



GUIDE TO SECTIONAL TITLE MANAGEMENT



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PART 1- INTRODUCTION

1.1 INTRODUCTION

This guide is based on the Sectional Titles Act 95 of 1986 and any amendment thereof

Purpose of the 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.

1.2 COMMON DEFINITIONS

'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' 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' means the Chief Surveyor-General appointed in terms of section 2 of the Land Survey Act, 1997 (Act 8 of 1997)

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

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

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

'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), also 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' 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' means a sectional plan prepared in accordance with the provisions of section 5, but not yet approved by the Surveyor-General; and **'draft**

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'sectional plan of subdivision', 'draft sectional plan of consolidation' and 'draft sectional plan of extension' have a corresponding meaning

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

'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' 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' means a municipality contemplated in section 151 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), exercising jurisdiction in the area in which the land is situated

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

'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 28 of 1966), the liquidator of a company or close corporation which is an owner, and the executor of an owner who has died, or the representative, recognized 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

'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' means prescribed by this Act or by regulation

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

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

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

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

'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' means a development scheme;

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

'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

(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', 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' means a certificate of registered sectional title or a deed of transfer

'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' 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' means a land development objective prepared in terms of Chapter IV of the Development Facilitation Act, 1995 (Act 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 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' means a Surveyor-General appointed in terms of section 5 of the Land Survey Act, 1997 (Act 8 of 1997)

'this Act' includes the regulations

'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', 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

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share in common property apportioned to that section in accordance with the quota of the section

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

1.3 OWNERSHIP & REAL RIGHTS

- 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
- separate ownership in such sections or an undivided share therein may be acquired;
- the owners of such sections shall own such common property in undivided shares;
- any real right may be acquired in or over any such section or an undivided share therein or common property
- a registrar may, 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.

PART2- DEVELOPMENT SCHEMES, SECTIONAL TITLE PLANS AND SECTION TITLE REGISTERS

2.1 APPROVAL OF DEVELOPMENT SCHEMES

- A developer who intends to establish a scheme shall submit a draft sectional plan to the Surveyor-General.
- 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
- 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 pieces of land registered in the name of the same person and which have been notarially tied.
- 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, unless:
 - every tenant of a part which is let for residential purposes;
 - (i) has been notified in writing by the developer of the particulars of the relevant scheme and information regarding their rights
 - (ii) has been provided with a certificate containing the particulars in respect of the relevant building, or units therein, and of the relevant scheme by the developer
- a meeting has been held and the developer has provided answers to all reasonable questions or the tenants have stated in writing that they are aware of their rights and do not wish to purchase the proposed units which they occupy .
- An architect or a land surveyor acting on behalf of a developer shall inspect the property, and apply to the local authority concerned for the condonation of any non-compliance .
- 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

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2.2 MANNER OF PREPARING DRAFT SECTIONAL PLANS

- draft sectional plan shall be prepared and signed by a qualified land surveyor or architect
- 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.
- A draft sectional plan shall:
 - 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:
 - indicate the name of the scheme
 - include a plan to scale of each storey in the building or buildings shown thereon
 - define the boundaries of each section in the building or buildings, and distinguish each section by a number
 - 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
 - delineate in the prescribed manner any exclusive use area
 - have endorsed upon or annexed to it a schedule specifying the quota of each section and the total of the quotas of all sections shown thereon
 - be drawn in such manner and contain such other particulars as may be prescribed.
- 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.

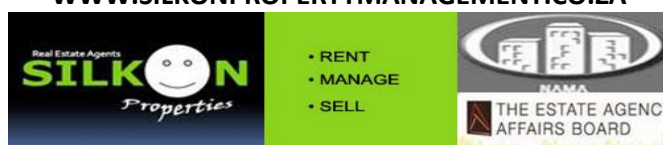
2.3 DUTIES OF LAND SURVEYORS AND ARCHITECTS

- 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.

