent of every mortgagee to the registration of such servitude or restrictive agreement shall be lodged with the registrar.

## **30 Ancillary servitudinal rights**

All ancillary rights and obligations reasonably necessary to make servitudes effective, shall apply in respect of servitudes implied or created under this Act.

## **31 Deeds Registries Act and implied servitudes**

The provisions of the Deeds Registries Act shall not apply with reference to servitudes or restrictions as to user implied under this Act, and such servitudes and restrictions shall take effect and be enforceable immediately upon the establishment of the body corporate.

## PART VII - Participation Quotas and Developers, Sections 32-34

### 32 Participation quotas

(1) Subject to the provisions of section 48, in the case of a scheme for residential purposes only as defined in any applicable operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law, the participation quota of a section shall be a percentage expressed to four decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the section by the floor area, correct to the nearest square metre, of all the sections in the building or buildings comprised in the scheme.

(2) Subject to the provisions of section 48, in the case of a scheme other than a scheme referred to in subsection (1), the participation quota of a section shall be a percentage expressed to four decimal places, as determined by the developer: Provided that-

(a) where a scheme is partly residential as defined in any applicable operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law, the total of the quotas allocated by the developer to the residential sections shall be divided among them in proportion to a calculation of their quotas made in terms of subsection (1);

(b) where a developer alienates a unit in such a scheme before the sectional title register is opened, the total of the quotas allocated to the respective sections and the participation quota of that unit must be disclosed in the deed of alienation; and

(c) where such disclosure is not made, the deed of alienation shall be voidable at the option of the purchaser and that the provisions of section 25 (15) (b) shall *mutatis mutandis* apply in respect of any such alienation.

(3) Subject to the provisions of subsection (4) of this section, the quota of a section shall determine-

(a) the value of the vote of the owner of the section, in any case where the vote is to be reckoned in value;

(b) the undivided share in the common property of the owner of the section; and

(c) subject to the provisions of section 37 (1) (b), the proportion in which the owner of the section shall make contributions for the purposes of section 37 (1) (a), or may in terms of section 47 (1) be held liable for the payment of a judgment debt of the body corporate of which he is a member.

(4) Subject to the provisions of section 37 (1) (b), the developer may, when submitting an application for the opening of a sectional title register, or the members of the body corporate may by special resolution, make rules under section 35 by which a different value is attached to the vote of the owner of any section, or the liability of the owner of any section to make contributions for the purposes of section 37 (1) (a) or 47 (1) is modified: Provided that where an owner is adversely affected by such a decision of the body corporate, his written consent must be obtained: Provided further that no such change may be made by a special resolution of the body corporate until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme: Provided further that, in the case where the developer alienates a unit before submitting an application for the opening of a sectional title register no

exercise of power to make a change conferred on the developer by this subsection shall be valid unless the intended change is disclosed in the deed of alienation in question.

(5) The specification in the schedule to a sectional plan of the quota of each section and of the total of the quotas of all the sections in the building or buildings comprised in a scheme, shall for all purposes be deemed to be correct in the absence of proof to the contrary.

### **33 Sale or letting of sections**

Nothing in this Act or any other law contained shall be construed as preventing a developer from selling certain sections in a building and letting other sections therein or from letting all sections therein.

### **34 Shares of developers in buildings and land**

(1) The developer shall be the owner of any section in respect of which the ownership is not held by any other person, and the quota of such section or, if there is more than one such section, the total of the quotas of such sections, shall determine the share of the developer in the common property.

(2) When the ownership in every section is held by any person or persons other than the developer, the developer shall, subject to the provisions of section 25 (1), cease to have a share or interest in the common property.

(3) When a developer has in one transaction alienated the whole of his or her interest in the land and the building or buildings comprised in a scheme, or a share in the whole of such interest, to any other person, the registrar shall register the transaction by means of a deed of transfer in the case of units and by means of a bilateral notarial deed of cession in the case of rights reserved under sections 25 and 27.

(4) The registrar shall not register the transfer of a transaction referred to in subsection (3) unless-

(a) there is produced to the registrar a clearance certificate of the local authority that-

(i) all rates and moneys due to that local authority in respect of the land concerned have been paid up to and including the day of transfer; or

(ii) in those cases where a law provides for the separate levying of rates in respect of a unit, all such rates due to that local authority in respect of the unit concerned have been paid up to and including the day of transfer; and

(b) there is produced to the registrar a certificate by a conveyancer confirming that, if a body corporate is deemed to have been established in terms of section 36 (1), that body corporate has certified that all moneys due to the body corporate by the transferor in respect of the units concerned have been paid or provision for the payment thereof has been made to the satisfaction of the body corporate.

## **PART VIII - Rules and Bodies Corporate, Sections 35-43**

### **35 Rules**

(1) A scheme shall as from the date of the establishment of the body corporate be controlled and managed, subject to the provisions of this Act, by means of rules.

(2) The rules shall provide for the control, management, administration, use and enjoyment of the sections and the common property, and shall comprise-

(a) management rules, prescribed by regulation, which rules may be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register, to the extent prescribed by regulation, and which rules may be substituted, added to, amended or repealed from time to time by unanimous resolution of the body corporate as prescribed by regulation;

(b) conduct rules, prescribed by regulation, which rules may be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register, and which rules may be substituted, added to, amended or repealed from time to time by special resolution of the body corporate: Provided that any conduct rule substituted, added to or amended by the developer, or any substitution, addition to or amendment of the conduct rules by the body corporate, may not be irreconcilable with any prescribed management rule contemplated in paragraph (a).

(3) Any management or conduct rule made by a developer or a body corporate shall be reasonable, and shall apply equally to all owners of units put to substantially the same purpose.

(4) The rules referred to in subsection (2) shall as from the date of establishment of the body corporate be in force in respect of the building or buildings and land concerned, and shall bind the body corporate and the owners of the sections and any person occupying a section.

(5) (a) If the rules contemplated in subsection (2) are substituted, added to, amended or repealed, the body corporate shall lodge with the registrar a notification in the prescribed form of such substitution, addition to, amendment or repeal.

(b) The registrar shall not be involved in the enforcement or application of the rules contemplated in subsection (2) and is not required to examine or not any substitution, addition, amendment or repeal thereof against any certificate or other document.

(c) A substitution, addition, amendment or repeal contemplated in paragraph (a) shall come into operation on the date of filing of the notification referred to in that paragraph.

(6) The body corporate shall, on the application of any owner or any person having a registered real right in or over a unit, or any person authorized in writing by such owner or person, make any rules then in force available for inspection to such owner, person or authorized person.

### **36 Bodies corporate**

(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 every person who thereafter becomes an owner of a unit in that scheme shall be a member of that body corporate.

(2) The developer shall cease to be a member of the body corporate when he ceases to have a share in the common property as contemplated in section 34 (2), and any other member of the body corporate shall cease to be a member thereof when he ceases to be the owner of a unit in the scheme in question.

(3) The body corporate shall be designated as 'the Body Corporate of the .....(name).....Scheme, No ....., such name and number to be inserted being the name and number referred to in sections 5 (3) (b) and 12 (1) (a), respectively.

(4) The body corporate shall, subject to the provisions of this Act, be responsible for the enforcement of the rules referred to in section 35, and for the control, administration and management of the common property for the benefit of all owners.

(5) The provisions of the Companies Act, 1973 (Act 61 of 1973), shall not apply in relation to the body corporate.

(6) The body corporate shall have perpetual succession and shall be capable of suing and of being sued in its corporate name in respect of-

(a) any contract made by it;

(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

(e) any claim against the developer in respect of the scheme if so determined by special resolution.

(7) (a) A developer shall convene a meeting of the members of the body corporate not later than 60 days after the establishment of the body corporate, the agenda of the meeting to be as prescribed in the management rules, at which meeting he shall 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

(iii) proof of revenue and expenditure concerning the management of the scheme from the date of the first occupation of any unit until the date of the establishment of the body corporate.

(aA) The developer shall pay over to the body corporate any residue, as revealed by the proof referred to in paragraph (a) (iii).

(b) A developer who fails to comply with any provision of paragraph (a) or (aA), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

### **37 Functions of bodies corporate**

(1) A body corporate referred to in section 36 shall perform the functions entrusted to it by or under this Act or the rules, and such functions shall include-

(a) to establish for administrative expenses a fund sufficient in the opinion of the body corporate for the repair, upkeep, control, management and administration of the common property (including reasonable provision for future maintenance and repairs), for the payment of rates and taxes and other local authority charges for the supply of electric current, gas, water, fuel and sanitary and other services to the building or buildings and land, and any premiums of insurance, and for the discharge of any duty or fulfillment of any other obligation of the body corporate;

(b) to require the owners, whenever necessary, to make contributions to such fund for the purposes of satisfying any claims against the body corporate: Provided that the body corporate shall require the owner or owners of a section or sections entitled to the right to the exclusive use of a part or parts of the common property, whether or not such right is registered or conferred by rules made under the Sectional Titles Act, 1971 (Act 66 of 1971), to make such additional contribution to the fund as is estimated necessary to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water, unless in terms of the rules the owners concerned are responsible for such costs;

(c) to determine from time to time the amounts to be raised for the purposes aforesaid;

(d) to raise the amounts so determined by levying contributions on the owners in proportion to the quotas of their respective sections;

(e) to open and operate an account or accounts with a banking institution or a building society;

(f) to insure the building or buildings and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed;

(g) to insure against such other risks as the owners may by special resolution determine;

(h) subject to the provisions of section 48 and to the rights of the holder of any sectional mortgage bond, forthwith to apply any insurance money received by it in respect of damage to the building or buildings, in rebuilding and reinstating the building or buildings in so far as this may be effected;

(i) to pay the premiums on any policy of insurance effected by it;

(j) properly to maintain the common property (including elevators) and to keep it in a state of good and serviceable repair;

(k) to comply with any notice or order by any competent authority requiring any repairs to or work in respect of the relevant land or building or buildings;

(l) to comply with any reasonable request for the names and addresses of the persons who are the trustees of the body corporate in terms of the rules referred to in section 35, or who are members of the body corporate;

(m) to notify the registrar and the local authority concerned of its *domicilium citandi et executandi*, which shall be its address for service of any process;

(n) to ensure compliance with any law relating to the common property or to any improvement of land comprised in the common property;

(o) to keep in a state of good and serviceable repair and properly maintain the plant, machinery, fixtures and fittings used in connection with the common property and sections;

(p) subject to the rights of the local authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the common property or in favour of one section over the common property;

(q) on the written request of any owner or registered mortgagee of a section, to produce to such owner or mortgagee, or any person authorized in writing by such owner or mortgagee,

the policy or policies of insurance effected by the body corporate and the receipt or receipts for the last premium or premiums in respect thereof; and

(r) in general, to control, manage and administer the common property for the benefit of all owners.

(2) Any contributions levied under any provision of subsection (1), shall be due and payable on the passing of a resolution to that effect by the trustees of the body corporate, and may be recovered by the body corporate by action in any court (including any magistrate's court) of competent jurisdiction from the persons who were owners of units at the time when such resolution was passed.

(3) The body corporate shall, on the application of an owner or mortgagee of a unit, or any person authorized by such owner or mortgagee, certify in writing-

(a) the amount determined as the contribution of that owner;

(b) the manner in which such contribution is payable;

(c) the extent to which such contribution has been paid by the owner; and

(d) the amount of any rates and taxes paid by the body corporate in terms of section 51 and not recovered by it.

(4) The body corporate shall, for the purposes of effecting any insurance under subsection (1) (f), be deemed to have an insurable interest for the replacement value of the building and shall, for the purposes of effecting any other insurance under that subsection, be deemed to have an insurable interest in the subject-matter of such insurance.

### **38 Powers of bodies corporate**

The body corporate may exercise the powers conferred upon it by or under this Act or the rules, and such powers shall include the power-

(a) to appoint such agents and employees as it may deem fit;

(b) when essential for the proper fulfillment of its duties, to purchase or otherwise acquire, take transfer of mortgage, sell, give transfer of, or hire or let units;

(c) to purchase, hire or otherwise acquire movable property for the use of owners for their enjoyment or protection, or in connection with the enjoyment or protection of the common property;

(d) where practicable, to establish and maintain on the common property suitable lawns and gardens and recreation facilities;

(e) to borrow moneys required by it in the performance of its functions or the exercise of its powers;

(f) to secure the repayment of moneys borrowed by it and the payment of interest thereon, by negotiable instrument or the hypothecation of unpaid contributions (whether levied or not), or by mortgaging any property vested in it;

(g) to invest any moneys of the fund referred to in section 37 (1) (a);

(h) to enter into an agreement with the local authority or any other person or body for the supply to the building or buildings and the land of electric current, gas, water, fuel and sanitary and other services;

(i) to enter into an agreement with any owner or occupier of a section for the provision of amenities or services by the body corporate to such section or to the owner or occupier thereof, including the right to let a portion of the common property to any such owner or occupier by means of a lease other than a lease contemplated in section 17 (1); and

(j) to do all things reasonably necessary for the enforcement of the rules and for the control, management and administration of the common property.

### **39 Functions and powers of bodies corporate to be performed or exercised by trustees**

(1) The functions and powers of the body corporate shall, subject to the provisions of this Act, the rules and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the body corporate holding office in terms of the rules.

(2) For the purposes of an agreement in respect of the beacons and boundaries of the common property required in terms of the Land Survey Act, 1997 (Act 8 of 1997), the trustees shall be deemed to be the owner of the land.

### **40 Fiduciary position of trustees**

(1) Each trustee of a body corporate shall stand in a fiduciary relationship to the body corporate.

(2) Without prejudice to the generality of the expression 'fiduciary relationship', the provisions of subsection (1) shall imply that a trustee-

(a) shall in relation to the body corporate act honestly and in good faith, and in particular-

(i) shall exercise such powers as he may have to manage or represent the body corporate in the interest and for the benefit of the body corporate; and

(ii) shall not act without or exceed the powers aforesaid; and

(b) shall avoid any material conflict between his own interests and those of the body corporate, and in particular-

(i) shall not derive any personal economic benefit to which he is not entitled by reason of his office as trustee of the body corporate, from the body corporate or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the body corporate;

(ii) shall notify every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he may have in any contract of the body corporate.

(3) (a) A trustee of a body corporate whose mala fide or grossly negligent act or omission has breached any duty arising from his fiduciary relationship, shall be liable to the body corporate for-

(i) any loss suffered as a result thereof by the body corporate; or

(ii) any economic benefit derived by the trustee by reason thereof.

(b) Where a trustee fails to comply with the provisions of subsection (2) (b) (ii) and it becomes known to the body corporate that the trustee has an interest referred to in that subsection in any contract of the body corporate, the contract in question shall, at the option of

the body corporate, be voidable: Provided that where the body corporate chooses not to be bound, a Court may on application by any interested person, if the Court is of the opinion that in the circumstances it is fair to order that such contract shall nevertheless be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.

(4) Except as regards his duty referred to in subsection (2) (a) (i), any particular conduct of a trustee shall not constitute a breach of a duty arising from his fiduciary relationship to the body corporate, if such conduct was preceded or followed by the written approval of all the members of the body corporate where such members were or are cognizant of all the material facts.

#### **41 Proceedings on behalf of bodies corporate**

(1) When an owner is of the opinion that he and the body corporate have suffered damages or loss or have been deprived of any benefit in respect of a matter mentioned in section 36 (6), and the body corporate has not instituted proceedings for the recovery of such damages, loss or benefit, or where the body corporate does not take steps against an owner who does not comply with the rules, the owner may initiate proceedings on behalf of the body corporate in the manner prescribed in this section.

(2) (a) Any such owner shall serve a written notice on the body corporate calling on the body corporate to institute such proceedings within one month from the date of service of the notice, and stating that if the body corporate fails to do so, an application to the court under paragraph (b) will be made.

(b) If the body corporate fails to institute such proceedings within the said period of one month, the owner may make application to the Court for an order appointing a *curator ad litem* for the body corporate for the purposes of instituting and conducting proceedings on behalf of the body corporate.

(3) The court may on such application, if it is satisfied-

(a) that the body corporate has not instituted such proceedings;

(b) that there are *prima facie* grounds for such proceedings; and

(c) that an investigation into such grounds and into the desirability of the institution of such proceedings is justified,

appoint a provisional *curator ad litem* and direct him to conduct such investigation and to report to the Court on the return day of the provisional order.

(4) The Court may on the return day discharge the provisional order referred to in subsection (3), or confirm the appointment of the *curator ad litem* for the body corporate, and issue such directions as it may deem necessary as to the institution of proceedings in the name of the body corporate and the conduct of such proceedings on behalf of the body corporate by the *curator ad litem*.

#### **42 Powers of curatores ad litem**

(1) A provisional *curator ad litem* appointed by the Court under section 41 (3) and a *curator ad litem* whose appointment is confirmed by the Court under section 41 (4) shall, in addition to the powers expressly granted by the Court in connection with the investigation, proceedings and enforcement of a judgment, have such powers as may be prescribed by regulation.

(2) If the disclosure of any information about the affairs of a body corporate to a provisional *curator ad litem* or a *curator ad litem* would in the opinion of the body corporate be harmful to the interests of the body corporate, the Court may on an application for relief by that body corporate, and if it is satisfied that the said information is not relevant to the investigation, grant such relief.

#### **43 Security for costs by applicants for appointment of curatores ad litem**

The Court may, if it appears that there is reason to believe that an applicant in respect of an application under section 41 (2) will be unable to pay the costs of the respondent body corporate if successful in its opposition, require sufficient security to be given for those costs and the costs of the provisional *curator ad litem* before a provisional order is made.

## **PART IX - Owners, Administrators and Buildings, Sections 44-51**

#### **44 Duties of owners**

(1) An owner shall-

(a) permit any person authorized in writing by the body corporate, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his section or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and capable of being used in connection with the enjoyment of any other section or common property, or for the purposes of ensuring that the provisions of this Act and the rules are being observed;

(b) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his section, other than such work as may be for the benefit of the building generally, and pay all charges, expenses and assessments that may be payable in respect of his section;

(c) repair and maintain his section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition;

(d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other owners or other persons lawfully on the premises;

(e) not use his section or exclusive use area, or permit it to be used, in such a manner or for such purpose as shall cause a nuisance to any occupier of a section;

(f) notify the body corporate forthwith of any change of ownership in his section and of any mortgage or other dealing in connection with his section; and

(g) when the purpose for which a section is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section to be used for any other purpose: Provided that with the written consent of all owners such section may be used for another purpose.

(2) (a) Any owner who is of the opinion that any refusal of consent of another owner in terms of the proviso to subsection (1) (g) is unfairly prejudicial, unjust or inequitable to him, may within six weeks after the date of such a refusal make an application in terms of this subsection to the Court.

(b) If on any such application it appears to the Court that the refusal in question is unfairly prejudicial, unjust or inequitable to the applicant, and if the Court considers it just and

equitable, the Court may with a view to bringing the dispute to an end make such order as it deems fit, including an order that it shall be deemed that the requirement stated in the proviso to subsection (1) (g) is met, an order that the provisions of section 14 of this Act which the Court deems appropriate, shall be applied with reference to the amendment of the registered sectional plan in question, any other supplementary order as the Court deems fit, and an order concerning costs as it deems appropriate.

#### **45 Insurance by owners**

(1) Notwithstanding the existence of a valid policy of insurance effected by the body corporate pursuant to the provisions of section 37 (1) (f), an owner may effect a policy of insurance in respect of any damage to his section arising from risks covered by the policy effected by the body corporate.

(2) Where a policy of insurance contemplated in subsection (1) is in force, and-

(a) where the damage to the section is made good by the body corporate pursuant to the provisions of section 37 (1) (h), the insurer shall not be liable in terms of the policy of insurance effected by the owner;

(b) where the damage to the section is covered by the policy of insurance effected by the body corporate pursuant to the provisions of section 37 (1) (f), but is not made good by the body corporate, the insurer shall be liable in terms of the policy of insurance effected by the owner; and

(c) where the damage to the section is not covered by the policy of insurance effected by the body corporate as aforesaid, the terms and conditions of the policy of insurance effected by the owner shall apply.

(3) Nothing in this section contained shall limit the rights of an owner to insure against risks other than damage to his section.

#### **46 Appointment of administrators**

(1) A body corporate, a local authority, a judgment creditor of the body corporate for an amount of not less than R500, or any owner or any person having a registered real right in or over a unit, may apply to the Court for the appointment of an administrator.

(2) (a) The Court may in its discretion appoint an administrator for an indefinite or a fixed period on such terms and conditions as to remuneration as it deems fit.

(b) The remuneration and expenses of the administrator shall be administrative expenses within the meaning of section 37 (1) (a).

(3) The administrator shall, to the exclusion of the body corporate, have the powers and duties of the body corporate or such of those powers and duties as the Court may direct.

(4) The Court may, in its discretion and on the application of any person or body referred to in subsection (1) remove from office or replace the administrator or, on the application of the administrator, replace the administrator.

(5) The Court may, with regard to any application under this section, make such order for the payment of costs as it deems fit.

#### **47 Recovery from owners of unsatisfied judgment against bodies corporate, and non-liability of bodies corporate for debts and obligations of developers**

(1) If a creditor of a body corporate has obtained judgment against the body corporate, and such judgment, notwithstanding the issue of a writ, remains unsatisfied, the judgment creditor may, without prejudice to any other remedy he may have, apply to the court which gave the judgment, for the joinder of the members of the body corporate in their personal capacities as joint judgment debtors in respect of the judgment debt and, upon such joinder, the judgment creditor may recover the amount of the judgment debt still outstanding from the said members on a pro rata basis in proportion to their respective quotas or a determination made in terms of section 32 (4): Provided that any member who has paid the contributions due by him or her in terms of section 37 (1) to the body corporate in respect of the same debt prior to the judgment against the body corporate may not be joined as a joint judgment debtor in respect of the judgment debt.

(2) No debt or obligation arising from any agreement between the developer and any other person shall be enforceable against the body corporate.