2.4 SALE BY DEVELOPERS OF UNITS OCCUPIED BY PRE EXISTING TENANTS

- A developer may not offer for sale or sell any unit in that building which is occupied by a tenant who was entitled to be notified, to any person other than the tenant, unless the developer has, offered the unit for sale to the tenant and the tenant has refused the offer within a period of 90 days.
- If a lessee refuses an offer referred, the developer shall not, within a period of 180 days from the date on which the tenant has refused the offer, offer for sale or sell the relevant unit to any person other than the tenant concerned at a price lower than the price at which it was offered for sale to the tenant, unless the developer has again offered the unit at that lower price for sale to the tenant and he has refused the offer within a period of 60 days
- A developer:
 - shall as from the date on which a tenant has been notified by the developer of the meeting referred to in that section:
 - (i) comply with the conditions of the relevant lease
 - (ii) or, after the unit has been offered for sale to the tenant and the tenant has refused the offer, not require the tenant 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

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of conduct which is a nuisance to occupiers of other units in the building concerned

- shall 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 the tenant to pay an amount of rent higher than the amount which was payable by the tenant on the date on which the tenant refused the offer
- A person who was in occupation of a rent-controlled flat on the date it was 'de-controlled', who is still living in it and whose monthly income is less than a certain prescribed amount is known as a 'protected tenant'. Similarly, a lessee who is 65 years of age or older, whose income does not exceed a prescribed amount, is also protected.
- A tenant younger than 65 years of age who is occupying rent-controlled premises can be made to leave after a certain period of time has elapsed. This period is determined by the circumstances of occupation.
- A developer can offer a flat for sale to a lessee only for the period stipulated in the Sectional Titles Act. Contravention of this provision is an offence. A protected tenant has a longer period than an ordinary tenant to decide whether to purchase a rent-controlled flat or not. After the periods set out in the Sectional Titles Act have expired, the flat may be sold to another tenant. In this case the new owner gives notice to the protected tenant. It is an offence to advertise for sale, make offers for sale or sell units in a block until a sectional title register has been opened at the Deeds Registry.

2.5 APPLICATIONS FOR OPENING OF SECTIONAL TITLE REGISTERS

- 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.
- When making application for the opening of a sectional title register and the registration of a sectional plan, a developer may impose certain registerable conditions.

2.6 REGISTRATION OF SECTIONAL PLANS AND OPENING OF SECTIONAL TITLE REGISTERS

When the requirements of the Act and any other relevant law have been complied with, the registrar shall:

- register the sectional plan and allot a distinctive number to it;
- open a sectional title register in respect of the land and building or buildings thereon in the manner prescribed;
- keep by means of a computer such registers containing such particulars as are necessary
- simultaneous 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;
- issue to the developer, in the prescribed form, a certificate of real right in respect of any reservation made, subject to any mortgage bond registered against the title deed of the land
- issue to the developer, in the prescribed form, a certificate of real right in respect of a right of exclusive, subject to any mortgage bond registered against the title

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- deed of the land; and
- make the necessary endorsements on the title deed, any mortgage bond or other document, or in his records.
- 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.

2.7 EFFECT OF REGISTRATION OF SECTIONAL PLANS

- Upon the registration of a sectional plan the building or buildings and the land shown thereon shall, be deemed to be divided into sections and common property as shown on the sectional plan.
- A sectional plan, together with the schedule of servitudes and conditions, 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 registerable condition imposed by a developer.
- 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.

2.8 AMENDMENT AND CANCELLATION OF SECTIONAL PLANS

- 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 bound to be incorrect, or to substitute another sectional plan for the incorrect sectional plan.

PART 3- REGISTRATION AND COMMON PROPERTY

3.1 REGISTRATION OF TRANSFER OF OWNERSHIP AND OTHER RIGHTS

- When a sectional title register has been opened and the sectional plan concerned has been registered:
 - ownership in any unit or land, or any undivided share in such unit or land, held under a sectional title deed shall, be transferred by means of a deed of transfer signed or attested by the registrar
 - 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
 - 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

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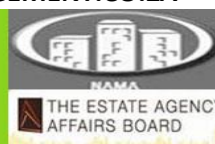
- such bond, by means of an endorsement made by him on the sectional title deed or on the registered lease or sub-lease or bond or other deed; and
- the registrar shall register any other real right in or over a unit or an undivided share in a unit or land held under a sectional title deed, and any notarial cancellation or modification of such a real right, by means of an endorsement made by him on the sectional title deed.
 - 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.
 - The registrar shall not register a transfer of a unit or of an undivided share therein, unless there is produced to him:
 - a conveyancer's certificate confirming that as at date of registration-
 - (i) (aa) if a body corporate is established, the body corporate must have 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 established, no moneys are payable;
 - (ii) no real right of extension of a scheme 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.
 - a clearance certificate from the local authority that all rates and moneys due to such local authority in terms of 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
 - if the transferor is a developer, an affidavit by the developer declaring that the transfer is effected in terms of a contract which is not contrary to any provision of section 10 of the Act.
 - A unit shall be capable of being held by two or more persons in joint ownership.
 - 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). and 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.