#### **48 Destruction of or damage to buildings**

(1) The building or buildings comprised in a scheme shall, for the purposes of this Act, be deemed to be destroyed-

(a) upon the physical destruction of the building or buildings;

(b) when the owners by unanimous resolution so determine and all holders of registered sectional mortgage bonds and the persons with registered real rights concerned, agree thereto in writing; or

(c) when the Court is satisfied that, having regard to all the circumstances, it is just and equitable that the building or buildings shall be deemed to have been destroyed, and makes an order to that effect.

(2) In any case where an order is made under subsection (1) (c), the Court may impose such conditions and give such directions as it deems fit for the purpose of adjusting the effect of the order between the body corporate and the owners and mutually among the owners, the holders of registered sectional mortgage bonds and persons with registered real rights.

(3) (a) Where the building or buildings is or are damaged or is or are destroyed within the meaning of subsection (1), the owners may by unanimous resolution, or the Court may by order, authorize a scheme-

(i) for the rebuilding and reinstatement in whole or in part of the building or buildings;

(ii) for the transfer of the interests of owners of sections which have been wholly or partially destroyed, to the other owners.

(b) In the exercise of their powers under this subsection, the owners may pass such resolution or the Court may make such order as they or it may deem necessary or expedient to give effect to the scheme, in connection with inter alia-

(i) the application of insurance moneys received by the body corporate in respect of damage to or the destruction of the building or buildings;

(ii) the payment of money by or to the body corporate or by or to the owners or by or to one or more of them;

(iii) an amendment of the sectional plan so as to include in the common property an addition thereto or subtraction therefrom;

(iv) the variation of the quota of any section; or

(v) the imposition of conditions.

(4) An application may, for the purposes of this section, be made to the Court by the body corporate or by any owner or by any holder of a registered sectional mortgage bond or a registered lease or by any insurer who has effected insurance on the building or buildings or any section therein, or by the local authority.

(5) Any insurer who has effected insurance on the building or buildings or any part thereof (being insurance against destruction of sections or damage to the building or buildings) shall, on any application to the Court under this section, have the right to intervene in the proceedings.

(6) (a) The Court may, on the application of a body corporate or any member thereof or any holder of a registered real right concerned, or any judgment creditor, by order make provision for the winding-up of the affairs of the body corporate.

(b) The Court may, by the same or any subsequent order, declare the body corporate dissolved as from a date specified in the order.

(7) The Court may, with regard to any application under this section, make such order for the payment of costs as it deems fit.

(8) Where two or more buildings are comprised in a scheme, and only one or part of one of the said buildings is damaged or destroyed, the provisions of this section shall apply *mutatis mutandis* as if the said buildings were one building and part of such building has been damaged or destroyed.

#### **49 Disposal on destruction of buildings**

(1) When in terms of section 48 the building or buildings comprised in a scheme is or are deemed to be destroyed and the owners have by unanimous resolution resolved not to rebuild the building or buildings, the body corporate shall lodge with the registrar a notification in the prescribed form of such destruction and a copy of the relevant resolution of the owners as certified by two trustees of the body corporate.

(2) Upon receipt of such notification the registrar shall make an entry thereof in the relevant sectional title register.

(3) When such entry has been made in the relevant sectional title register-

(a) the owners shall cease to be separate owners of sections but shall, subject to the provisions of section 48 (2), remain co-owners of the land in undivided shares proportionate to the quotas of the respective sections previously owned by them;

(b) 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;

(c) the land shall revert to the land register; and

(d) the sectional title deeds of units which are thus deemed to be destroyed as well as the title deeds regarding any right to an exclusive use area and any right to the extension of a

scheme referred to in section 25, together with any mortgage bond over the said rights, shall be surrendered to the registrar for cancellation.

(4) Upon the reversion of the land to the land register, the registrar shall-

(a) cancel the title deeds referred to in subsection (3) (d);

(b) issue to each of the owners of a unit which is thus deemed to be destroyed a certificate of registered title in the form prescribed under the Deeds Registries Act for his undivided share in the land, subject or entitled to such servitudes, mortgage bonds, other real rights and conditions which are applicable to or in respect of such land;

(c) make suitable endorsements on any sectional mortgage bond, lease or other real right to reflect the conversion referred to in subsection (3) (b);

(d) re-register any sectional mortgage bond, lease or other real right referred to in subsection (3) (b) as a mortgage bond, lease or real right in terms of the Deeds Registries Act;

(e) make an endorsement on the schedule referred to in section 11 (3) (b) to reflect the reversion of the land; and

(f) notify the Surveyor-General and the local authority of the said reversion of the land.

(5) Upon receipt of the notification that the whole of the land has reverted to the land register, the Surveyor-General shall cancel the relevant sectional plan.

#### **50 Unencumbered sections destroyed by State or local authority**

(1) Where the State or a local authority is the owner of a section in a building which is not encumbered by a mortgage, lease or real right, and such section has been destroyed to give effect to a project or scheme for the benefit of the public, the State or local authority, as the case may be, may, after advising the body corporate of its intention to do so, notify the registrar to this effect and apply for the cancellation of the relevant sectional title deed.

(2) An application in terms of subsection (1) shall be accompanied by the owner's copy of the relevant sectional title deed.

(3) On receipt of such application, the registrar shall cancel the deeds office's and owner's copy of the relevant sectional title deed and shall make the necessary consequential entries in his records and notify the Surveyor-General and the local authority concerned accordingly, and thereupon the undivided share in the common property that was held under that sectional title deed shall vest in the owners of the remaining sections in the building proportionately to their respective participation quotas.

(4) On receipt of a notification referred to in subsection (3) and an amended schedule referred to in section 5 (3) (g), prepared by an architect or land surveyor and to be furnished by the State or local authority, as the case may be, the Surveyor-General shall amend the original plan and the deeds office copy of the sectional plan to give effect to the cancellation of the sectional title deed referred to in the notification.

#### **51 Valuation of land and buildings and recovery of rates by local authorities**

(1) (a) When a local authority causes land and buildings comprised in a scheme to be valued for any lawful purposes, the land and buildings thereon shall, subject to the provisions of subsection (3), be valued as if they were owned by a single owner, and for the purposes of such

valuation and all purposes incidental thereto (including an objection to a valuation), the land and buildings thereon shall be deemed to be owned by the body corporate.

(b) A separate valuation shall be made of-

- (i) the land; and
- (ii) the building or buildings.

(2) Subject to the provisions of subsection (3) of this section, and section 47, the local authority may recover any rates and taxes levied by it, from the body corporate.

(3) When by law provision has been made for the separate rating of units, each relevant unit shall for the purposes of valuation and the levying and recovery of rates by a local authority be deemed to be a separate entity.

## PART X - Miscellaneous, Sections 52-61

**52 .....**

**53 ....**

### **54 Sectional titles regulation board**

(1) There is hereby established a sectional titles regulation board (in this section referred to as the regulation board), which shall-

(a) make recommendations to the Minister concerning any matter specified in section 55 in regard to which the Minister may make regulations;

(b) keep the working and implementation of this Act and the regulations under regular review and which may make recommendations to the Minister in regard to any amendments or other action which may be advisable; and

(c) advise the Minister on any matter referred to it by the Minister.

(2) The regulation board shall consist of the following members-

(a) the Chief Registrar of Deeds appointed in terms of section 2 of the Deeds Registries Act, who shall act as chairman at the proceedings of the regulation board;

(b) the Chief Surveyor-General; and

(c) seven members appointed by the Minister, who shall consist of the following persons-

(i) a conveyancer nominated by the Executive Council of the Association of Law Societies of the Republic of South Africa;

(ii) a professional land surveyor nominated by the relevant Council;

(iii) an architect nominated by the relevant Council;

(iv) an officer in the employ of the Council of South African Banks;

(v) two persons having special knowledge of sectional title development schemes; and

(vi) an official of the Department of Land Affairs.

(3) For every member of the regulation board appointed in terms of subsection (2) (c) there shall be an alternate member appointed in the same manner as such member, and any

alternate member so appointed shall act in the place of the member in respect of whom he has been appointed as alternate member, during such member's absence or inability to act as a member of the regulation board.

(4) The Chief Registrar of Deeds and the Chief Surveyor-General may each designate a person from their respective offices to act in their place at meetings which they are unable to attend.

(5) When any nomination in terms of subsection (2) (c) (i), (ii), (iii) or (iv) becomes necessary, the body concerned shall at the request of the Director-General: Land Affairs furnish the nomination required for appointment to the regulation board, within a period of 60 days from the date of such request, failing which the Minister may appoint, subject to the provisions of that subsection, any suitable person as a member in place of the person he or she would have appointed if the said body had not so failed to nominate a person.

(6) A member of the regulation board appointed by the Minister shall hold office for the period determined by the Minister, but the Minister may, if in his opinion there is good reason for doing so, terminate the appointment of such a member at any time before the expiration of his period of office.

(7) If a member of the regulation board dies or vacates his office before the expiration of his period of office, the Minister may, subject to the provisions of subsection (2) (c), appoint a person to fill the vacancy for the unexpired portion of the period for which such member was appointed.

(8) A member of the regulation board whose period of office has expired, may be reappointed.

(9) A member of the regulation board, excluding a member in the fulltime service of the State, shall, while he is engaged in the business of the regulation board, be paid such remuneration and travelling and subsistence allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(10) In the absence of the chairman, the Chief Surveyor-General shall act as chairman of the regulation board.

(11) (a) The regulation board shall from time to time meet at such times and places as are determined by the chairman.

(b) The Minister may at any time direct the chairman of the regulation board to convene a meeting of the board at a time and place specified by the Minister.

(12) (a) Five members of the regulation board, one of whom shall be a member referred to in subsection (2) (a) or (b), shall form a quorum for a meeting of the board.

(b) A decision of a majority of the members of the regulation board present at any meeting shall be a decision of the regulation board and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

(13) The regulation board may regulate the proceedings at its meetings as it may think fit, and shall cause minutes of such proceedings to be kept.

## 55 Regulations

The Minister may, after consultation with the sectional titles regulation board, make regulations in regard to-

(a) the form of sectional title registers to be opened and kept by a registrar and the particulars to be registered or filed in any such register;

(b) the form of any deed or document to be registered or filed in a deeds registry;

(c) the procedures to be followed in a deeds registry or an office of the Surveyor-General to give effect to the provisions of this Act;

(d) the manner and the unit of measure in which measurements shall be taken in the preparation or modification of a draft sectional plan or sectional plan, and the manner and form in which the records of such measurements shall be prepared and lodged with the Surveyor-General; the degree of accuracy to be obtained and the limit of error to be allowed in the taking of a measurement in the preparation or modification of a draft sectional plan or sectional plan; the steps to be taken by the Surveyor-General to test the correctness or accuracy of measurements of which the results are recorded on a draft sectional plan, sectional plan or other plan relating thereto or filed in his office in connection with a plan or sectional plan; and the steps to be taken by the Surveyor-General in the event of a measurement being inaccurate or incorrect to cause the defective sectional plans and relative title deeds to be amended;

(e) the size of a draft sectional plan, sectional plan or other plan relating thereto, and the scale according to which and the manner in which such draft sectional plan, sectional plan or other plan shall be prepared; the information to be recorded thereon; the number of draft sectional plans, sectional plans or other plans to be supplied; and the circumstances in which the Surveyor-General may authorize a departure from a regulation made in terms of this paragraph if it is found that compliance with such regulation is impossible or unpractical;

(f) the method according to which draft sectional plans, sectional plans, buildings and sections shall be numbered;

(g) the fees of office (if any) to be charged in respect of any act required or permitted to be done in or in relation to, or any matter in connection with, a deeds registry or office of a Surveyor-General, including any report made to the Court by the registrar or Surveyor-General in connection with any application or action to which he is not a party;

(h) .....

(i) .....

(k) the procedure to be followed in arbitration proceedings under this Act and the powers and duties of arbitrators appointed under this Act;

(l) the syllabus for the examination referred to in section 5 (2), and in regard to all matters incidental to conducting such examination;

(m) the conditions under which copies of sectional plans may be issued by the Surveyor-General for judicial, information or other purposes;

(n) any matter required or permitted to be prescribed by regulation under this Act; and

(o) generally, any matter which he considers necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

## **56 Notice of applications to Court**

Before any application is made to the Court for an order affecting the performance of any act in a deeds registry or office of a Surveyor-General, the applicant shall give notice in writing to the

registrar or Surveyor-General concerned at least 21 days before the hearing of such application, and such registrar or Surveyor-General may submit to the Court such report thereon as he may deem fit.

### **57 Exemption from liability**

No act or omission of a registrar, Surveyor-General or any local authority, or of an official who is employed in a deeds registry or office of the Surveyor-General or local authority, in the course of the administration of this Act, shall make the State or that registrar, Surveyor-General, local authority or official liable for damages suffered by anyone in consequence of such act or omission: Provided that if a Court finds that such act or omission was mala fide, the State or local authority, as the case may be, shall be liable for such damages.

### **58 Powers of Surveyor-General regarding sectional plans registered in terms of Sectional Titles Act, 1971**

The Surveyor-General may perform any act in relation to a sectional plan registered by a registrar in terms of the Sectional Titles Act, 1971 (Act 66 of 1971), that he would be empowered to perform if such sectional plan had been approved by him in terms of this Act, and he shall in collaboration with the registrar arrange that the original sectional plan be filed in his office and that a certified copy thereof be furnished for filing in the office of the registrar.

### **59 Repeal of laws**

The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

### **60 Savings and transitional provisions**

(1) Notwithstanding the repeal of the Sectional Titles Act, 1971 (Act 66 of 1971), by section 59 of this Act-

(a) the registration of a sectional plan and the opening of a sectional title register in respect of a development scheme which had, prior to the date of coming into operation of this Act (in this section referred to as the commencement date) already been approved by a local authority in terms of the Sectional Titles Act, 1971, shall be completed or exercised in terms of the Sectional Titles Act, 1971, as if it had not been repealed: Provided that such sectional plans and the opening of the sectional title register shall be registered in a deeds registry within 24 months after commencement of the Sectional Titles Amendment Act, 1997, or such extended period as may be required by regulation, failing which the approval shall lapse.

(b) (i) a certificate of real right contemplated in section 25 shall be issued on application by the developer in respect of a right of extension of a building acquired in terms of section 18 of the Sectional Titles Act, 1971, and upon compliance with section 25 of this Act, this Act shall be applicable as if the reservation had been made in terms of this Act: Provided that a certificate of real right in terms of section 18 of the Sectional Titles Act, 1971, shall only be issued if the right of extension still vests in the developer;

(ii) the registrar shall not issue a certificate of real right as contemplated in subparagraph (i) unless a certificate is provided by a conveyancer stating that the consent of all owners of units in the scheme and of all the mortgagees to the proposed extension has been obtained, which consent shall not unreasonably be withheld;

(iii) the developer shall obtain a certificate contemplated in subparagraph (i) within a period of 24 months after the commencement of the Sectional Titles Amendment Act, 1997, or such extended period as may be prescribed by regulation, failing which this right shall lapse.

(2) The provisions of section 32 (1) and (2) shall not affect the participation quota of any section as reflected on any relevant sectional plan which was registered in terms of the Sectional Titles Act, 1971, prior to the commencement date.

(3) Where an owner has, prior to the commencement of this Act, acquired in terms of an agreement or been granted in terms of rules made under the Sectional Titles Act, 1971, the right to the exclusive use of a part or parts of common property, the body corporate concerned shall, if so requested after the commencement date by the owner, transfer such right to the owner by the registration of a notarial deed entered into by the parties, in which the body corporate shall represent the owners of all relevant sections as transferor.

(4) No provisions of this Act shall affect any vested right in respect of any exclusive use by an owner of a part or parts of common property conferred before the commencement date by rules made under the Sectional Titles Act, 1971, or any other vested right granted or obtained in terms of that Act, or arising from any agreement concluded before the commencement date.

(5) Any reference in any law or document to a body corporate established in terms of the Sectional Titles Act, 1971, as a 'Controlling Body' referred to in section 28 (3) of that Act, shall after the commencement date be construed as a reference to a 'Body Corporate' referred to in section 36 (3) of this Act.

(6) Rules decided on by unanimous resolution under the Sectional Titles Act, 1971, before the commencement date replacing rules contained in Schedule 1 to that Act, and at the said date not yet lodged with the registrar as contemplated in section 27 (3) of that Act, may be lodged within a period of six months after that date in terms of the said section as if that Act had not been repealed by section 59 of this Act, and shall, where not so lodged within the said period, lapse and be deemed in any such case to have been replaced, subject to addition, amendment or repeal as contemplated in section 35 (2) (a) of this Act, by prescribed management rules contemplated in the last-mentioned section.

(6A) Notwithstanding the provisions of subsection (6) the rules referred to in that subsection that were not lodged with the registrar within the period referred to in that subsection may be lodged with the registrar within a period of 12 months after the commencement of the Sectional Titles Amendment Act, 1991.

(7) Subject to the provisions of subsection (4) of this section-

(a) unaltered rules contained in Schedule 1 to the Sectional Titles Act, 1971, and applying immediately prior to the commencement date in respect of any scheme, shall lapse on that date, and such rules shall be deemed to be replaced, subject to addition, amendment or repeal as contemplated in section 35 (2) (a) of this Act, by prescribed management rules contemplated in the last-mentioned section; and

(b) unaltered rules contained in Schedule 2 to the Sectional Titles Act, 1971, and so applying in respect of any scheme, shall lapse on that date, and such rules shall be deemed to be replaced, subject to addition, amendment or repeal as contemplated in section 35 (2) (b) of this Act, by prescribed conduct rules contemplated in the last-mentioned section.

(8) Subject to the provisions of subsection (4) of this section, any rules other than rules referred to in subsection (7) of this section, applying in respect of a scheme immediately prior to the commencement date, shall, subject to such substitution, addition, amendment or repeal as contemplated in paragraph (a) or (b) of section 35 (2) of this Act, as the case may be, remain in force after the said date, except to the extent that any such rule may be irreconcilable with any prescribed management rule contemplated in section 35 (2) (a), in which case the management rule concerned shall apply: Provided that any such rules shall as from the commencement date be deemed to be supplemented by any rule for which it does not make provision but for which provision is made in the prescribed rules.

(9) Subject to the provisions of this section, anything done under a provision of a law repealed by section 59, shall be deemed to have been done under the corresponding provision of this Act.

### **60A Further savings and transitional provisions**

(1) Notwithstanding the repeal of a law mentioned in Schedule 2 to Proclamation R9 of 1997 (in this section referred to as the Proclamation)-

(a) the registration of a sectional plan and the opening of a sectional title register in respect of a development scheme which was, prior to the date of commencement of the Proclamation (in this section referred to as the commencement date), already approved by a local authority under the provisions of any law mentioned in Schedule 2 to the Proclamation shall be completed or exercised in terms of the provisions of such law as if it had not been repealed: Provided that the application for the registration of such a sectional plan and the opening of such a sectional title register shall be registered within a period of twenty-four months after the commencement date;

(b) a certificate of real right as contemplated in section 25 of this Act, shall be issued in respect of a right of extension of a building, acquired in terms of the provisions of any law mentioned in Schedule 2 to the Proclamation, after compliance with the provisions of section 25 of this Act: Provided that the contemplated certificate shall only be issued-

(i) if the right of extension still vests in the developer;

(ii) on production of a conveyancer's certificate to the effect that consent to the extension has been obtained from all registered owners of the units and all the mortgagees of registered bonds over units in the scheme or, if any person refuses to consent, on an order by a local or provincial division of the Supreme Court authorising the registrar to issue such certificate; and

(iii) within a period of twenty-four months after the commencement date.

(2) The provisions of section 32 (1) and (2) of this Act shall not affect the participation quota of any section as reflected on any relevant sectional plan which was registered in terms of any law mentioned in Schedule 2 to the Proclamation prior to the commencement date.

(3) Where an owner has, prior to the commencement date, acquired, in terms of an agreement or been granted in terms of rules made under any law mentioned in Schedule 2 to the Proclamation, the right to exclusive use of a part or parts of common property, the body corporate concerned shall, if so requested by the owner after the commencement date transfer such right to the owner by the registration of a notarial deed entered into by the parties, in which the body corporate shall represent the owners of all relevant sections as transferor.

(4) No provision of this Act shall affect any vested right in respect of any exclusive use by an owner of a part or parts of common property conferred before the commencement date by rules made under any law mentioned in Schedule 2 to the Proclamation or any other vested right granted or obtained in terms of such law, or arising from any agreement concluded before the commencement date.

(5) Any reference in any law or document to a body corporate established in terms of any law mentioned in Schedule 2 to the Proclamation as a 'Controlling Body' shall, after the commencement date be construed as a reference to a 'Body Corporate' referred to in section 36 (3) of this Act.

(6) Rules decided on by unanimous resolution under any law mentioned in Schedule 2 to the Proclamation before the commencement date replacing the rules contained in a schedule to such law, and at the said date not yet lodged with the registrar in terms of the provisions of such law, may be lodged within a period of twelve months after that date in terms of the said law as if that law had not been repealed by the Proclamation, and shall, where not so lodged within the said period, lapse and be deemed in any case to have been replaced, subject to addition, amendment or repeal as contemplated in section 35 (2) (a) of this Act, by prescribed management rules contemplated in the last-mentioned section.

(7) Subject to the provisions of subsection (4) of this section-

(a) unaltered rules contained in a schedule to any law mentioned in Schedule 2 to the Proclamation and applying immediately prior to the commencement date in respect of any scheme, shall lapse on that date, and such rules shall be deemed to be replaced, subject to addition, amendment or repeal as contemplated in section 35 (2) (a) of this Act, by prescribed management rules as contemplated in the last-mentioned section;

(b) unaltered rules contained in a schedule to any law mentioned in Schedule 2 to the Proclamation and so applying in respect of any scheme, shall lapse on that date, and such rules shall be deemed to be replaced, subject to addition, amendment or repeal as contemplated in section 35 (2) (b) of this Act, by prescribed conduct rules contemplated in the last-mentioned section.