3.2 OWNERSHIP OF COMMON PROPERTY

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- 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.
- 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.
- 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, 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.
- 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.

3.3 ALIENATION AND LETTING OF COMMON PROPERTY

- 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.

PART 4- DIVISION, CONSOLIDATION AND EXTENSION

4.1 APPROVAL OF PLAN OF SUBDIVISION OR CONSOLIDATION BY SURVEYOR-GENERAL

- 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.

4.2 REGISTRATION OF SUBDIVISION OF SECTION

- 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.
- When the requirements of this section and any other relevant law have been complied with, the registrar shall register the sectional plan of subdivision, 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.
- Upon registration of the sectional plan of subdivision, the portions in question shall

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be deemed to be separated from one another and shall each be deemed to be a separate section.

- Simultaneously with the registration of the sectional plan of subdivision the registrar shall, in lieu of the sectional title deed issue the certificates of registered sectional title 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.
- A sectional plan of subdivision shall upon the registration thereof be deemed to be incorporated in the sectional plan registered.

4.3 REGISTRATION OF CONSOLIDATION OF SECTIONS

- 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.
- When the requirements of this section and any other relevant law have been complied with, the registrar shall register the sectional plan of consolidation, 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.
- 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.
- Simultaneously with the registration of the sectional plan of consolidation, the registrar shall, in lieu of the sectional title deeds, issue the certificate of registered sectional title and any endorsements and entries to be made in the deeds registry records.

4.4 EXTENSION OF SECTIONS

- 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.
- 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, 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.

PART 5- EXTENSION OF SCHEMES

5.1 EXTENSION OF SCHEMES BY ADDITION OF SECTIONS

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- A developer may, reserve a conditional right to erect and complete from time to time, but within a period stipulated in such condition, for his personal account-
 - a further building or buildings;
 - a horizontal extension of an existing building;
 - 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.
- The developer shall promptly on demand pay any moneys due to the body corporate.
- A right reserved and in respect of which a certificate of real right has been issued-
 - shall for all purposes be deemed to be a right to urban immovable property which admits of being mortgaged; and
 - 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.
- A right reserved 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.
- If the right reserved 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.
- 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, as if the unit had been included in the relevant sectional title register on the date of completion.
- The certificate shall not be issued unless the amounts in question are paid to the body corporate.
- If no reservation was made by a developer, or if such a reservation was made and for any reason has lapsed, the right to extend a scheme including land, shall vest in the body corporate which shall be entitled and after compliance, 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.
- If no reservation has been made by a developer and the body corporate has not yet been established, the registrar may issue a certificate of real right of extension on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder and the relevant documents.
- Upon compliance of the above subsection the necessary changes to such real right apply 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.
- 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.
- 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

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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.

- Upon registration of a sectional plan of extension:
 - 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 or in title of the body corporate, as the case may be, by the issue of the relevant certificates of registered sectional title.
 - a sectional mortgage bond whereby a real right held by a certificate of real right 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; and
 - the sectional plan of extension shall be deemed to be incorporated in the sectional plan registered.
- 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.
- A deed of alienation in which a real right has not been disclosed, shall be voidable at the option of the purchaser.
- After notice by any such purchaser to the seller that he or she annuls the alienation, the alienation shall be void.

5.2 EXTENSION OF SCHEMES BY ADDITION OF LAND TO COMMON PROPERTY

- 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
- Land purchased or otherwise acquired by and registered in the name of a body corporate 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.
- 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.
- 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.
- Upon the registration of a plan of extension of the common property, such plan shall be deemed to be incorporated in the sectional plan, 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.

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PART 6- EXCLUSIVE USE OF COMMON PROPERTY AND SERVITUDES

6.1 RIGHTS OF EXCLUSIVE USE OF PARTS OF COMMON PROPERTY

- If a part or parts of common property is or are delineated on a sectional plan 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 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.
- 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.
- If a developer ceases to be a member of the body corporate any right to an exclusive use area still registered in his or her name vests in the body corporate free from any mortgage bond.
- If a right to the exclusive use of a part or parts of the common property vests in a body corporate 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.
- The registrar shall, after consideration of the application in paragraph (d), issue such certificate in the prescribed form.
- If no reservation was made by a developer 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 on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder.
- Upon compliance with the above subsection shall apply with the necessary changes to such real right shall apply 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.
- A body corporate, duly authorized thereto by a unanimous resolution of its members, may, 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 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.
- 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 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.
- 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.
- If an owner ceases to be a member of the body corporate, any right to an exclusive use area still registered in his or her name vests in the body corporate

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free from any mortgage bond.