(8) Subject to the provisions of subsection (4) of this section, any rules other than rules referred to in subsection (7) of this section, applying in respect of a scheme immediately prior to the commencement date, shall subject to such substitution, addition, amendment or repeal as contemplated in paragraph (a) or (b) of section 35 (2) of this Act, as the case may be, remain in force after the said date, except to the extent that any such rule may be inconsistent with any prescribed management rule contemplated in section 35 (2) (a), in which case the management rule concerned shall apply: Provided that any such rules shall as from the commencement date be deemed to be supplemented by any rule for which it does not make provision but for which provision is made in the prescribed rules.

(9) Subject to the provisions of this section, anything done under a provision of a law mentioned in Schedule 2 to the Proclamation and repealed by that Proclamation shall be deemed to have been done under the corresponding provision of this Act.

## **61 Short title and commencement**

This Act shall be called the Sectional Titles Act, 1986, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

# Prescribed ('model') Management Rules

(Contained in Annexure 8 to the Regulations made under the Sectional Titles Act, with the addition of some headings to aid legibility)

## Preliminary

### 1. Amendment

The Rules contained in this Annexure shall not be added to, amended or repealed except in accordance with section 35 (2) (a) of the Act, and subject to the provisions of section 35 (3) and (5) of the Act.

### 2. Interpretation

In the interpretation of these rules, unless the context otherwise indicates-

- (a) 'Act' means the Sectional Titles Act, 1886 (Act 95 of 1986), as amended from time, to time and any regulations made and in force thereunder;
- (b) 'accounting officer' means a person who in terms of section 60 (2) of the Close Corporation Act, 1984 (Act 69 of 1984), is qualified to perform the duties of an accounting officer;
- (c) 'auditor' means an auditor qualified to act as such under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951);
- (d) 'registered mortgagee' means any mortgagee of whom the body corporate has been notified in writing as contemplated in section 44 (1) (f) of the Act;
- (e) 'trustee' includes an alternate trustee.
- (f) words and expressions to which a meaning has been assigned in the Act, shall bear the meanings so assigned to them;
- (g) words importing-
  - (i) the singular number only shall include the plural, and the converse shall also apply;
  - (ii) the masculine gender shall include the feminine, and neuter genders; and the neuter gender shall include the masculine and feminine genders;
- (h) the headings to the respective rules are provided for convenience of reference only and are not to be taken into account in the interpretation of the rules.

### 3. Domicilium citandi et executandi

(1) The trustees shall from time to time determine the address constituting the domicilium citandi et executandi of the body corporate as required by section 37 (1) (m) of the Act, subject to the following-

- (a) Such address shall be situated in the magisterial district in which the scheme is situated and shall be the address of the chairman or other resident trustee duly appointed in general meeting or in the magisterial district in which the offices of any duly appointed managing agent are situated being the address of such managing agent;

(b) no change of such address shall be effective until written notification thereof has been received by the registrar;

(c) the trustees shall give notice to all owners of any change of such address.

(2) The domicilium citandi et executandi of each owner shall be the address of the section registered in his name: Provided that such owner shall be entitled from time to time to change the said domicilium but that any new domicilium selected shall be situate in the Republic, and that the change shall only be effective on receipt of written notice thereof by the body corporate at its domicilium.

## Trustees of the Body Corporate

### 4. General

(1) The number of trustees shall be determined from time to time by the members of the body corporate in general meeting, provided that there shall be not less than two trustees.

(2) With effect from the date of the establishment of the body corporate, all owners shall be trustees who shall hold office until the first general meeting of the members of the body corporate as contemplated in rule 50 (1) whereupon they shall retire but shall be eligible for re-election.

(3) The chairman of the trustees referred to in rule 4 (2) shall be the developer concerned or his nominee, who shall hold office until the general meeting referred to in the said rule, when he shall retire as a trustee and as chairman, but shall be eligible for re-election in terms of rule 18.

### 5. Qualifications

Save for the provisions of rule 4 (2), a trustee or alternate trustee shall not be required to be an owner or the nominee of an owner who is a juristic person, in order to qualify for office as a trustee: Provided that-

(a) the majority of the trustees are owners, or spouses of owners; and

(b) the managing agent or any of his or her employees or an employee of the body corporate may not be a trustee unless he or she is an owner.

### 6. Election

Save for the provisions of rule 4 (2), the trustees shall be elected at the first annual general meeting and thereafter at each subsequent annual general meeting, and shall hold office until the next succeeding annual general meeting, but they shall be eligible for re-election, if so nominated.

### 7. Nominations

Nominations by owners for the election of trustees at any annual general meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received at the domicilium of the body corporate not later than 48 hours before the meeting: Provided that trustees are also capable of being elected by way of nominations with the consent of the nominee given at the meeting itself should insufficient written nominations be received to comply with rule 4 (1).

### 8. Vacancy in Number

The trustees may fill any vacancy in their number. Any trustee so appointed shall hold office until the next annual general meeting when he shall retire and be eligible for re-election as though he had been elected at the previous annual general meeting.

#### **9. Alternate Trustees**

- (1) The trustees may appoint another person, whether or not he be the owner of a unit, to act as an alternate trustee during the absence or inability to act a trustee.
- (2) An alternate trustee shall have the powers and be subject to the duties of trustee.
- (3) An alternate trustee shall cease to hold office if the trustee whom he replaces, ceases to be a trustee, or if the alternate's appointment is revoked by the trustees.

#### **10. Remuneration**

- (1) Unless otherwise determined by a special resolution of the owners, trustees who are owners shall not be entitled to any remuneration in respect of their services as such: Provided that the body corporate shall reimburse to the trustees all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- (2) The body corporate may remunerate trustees who are not owners at such rate as may be agreed upon between the body corporate and such trustees, and such trustees shall further be entitled to have refunded to them any disbursements and expenses incurred by them in the circumstances envisaged in the proviso to sub-rule (1) of this rule, provided always that an alternative trustee appointed by a trustees, who is not an owner, shall claim his remuneration, if any, from the trustee whom he replaced and not from the body corporate, unless the body corporate has been instructed in writing by such trustee to pay any portion of his remuneration to such alternate trustee.

#### **11. Validity of Acts**

Any act performed by the trustees shall, notwithstanding that it is after the performance of the act discovered that there was some defect in the appointment or continuance in office of any trustee, be as valid as if such trustee had been duly appointed or had duly continued in office.

#### **12. Indemnity**

(1) (a) Subject to the provisions of sub-rule (2), every trustee, agent or other officer or servant of the body corporate shall be indemnified by the body corporate against all costs, losses, expenses and claims which he may incur or become liable to by reason of any act done by him in the discharge of his duties, unless such costs, losses, expenses or claims are caused by the mala fide or grossly negligent act or omission of such person.

(b) It shall be the duty of the trustees to pay such indemnity out of the funds of the body corporate.

(2) The indemnity referred to in sub-rule (1) shall not apply in favour of any managing agent appointed in terms of rule 46.

#### **13. Disqualification**

A trustee shall cease to hold office as such-

- (a) if by notice in writing to the body corporate he resigns his office;
- (b) if he is or becomes of unsound mind;

- (c) if he surrenders his estate as insolvent, or his estate is sequestrated;
- (d) if he is convicted of an offence which involves dishonesty;
- (e) if by resolution of a general meeting of the body corporate, he is removed from his office, provided that the intention to vote upon the removal from office has been specified in the notice convening the meeting;
- (f) if he is or becomes disqualified in terms of section 218 or 219 of the Companies Act, 1973, from being appointed or acting as a director of a company.

#### **14. Replacement**

The body corporate may at a general meeting appoint another trustee in the place of any trustee who has ceased to hold office in terms of rule 13, for the unexpired part of the term of office of the trustee so replaced.

## **Meetings of Trustees**

#### **15. When to be Held, Notice and Attendance**

(1) Subject to the provisions of sub-rule (2) and (3) hereof, the trustees may give notice convening meetings, meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit. It shall not be necessary to give notice of a meeting of trustees to any trustee for the time being absent from the Republic, but notice of any such meeting shall be given to his alternate, if he has appointed one, where such an alternate is in the Republic.

(2) A trustee may at any time convene a meeting of the trustees by giving to the other trustees and all first mortgagees in the circumstances referred to in sub-rule (3) hereof, not less than seven days' written notice of a meeting proposed by him, which notice shall specify the reason for calling such a meeting: Provided that in cases of urgency such shorter notice as is reasonable in the circumstances may be given.

(3) Any mortgagee holding first mortgage bonds over units shall, if he so requires the trustees in writing, be entitled to receive reasonable notice of all meetings of the trustees.

(4) The nominee of any such first mortgagee shall be entitled to attend and speak at all meetings of the trustees but shall not, in his capacity as such, be entitled to vote thereat.

(5) An owner shall be entitled to attend and speak at any meeting of the trustees, but shall not in his or her capacity as such, be entitled to vote thereat.

#### **16. Quorum**

(1) At a meeting of the trustees, 50 percent of the number of trustees but not less than two, shall form a quorum.

(2) If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act, but only for the purpose of appointing or co-opting additional trustees to make up a quorum or for the purpose of convening a general meeting of owners.

### **17. Adjournment Due to Lack of Quorum**

If at any meeting of trustees a quorum is not present within thirty minutes of the appointed time of the meeting, such meeting shall stand adjourned to the next business day at the same time, and the trustees then present, who shall not be less than two, shall form a quorum.

### **18. Election of Chairman**

At the commencement of the first meeting of trustees after an annual general meeting, at which trustees have been elected, the trustees shall elect a chairman from among their number who shall hold office as such until the end of the next annual general meeting of the members of the body corporate and who shall have a casting as well as a deliberative vote, save where there are only two trustees.

### **19. Removal of Chairman**

The trustees at a trustees' meeting or the body corporate at a special meeting, in respect of either of which notice of the intended removal from office of the chairperson has been given, may remove the chairperson from his or her office.

### **20. Replacement of Chairman**

If any chairman elected in terms of rule 18 vacates his office as chairman or no longer continues in office by virtue of the provisions of rule 19, the trustees shall elect another chairman who shall hold office as such for the remainder of the period of office of the first-mentioned chairman, and who shall have the same rights of voting.

### **21. Temporary Chairman**

If any chairman vacates the chair during the course of a meeting or is not present or is for any other reason unable to preside at any meeting, the trustees present at such meeting shall choose another chairman for such meeting who shall have the same rights of voting as the chairman.

### **22. Voting Rights**

All matters at any meeting of the trustees shall be determined by a majority of the votes of the trustees present and voting.

### **23. Disqualification from Voting**

A trustee shall be disqualified from voting in respect of any contract or proposed contract, or any litigation or proposed litigation, with the body corporate, by virtue of any interest he may have therein.

### **24. Round Robin Resolution**

A resolution in writing signed by all the trustees for the time being present in the Republic and being not less than are sufficient to form a quorum, shall be as valid and effective as if it had been passed at a meeting of the trustees duly convened and held.

## The Functions, Powers and Duties of Trustees

### 25. General

The duties and powers of the body corporate shall, subject to the provisions of the Act and these rules and to any restriction imposed or direction given at a general meeting of the owners of sections, be performed or exercised by the trustees of the body corporate holding office in terms of these rules.

### 26. Powers

(1) Subject to any restriction imposed or direction given at a general meeting of the body corporate, the powers of the trustees shall include the following:

(a) to appoint for and on behalf of the body corporate such agents and employees as they deem fit in connection with-

(i) the control, management and administration of the common property; and

(ii) the exercise and performance of any or all of the powers and duties of the body corporate;

(b) to delegate to one or more of the trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.

(2) The trustees may not make loans on behalf of the body corporate to owners of units or to themselves.

### 27. Signing of Instruments

No document signed on behalf of this body corporate, shall be valid and binding unless it is signed by a trustee and the managing agent referred to in rule 46 or by two trustees or, in the case of a certificate issued in terms of section 15B (3) (i) (aa) of the Act, by two trustees or the managing agent.

### 28. Statutory and General Duties

(1) Without detracting from the scope of the additional duties specified in rules 29 to 45, inclusive, and subject to the provisions of such rules, the trustees shall perform the functions entrusted to them by sections 37 and 39 of the Act.

(2) The trustees shall do all things reasonably necessary for the control, management and administration of the common property in terms of the powers conferred upon the body corporate by section 38 of the Act.

(3) The trustees shall do all things reasonably necessary for the enforcement of the rules in force.

### 29. Insurance

(1) (a) At the first meeting of the trustees or soon thereafter as is possible, and annually thereafter, the trustees shall take steps to insure the buildings, and all improvements to the common property, to the full replacement value thereof, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the trustees are most beneficial to the owners, against-

(i) fire, lightning and explosion;

(ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organization;

- (iii) storm, tempest and flood;
- (iv) earthquake;
- (v) aircraft and other aerial devices or articles dropped therefrom;
- (vi) bursting or overflowing of water tanks, apparatus or pipes;
- (vii) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
- (viii) housebreaking or any attempt thereat;
- (ix) loss of occupation or loss of rent in respect of any of the above risks;
- (x) such other perils or dangers as the trustees or any holder of first mortgage bonds over not less than 25% in number of the units in the scheme, may deem appropriate.

(b) The trustees shall at all times ensure that in the policy of insurance referred to in paragraph (a) above-

(i) there is specified the replacement value of each unit (excluding the owner's interest in the land)-

(aa) initially [but subject to the provisions of subparagraph (cc)] in accordance with the trustees' estimate of such value;

(bb) after the first annual general meeting [but subject to the provisions of subparagraph (cc)] in accordance with the schedule of values as approved in terms of paragraph (c); or

(cc) as required at any time by any owner in terms of paragraph (d);

(ii) any 'average' clause is restricted in its effect to individual units and does not apply to the building as a whole.

(iii) there is included a clause in terms of which the policy is valid and enforceable by any mortgagee against the insurer notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured unless and until the insurer on not less than 30 days' notice to the mortgagee shall have terminated such insurance.

(c) Before every annual general meeting, the trustees shall cause to be prepared schedules reflecting their estimate of-

(i) the replacement value of the buildings and all improvements to the common property; and

(ii) the replacement value of each unit (excluding the owner's interest in the land), the aggregate of such values of all units being equal to the value referred to in subparagraph (i) above,

and such schedules shall be laid before the annual general meeting for consideration and approval in terms of rule 56.

(d) Any owner may at any time increase the replacement value as specified in the insurance policy in respect of his unit: Provided that such owner shall be liable for payment of the additional insurance premium and shall forthwith furnish the body corporate with proof thereof from the insurer.

(e) The trustees shall, on the written request of a mortgagee and satisfactory proof thereof, record the cession by any owner to such mortgagee of the owner's interest in the application of the proceeds of the policies of insurance effected in terms of rule 29 (1) (a).

(2) At the first meeting of the trustees or as soon thereafter as is possible, the trustees shall take all reasonable steps-

(a) to insure the owners and the trustees and to keep them insured against liability in respect of-

(i) death, bodily injury or illness; or

(ii) loss of, or damage to, property,

occurring in connection with the common property, for a sum of liability of not less than one hundred thousand rand, which sum may be increased from time to time as directed by the owners in general meeting; and

(b) to procure to the extent, if any, as determined by the members of the body corporate in a general meeting, a fidelity guarantee in terms of which shall be refunded any loss of moneys belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person being any person in the service of the body corporate and all trustees and persons acting in the capacity of managing agents of the body corporate; and

(3) The owners may by special resolution direct the trustees to insure against such other risks as the owners may determine.

### **30. Collection of Contributions**

It shall be the duty of the trustees to levy and collect contributions from the owners in accordance with the provisions and in the proportions set forth in rule 31.

### **31. Liability in Terms of Sections 37 (1) and 47 of the Act**

(1) The liability of owners to make contributions, and the proportions in which the owners shall make contributions for the purposes of section 37 (1) of the Act, or may in terms of section 47 of the Act be held liable for the payment of a judgment debt of the body corporate, shall with effect from the date upon which the body corporate comes into being, be borne by the owners in accordance with a determination made in terms of section 32 (4) of the Act, or in the absence of such determination, in accordance with the participation quotas attaching to their respective sections.

(2) At every annual general meeting the body corporate shall approve, with or without amendment, the estimate of income and expenditure referred to in rule 36, and shall determine the amount estimated to be required to be levied upon the owners during the ensuing financial year.

(3) Within fourteen days after each annual general meeting the trustees shall advise each owner in writing of the amount payable by him or her in respect of the estimate referred to in subrule (2), whereupon such amount shall become payable in instalments, as determined by the trustees.

(4) The trustees may from time to time, when necessary, make special levies upon the owners or call upon them to make special contributions in respect of all such expenses as are mentioned in rule 31 (1) above [which are not included in any estimates made in terms of rule 31 (2) above], and such levies and contributions may be made payable in one sum or by such instalments and at such time or times as the trustees shall think fit.

(5) An owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the body corporate in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owner to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.

(6) The trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine.

### **32. Records of Rules and their Availability**

(1) The trustees shall keep a complete record of all rules in force from time to time and shall ensure that any amendment, substitution, addition or repeal of such rules (as contemplated in section 35(5) of the Act) is submitted forthwith to the Registrar of Deeds for filing as contemplated in section 35(5)(c) of the Act.

(2) The trustees shall on the application of-

- (a) an owner of a unit;
- (b) an occupant of a unit;
- (c) the prospective purchaser of a unit;
- (d) the holder of any registered sectional mortgage bond;
- (e) the managing agent; and
- (f) the auditor or the accounting officer,

supply to such person a copy of all rules in force, and may require them to pay a reasonable charge therefor.

### **33. Improvements to Common Property**

#### **Luxurious**

(1) The trustees may, if the owners by unanimous resolution so decide, effect improvements of a luxurious nature on the common property.

#### **Non-luxurious**

(2) (a) Should the trustees wish to effect any improvements to the common property, other than luxurious improvements referred to in subrule (1), they shall first give written notice of such intention to all owners such notice shall-

(i) indicate the intention of the trustees to proceed with the improvement upon the expiry of a period of not less than thirty days reckoned from the date of posting such notice; and

(ii) provide details of the improvements as to-

(aa) the costs thereof; and

(bb) the manner in which it is to be financed and the effect upon levies paid by owners; and

(cc) the need, desirability and effect thereof.

(b) The trustees shall at the written request of any owner convene a special general meeting in order to discuss and to deliberate upon the proposals contained in the notice referred to in

paragraph (a), at which meeting the owners may approve, with or without amendments, such proposals by way of special resolution.

(c) In the event of such a special general meeting being called, the trustees shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any special resolution ensuing therefrom.

(3) Notwithstanding the provisions of subrules (1) and (2), the trustees shall, if so required in writing by a majority of owners, procure the installation and maintenance in good working order, at the body corporate's cost, of separate meters to record the consumption of electricity, water and gas in respect of each individual section and the common property.

(4) If and for so long as no separate meters have been installed in terms of sub-rule (3) the contribution payable by each owner in respect of electricity, water and gas shall be calculated in accordance with the provisions of rule 31.

### **34. Minutes**

(1) The trustees shall-

(a) keep minutes of their proceedings;

(b) cause minutes to be kept of all meetings of the body corporate in a minute book of the body corporate kept for the purpose;

(c) include in the minute book of the body corporate a record of every unanimous resolution, special resolution and any other resolution of the body corporate.

(2) The trustees shall keep all minute books in perpetuity.

(3) On the written application of any owner or registered mortgagee of a unit, the trustees shall make all minutes of their proceedings and the minutes of the body corporate available for inspection by such owner or mortgagee.

### **35. Books of Account and Records**

(1) The trustees shall cause proper books of account and records to be kept so as fairly to explain the transactions and financial position of the body corporate, including-

(a) a record of the assets and liabilities of the body corporate;

(b) a record of all sums of money received and expended by the body corporate and the matters in respect of which such receipt and expenditure occur;

(c) a register of owners and of registered mortgagees of units and of all other persons having real rights in such units (insofar as written notice shall have been given to the trustee by such owners, mortgagees or other persons) showing in each case their addresses; and

(d) individual ledger accounts in respect of each owner.

(2) On the application of any owner, registered mortgagee or of the managing agent the trustees shall make all or any of the books of account and records available for inspection by such owner, mortgagee or managing agent.

(3) The trustees shall cause all books of account and records to be retained for a period of six years after completion of the transactions, acts or operations to which they relate: Provided that minute books shall be retained for so long as the scheme remains registered.

### **36. Annual Financial Estimate**

(1) Before every annual general meeting, the trustees shall cause to be prepared an itemized estimate of the anticipated income and expenses of the body corporate during the ensuing financial year, which estimate shall be laid before the annual general meeting for consideration in terms of rule 56 hereof.

(2) The estimate of expenses referred to in sub-rule (1) shall include a reasonable provision for contingencies and the maintenance of the common property.

### **37. Annual Financial Statement**

(1) The trustees shall cause to be prepared, and shall lay before every annual general meeting, for consideration in terms of rule 56(b), a financial statement in conformity with generally accepted accounting practice, which statement shall fairly present the state of affairs of the body corporate and its finances and transaction as at the end of the financial year concerned.

(2) The financial statement shall include information and notes pertaining to the proper financial management by the body corporate, including:

(a) the age analysis of debts in respect of levies, special levies and other contributions;

(b) the age analysis of amounts owing by the body corporate to the creditors and in particular to any public or local authority in respect of rates and taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;

(c) the expiry dates of all insurance policies.

### **38. Annual Trustees' Report**

The trustees shall further cause to be prepared and shall lay before every annual general meeting a report signed by the chairman reviewing the affairs of the body corporate during the past year, for consideration in terms of rule 56 (b).

### **39. Delivery of Estimate, Statement & Report**

(1) The trustees shall cause copies of the schedules, estimate, audited statement and report referred to in rules 29 (1) (c), 36, 37 and 38 to be delivered to each owner, and to any mortgagee which has advised the body corporate of its interest, at least fourteen days before the date of the annual general meeting at which they are to be considered.

(2) Delivery under the last preceding sub-rule shall be deemed to have been effected if the documents referred to are sent by prepaid post addressed to the owner at his domicilium referred to in rule 3 (2), and to any mortgagee as aforesaid at the address of such mortgagee as reflected in the records of the body corporate.

### **40. Audit**

At the first general meeting and thereafter at every ensuing annual general meeting, the body corporate shall appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting: Provided that where a scheme comprises less than 10 units, an accounting officer may be appointed for that purpose and the auditor or accounting officer, as the case may be, must sign the financial statements.

#### **41. Deposit of Funds**

The trustees shall cause all moneys received by the body corporate to be deposited to the credit of an account or accounts with a registered commercial bank or building society in the name of the body corporate and, subject to any direction given or restriction imposed at a general meeting of the body corporate, such moneys shall only be withdrawn for the purpose of payment of the expenses of the body corporate or investment in terms of rule 43.

#### **42. Managing Agent's Control of Funds**

The trustees may authorize the managing agent to administer and operate the account referred to in rule 41 and 43: Provided that where the managing agent is an estate agent as defined in the Estate Agents' Act, 1976 (Act 112 of 1976), the trustees may authorize such managing agent to deposit moneys contemplated in rule 41 in a trust account as contemplated in section 32(3) of the Estate Agents' Act, 1976, which moneys shall only be withdrawn for the purposes contemplated in rule 41.

#### **43. Investment of Funds**

Any funds not immediately required for disbursement may be invested in a savings or similar account with any registered building society or bank approved by the trustees from time to time.

#### **44. Use of Interest**

Interest on moneys invested shall be used by the body corporate for any lawful purpose.

#### **45. No Refunds or Distributions of Profits or Assets**

(1) The owners shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them.

(2) No portion of the profits or gains of the body corporate shall be distributed to any owner or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is of a capital nature.

#### **46. The Appointment, Powers and Duties of a Managing Agent**

(1) Notwithstanding anything to the contrary contained in rule 28, and subject to the provisions of section 39 (1) of the Act, the trustees may from time to time, and shall if required by a registered mortgagee of 25 per cent of the units or by the members of the body corporate in general meeting, appoint in terms of a written contract a managing agent to control, manage and administer the common property and the obligations to any public or local authority by the body corporate on behalf of the unit owners, and to exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor or caretaker: Provided that a managing agent shall be appointed for an initial period of one year and thereafter upon 1 month's written notice of termination by either party.

(2) (a) The trustees shall ensure that there is included in the contract of appointment of all managing agents a provision to the effect that if he is in breach of any of the provisions of his contract, or if he is guilty of conduct which at common law would justify the termination of a contract between master and servant, the trustees may, without notice, cancel such contract of appointment, and that the managing agent shall have no claim whatsoever against the body corporate or any of the owners as a result of such cancellation.

(b) Any one or more of the owners or mortgagees of sections in the buildings may, if the managing agent is in breach of the provisions of his contract or if he is guilty of any conduct which at common law would justify the termination of a contract between master and servant, require the trustees to cancel the managing agent's contract in terms of paragraph (a). The foregoing provisions shall in no way detract from the trustees' rights to cancel the managing agent's contract.

(c) Any owner or mortgagee who required the trustees to cancel the managing agent's contract in terms of paragraph (b) shall furnish the trustees with such security as they in their discretion may determine for the payment of and shall indemnify the trustees and the body corporate against-

(i) all litigation costs reasonably incurred by the trustees in enforcing such cancellation against the managing agent; and

(ii) all other costs and damages arising out of such cancellation, purported cancellation or litigation for which the trustees or the body corporate might be liable up to the time such owner or mortgagee formally notifies the trustees that he no longer requires them to pursue the action.

(d) The trustees shall not be required to cancel the contract of appointment of the managing agent unless and until the owner or mortgagee requiring cancellation in terms of paragraph (b) has furnished them with the security and indemnity as specified in rule 46, paragraph (2) (c).

#### **47. Mandatory Provisions in Managing Agency Contract**

The contract with the managing agent shall further provide for the appointment to be revoked, and such managing agent shall cease to hold office if:

(i) where the managing agent is a juristic person, an order is made for its provisional or final liquidation or, where the managing agent is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the managing agent is a company, it is placed under judicial management; or

(ii) the managing agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the managing agent is a company or a close corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty; or

(iii) a special resolution of the members of the body corporate is passed to that effect: Provided that in such event the managing agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract.

#### **48. Records of Administration**

The managing agent shall keep full records of his or her administration and shall report to the body corporate and to all holders of registered sectional mortgage bonds who have notified the body corporate of their interest in terms of rule 54(1)(b) of all matters which in his or her opinion detrimentally affect the value or amenity of the common property and any of the sections.

#### **49. Notice and Minutes to Managing Agent**

(1) The trustees shall give reasonable prior notice to the managing agent of all meetings of the trustees and he may with the consent of the trustees be present thereat.

(2) The trustees shall from time to time furnish to the managing agent copies of the minutes of all meetings of the trustees and of the body corporate.

## Meetings of Owners

### 50. First Meeting

(1) The first meeting of owners shall be held within sixty days of the establishment of the body corporate, at least seven days' notice of which shall be given in writing, and which notice shall be accompanied by a copy of the agenda of such meeting and details of the items referred to in sub-rule 2.

(2) The agenda for the meeting convened under subrule (1), shall comprise at least the following:

- (i) the consideration, confirmation or variation of the insurances effected by the developer or the body corporate;
- (ii) the consideration, confirmation or variation of an itemised estimate of the anticipated income and expenses of the body corporate for the ensuing financial year;
- (iii) the consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the building from date of establishment of the body corporate to the date of notice of the meeting referred to in subrule (1);
- (iv) subject to section 47 (2) of the Act, the taking of cession of such contracts relating to the management, control and administration of the building as may have been entered into by the developer for the continual management, control and administration of the building and the common property and in respect of which the developer shall be obliged to submit such contracts to the meeting;
- (v) the appointment of an auditor, or where applicable, an accounting officer;
- (vi) the election of trustees;
- (vii) any restrictions or directions to be given in terms of section 39 (1) of the Act; and
- (viii) determination of the domicilium citandi et executandi of the body corporate.

### 51. Annual General Meetings

(1) An annual general meeting shall be held within four months of the end of each financial year.

(2) Unless otherwise decided at a general meeting or by the trustees, the financial year of the body corporate shall run from the first day of March in each year to the last day of February in the following year.

### 52. Special General Meetings

All general meetings other than the annual general meeting shall be called special general meetings.

### 53. Convening Meetings

The trustees may whenever they think fit and shall upon a request in writing made either by owners entitled to 25 per cent of the total of the quotas of all sections or by any mortgagee holding mortgage bonds over not less than 25 per cent in number of the units, convene a special general meeting. If the

trustees fail to call a meeting so requested within fourteen days of the request, the owners or mortgagee concerned shall be entitled themselves to call the meeting.

#### **54. Notice**

(1) Unless otherwise provided for in the Act, at least fourteen days' notice of every general meeting specifying the place, within the magisterial district where the scheme is situated, or such other place determined by special resolution of members of the body corporate, the date and the hour of the meeting and, in the case of special business, the general nature of such business, shall be given-

- (a) to all owners;
- (b) to all holders of registered mortgage bonds over units who have advised the body corporate of their interests; and
- (c) to the managing agent.

(2) The holders of registered mortgage bonds and the managing agent referred to in sub-rule (1), shall have the right to attend the meeting herein referred to and to speak at such meetings, but shall not, in their respective capacities as such, be entitled to vote thereat.

(3) The notice referred to in sub-rule (1) (a) shall be deemed to have been sufficiently given and delivered if delivered in accordance with rule 39 (2).

(4) The notice referred to in sub-rule (1) shall be accompanied by the documents referred to in rule 39 (1), except in the case of a meeting contemplated in rule 50 (1) or a special general meeting.

(5) Inadvertent omission to give the notice referred to in sub-rule (1) to any person entitled to such notice or the non-receipt of such notice by such person shall, save in the case of the persons contemplated in sub-rule (1) (b) not invalidate any proceedings at any such meeting.

(6) A general meeting of the body corporate may be called on shorter notice than that specified in sub-rule (1) hereof, provided it is so agreed by all persons entitled to attend.

(7) A special general meeting for the purposes of passing a unanimous or special resolution may be convened for a date 30 days or less after notice has been given to all the members of the body corporate if, in the opinion of the trustees, it is necessary due to the urgency of a matter or due to the specific nature of a matter to convene the meeting with such shorter period of notice:

#### **55. Special Business**

All business at any general meeting other than business referred to in rule 56 (a), (b), (c), and (d) shall be special business.

## **Annual General Meeting**

#### **56. Compulsory Items of AGM Agenda**

The following business shall be transacted at an annual general meeting:

- (a) The consideration of the financial statement and report referred to in rules 37 and 38;
- (b) the approval with or without amendment of-
  - (i) the schedules of replacement values referred to in rule 29 (1) (c); and
  - (ii) the estimate of income and expenditure referred to in rule 36;

- (c) the appointment of an auditor or an accounting officer;
- (d) the determination of the number of trustees for the ensuing year;
- (e) the election of trustees for the ensuing year;
- (f) any special business of which due notice has been given in terms of rule 54;
- (g) the giving of directions or the imposing of restrictions referred to in section 39 (1) of the Act;
- (h) the determination of the domicilium citandi et executandi of the body corporate; and
- (i) the confirmation by the auditor or accounting officer that any amendment, substitution, addition or repeal of the rules (as contemplated in section 35(5) of the Act) have been submitted to the Registrar of Deeds for filing as contemplated in section 35(5)(c) of the Act.

### **57. Quorum**

(1) No business shall be transacted at any general meeting unless a quorum of persons is present in person or by proxy at the time when the meeting proceeds to business.

(2) A quorum at a general meeting shall be-

- (a) the number of owners holding at least 50 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote, in schemes where there are ten units or less;
- (b) the number of owners holding at least 35 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote in the case of schemes with less than 50 but more than 10 units; and
- (c) the number of owners holding at least 20 per cent of the votes present in person or by proxy or by representative recognised by law and entitled to vote, in the case of schemes with 50 or more units.

### **58. Adjournment Due to Lack of Quorum**

If within half-an-hour from the time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half-an-hour of the time appointed for the meeting, the owners present in person or by proxy and entitled to vote shall form a quorum.

### **59. Chairman**

(1) The chairman, if any, of the trustees shall preside as chairman at every general meeting of the body corporate, unless otherwise resolved by members of the body corporate at such meeting.

(2) If there is no such chairman or if, at any meeting, the chairman of the trustees is not present within fifteen minutes after the time appointed for the holding of the meeting, or if he is unwilling or unable to act as chairman, the members present shall elect a chairman for such meeting.

### **60. Voting Procedure**

(1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

(2) Unless a poll be so demanded, a declaration by the chairman that a resolution has on the show of hands been carried, shall be conclusive evidence of that fact without proof of the number or proportion of votes recorded in favour of or against such resolution.

(3) A demand for a poll may be withdrawn.

#### **61. Poll Procedure**

A poll, if demanded, shall be taken in such a manner as the chairman thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.

#### **62. Value of Votes by Show of Hands**

On a show of hands the owner or owners of a section, or if the owner is a juristic person, its proxy, shall have one vote for each section owned: Provided that the chairman shall be entitled, in his discretion, to change the manner of voting to one by poll and not by show of hands.

#### **63. Value of Votes for Special or Unanimous Resolutions or on a Poll**

For the purpose of a unanimous or special resolution (with or without a ballot), or on a poll the value of the vote of the owner or owners of a section shall be reckoned in accordance with a determination made in terms of section 32 (4) of the Act or, in the absence of this determination, in accordance with participation quotas.

#### **64. No Vote in Certain Circumstances**

Except in cases where a special resolution or unanimous resolution is required under the Act, an owner shall not be entitled to vote at any general meeting if-

(a) any contributions payable by him in respect of his section and his undivided share in the common property have not been duly paid; or

(b) he persisted in breach of any of the conduct rules referred to in section 35 (2) (b) of the Act, notwithstanding written warning by the trustees or managing agent to refrain from breaching such rule: Provided that any mortgagee shall be entitled to vote as such owner's proxy at any general meeting, even though paragraph (a) or the foregoing provisions of this paragraph may apply to such owner.

#### **65. Voting by Trustee for Beneficiary**

Where an owner of a section is as such a trustee for a beneficiary, he shall exercise the voting rights in respect of the section to the exclusion of persons beneficially interested in the trust and such persons shall not be entitled to vote.

#### **66. Joint Voters**

(1) When two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by a person (who may or may not be one of them) jointly appointed by them as their proxy.

(2) Notwithstanding sub-rule (1), where two or more persons are entitled to exercise one vote jointly, any one of them may demand a poll.

#### **67. Proxies**

(1) Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands.

(2) A proxy shall be appointed in writing under the hand of the appointer, or his agent duly appointed in writing, and shall be handed to the Chairman prior to the commencement of the meeting: Provided that the foregoing provisions shall not apply in the case of any proxy created and contained in any registered mortgage bond, if such mortgage bond is produced at the meeting.

(3) A proxy need not be an owner, but shall not be the managing agent or any of his or her employees, or an employee of the body corporate.

## Duties of Owners and Occupiers of Sections

### 68. Statutory and General

(1) In addition to his obligations in terms of section 44 of the Act, an owner-

(i) shall not use his section, exclusive use area or any part of the common property, or permit it to be used, in such a manner or for such purpose as shall be injurious to the reputation of the building;

(ii) shall not contravene, or permit the contravention, of any law, by-law, ordinance, proclamation or statutory regulation, or the conditions of any licence, relating to or affecting the occupation of the building or the common property, or the carrying on of business in the building, or so contravene or permit the contravention of the conditions of title applicable to his section or any other section or to his exclusive use area or any other exclusive use area;

(iii) shall not make alterations which are likely to impair the stability of the building or the use and enjoyment of other sections, the common property or any exclusive use area;

(iv) shall not do anything to his section or exclusive use area which is likely to prejudice the harmonious appearance of the building;

(v) shall, when the purpose for which an exclusive use area is intended to be used, is shown expressly or by implication on or by a registered sectional plan, not use, nor permit such exclusive use area to be used, for any other purpose: Provided that with the written consent of all owners such exclusive use area may be used for another purpose;

(vi) shall not construct or place any structure or building improvement on his or her exclusive use area, without the prior written consent of the trustees, which shall not be unreasonably withheld and that the provisions of section 24 and section 25 or other relevant provisions of the Act or the rules, will not be contravened;

(vii) shall maintain the hot water installation which serves his section, or, where such installation serves more than one section, the owners concerned shall maintain such installation pro-rata, notwithstanding that such appliance is situated in part of the common property and is insured in terms of the policy taken out by the body corporate.

(2) An owner who exercises his rights in terms of section 60 (3) of the Act shall bear all costs to give effect thereto.

### 69. Binding Nature

The provisions of these rules and of the conduct rules, and the duties of the owner in relation to the use and occupation of sections and common property shall be binding on the owner of any section and any lessee or other occupant of any section, and it shall be the duty of the owner to ensure

compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or his occupant.

## **70. Statutory and General**

If an owner-

- (a) fails to repair or maintain his section in a state of good repair as required by section 44 (1) (c) of the Act; or
- (b) fails to maintain adequately any area of the common property allocated for his exclusive use and enjoyment,

and any such failure persists for a period of thirty days after the giving of written notice to repair or maintain given by the trustees or the managing agent on their behalf, the body corporate shall be entitled to remedy the owner's failure and to recover the reasonable cost of doing so from such owner.

## **71. Determination of Disputes by Arbitration**

(1) Any dispute between the body corporate and an owner or between owners arising out of or in connection with or related to the Act, these rules or the conduct rules, save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined in terms of these rules.

(2) If such a dispute or complaint arises, the aggrieved party shall notify the other affected party or parties in writing and copies of such notification shall be served on the trustees and the managing agents, if any, and should the dispute or complaint not be resolved within 14 days of such notice, either of the parties may demand that the dispute or complaint be referred to arbitration: Provided that, if an owner declares a dispute with the body corporate, it shall be sufficient notice if notification is served on the trustees and managing agents, if any, and such owner will not be required to serve notice on each of the other owners.

(3) Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties appoint an arbitrator who shall be an independent and suitably experienced and qualified person as may be agreed upon between the parties to the dispute.

(4) If the parties cannot agree as to the arbitrator to be appointed in terms of subrule (3) within 3 days after the arbitration has been demanded, the registrar of deeds for the deeds registry in which the scheme is registered of his or her nominee shall upon written application and subject to payment of the prescribed fee, in writing appoint an arbitrator within 7 days after he or she has been required to make the appointment so that the arbitration can be held and concluded without delay.

(5) Arbitration shall be held informally or otherwise as the arbitrator may determine. The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for payment of the costs of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with. Where possible, the arbitration shall be concluded within 21 days after the matter has been referred to arbitration in terms of subrule (2) or security for costs has been furnished.

(6) The arbitrator shall make his or her award within 7 days from the date of the completion of the arbitration and shall, in making his or her award, have regard to the principles laid down in terms of these rules. The arbitrator may determine that the costs of the arbitration be paid by any one of the

disputing parties or any of them jointly or in such shares as he or she may determine, and as he or she, in his or her discretion, may deem appropriate having regard to the outcome of the arbitration.

(7) The decision of the arbitrator shall be final and binding and may be made an order of the High Court upon application of any party to or affected by the arbitration.

(8) Notwithstanding that the Arbitration Act, No. 42 of 1965, makes no provision for joinder of parties to an arbitration without their consent thereto, should a dispute arise between the body corporate and more than one owner or between a number of owners arising out of the same or substantially the same cause of action, or where substantially the same order would be sought against all the parties against whom the dispute has been declared, such parties shall be automatically joined in the arbitration by notice thereof in the original notice of dispute given in terms of sub-rule (2).

# Prescribed ('model') Conduct Rules

(Contained in Annexure 9 to the Regulations made under the Sectional Titles Act)

## 1. Animals, Reptiles and Birds

- (1) An owner or occupier of a section shall not, without the consent in writing of the trustees, which approval may not unreasonably be withheld, keep any animal, reptile or bird in a section or on the common property.
- (2) When granting such approval, the trustees may prescribe any reasonable condition.
- (3) The trustees may withdraw such approval in the event of any breach of any condition prescribed in terms of sub-rule (2).

## 2. Refuse Disposal

- (1) An owner or occupier of a section shall-
  - (a) maintain in an hygienic and dry condition, a receptacle for refuse within his section, his exclusive use area or on such part of the common property as may be authorised by the trustees in writing;
  - (b) ensure that before refuse is placed in such receptacle it is securely wrapped, or in the case of tins or other containers, completely drained;
  - (c) for the purpose of having the refuse collected, place such receptacle within the area and at the times designated by the trustees;
  - (d) when the refuse has been collected, promptly return such receptacle to his section or other area referred to in paragraph (a).

## 3. Vehicles

- (1) No owner or occupier shall park or stand any vehicle upon the common property, or permit or allow any vehicle to be parked or stood upon the common property, without the consent of the trustees in writing.
- (2) The trustees may cause to be removed or towed away, at the risk and expense of the owner of the vehicle, any vehicle parked, standing or abandoned on the common property without the trustees' consent.
- (3) Owners and occupiers of sections shall ensure that their vehicles, and the vehicles of their visitors and guests, do not drip oil or brake fluid on to the common property or in any other way deface the common property.
- (4) No owner or occupier shall be permitted to dismantle or effect major repairs to any vehicle on any portion of the common property, an exclusive use or in a section.

## 4. Damage Alterations or Additions to the Common Property

- (1) An owner or occupier of a section shall not mark, paint, drive nails or screws or the like into, or otherwise damage, or alter, any part of the common property without first obtaining the written consent of the trustees.
- (2) Notwithstanding subrule (1), an owner or person authorised by him may install-

(a) any locking device, safety gate, burglar bars or other safety device for the protection of his section; or

(b) any screen or other device to prevent the entry of animals or insects;

Provided that the trustees have first approved in writing the nature and design of the device and the manner of its installation.

## **5. Appearance from Outside**

The owner or occupier of a section used for residential purposes shall not place or do anything on any part of the common property, including balconies, patios, stoeps, and gardens which, in the discretion of the trustees, is aesthetically displeasing or undesirable when viewed from the outside of the section.

## **6. Signs and Notices**

No owner or occupier of a section, used for residential purposes, shall place any sign, notice, billboard or advertisement of any kind whatsoever on any part of the common property or of a section, so as to be visible from outside the section, without the written consent of the trustees first having been obtained.

## **7. Littering**

An owner or occupier of a section shall not deposit, throw, or permit or allow to be deposited or thrown, on the common property any rubbish, including dirt, cigarette butts, food scraps or any other litter whatsoever.

## **8. Laundry**

An owner or occupier of a section shall not, without the consent in writing of the trustees, erect his own washing lines, nor hang any washing or laundry or any other items on any part of the building or the common property so as to be visible from outside the buildings or from any other sections.

## **9. Storage of Inflammatory Material and Other Dangerous Acts**

An owner or occupier shall not store any material, or do or permit or allow to be done, any other dangerous act in the building or on the common property which will or may increase the rate of the premium payable by the body corporate on any insurance policy.

## **10. Letting of Units**

All tenants of units and other persons granted rights of occupancy by any owner of the relevant unit are obliged to comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy.

## **11. Eradication of Pests**

An owner shall keep his section free of white ants, borer and other wood destroying insects and to this end shall permit the trustees, the managing agent, and their duly authorized agents or employees, to enter upon his section from time to time for the purpose of inspecting the section and taking such action as may be reasonably necessary to eradicate any such pests. The costs of the inspection, eradicating any such pests as may be found within the section, replacement of any woodwork or other material forming part of such section which may be damaged by any such pests shall be borne by the owner of the section concerned.