- If a right to the exclusive use of a part or parts of the common property vests in a body corporate, 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.
- The registrar must issue such certificate in the prescribed form.
- 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.
- 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, may be registered.
- Any person who holds two or more rights to exclusive use areas or undivided shares by one title deed may obtain a separate title deed in respect of one or more of the rights to exclusive use areas held therein.
- At least one of the exclusive use areas or shares shall remain held by such title deed.

6.2 RULES REGARDING EXCLUSIVE USE AREAS

- 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.

6.3 IMPLIED SERVITUDES

There shall be implied in favour of each section:

- 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
- 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

There shall be implied against each section:

- a servitude for the subjacent and lateral support of the common property and of any other section capable of enjoying such support
- the servitudes 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.

The servitudes:

- shall be deemed to be incorporated in the title deeds of the owners affected thereby
- 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

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or any other section or sections.

6.4 CREATION OF SERVITUDES

The owners may by special resolution direct the body corporate:

- to execute on their behalf a servitude or restrictive agreement burdening the land shown on the relevant sectional plan;
- to accept on their behalf a servitude or restrictive agreement benefiting the said land.
- 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 and on the title deeds of any party to such servitude or restrictive agreement whose title deeds are registered in the land register.
- 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.

PART 7- PARTICIPATION QUOTAS AND DEVELOPERS

7.1 PARTICIPATION QUOTAS

- 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.
- In the case of a scheme other than residential, the participation quota of a section shall be a percentage expressed to four decimal places, as determined by the developer, provided that:
 - 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
 - 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
 - where such disclosure is not made, the deed of alienation shall be voidable at the option of the purchaser
- The quota of a section shall determine:
 - the value of the vote of the owner of the section, in any case where the vote is to be reckoned in value
 - the undivided share in the common property of the owner of the section
 - the proportion in which the owner of the section shall make contributions or may be held liable for the payment of a judgment debt of the body corporate of which he is a member.
- 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

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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 provided that

- where an owner is adversely affected by such a decision of the body corporate, his written consent must be obtained
 - 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
 - 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.
- 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.

7.2 SHARES OF DEVELOPERS IN BUILDINGS AND LAND

- 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.
- When the ownership in every section is held by any person or persons other than the developer, the developer shall, cease to have a share or interest in the common property.
- 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.

PART 8- RULES AND BODIES CORPORATE

8.1 RULES

- A scheme shall as from the date of the establishment of the body corporate be controlled and managed by means of rules.
- The rules shall provide for the control, management, administration, use and enjoyment of the sections and the common property, and shall comprise:
 - **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
(SEE GUIDE TO MANAGEMENT RULES)
 - **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

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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

(SEE GUIDE TO CONDUCT RULES)

- 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.
- The aforementioned rules 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.
- If the aforementioned rules 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, amendment or repeal.
- The registrar shall not be involved in the enforcement or application of the rules and is not required to examine or note any substitution, addition, amendment or repeal thereof against any certificate or other document.
- A substitution, addition, amendment or repeal shall come into operation on the date of filing of the notification referred to in that paragraph.
- 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.

8.2 BODIES CORPORATE

- 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.
- The developer shall cease to be a member of the body corporate when he ceases to have a share in the common property, 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.
- The body corporate shall, be responsible for the enforcement of the rules, and for the control, administration and management of the common property for the benefit of all owners.
- The provisions of the Companies Act, 1973 (Act 61 of 1973), shall not apply in relation to the body corporate.
- The body corporate shall have perpetual succession and shall be capable of suing and of being sued in its corporate name in respect of:
 - any contract made by it
 - any damage to the common property
 - any matter in connection with the land or building for which the body corporate is liable or for which the owners are jointly liable
 - any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties or any rule
 - any claim against the developer in respect of the scheme if so determined by special resolution.
- A developer shall convene a meeting of the members of the body corporate not

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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.
- (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.

8.3 FUNCTIONS OF BODIES CORPORATE

- A body corporate shall perform the functions entrusted to it by or under this Act or the rules, and such functions shall include:
 - 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.
 - 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.
 - to determine from time to time the amounts to be raised for the purposes aforesaid.
 - to raise the amounts so determined by levying contributions on the owners in proportion to the quotas of their respective sections;
 - to open and operate an account or accounts with a banking institution or a building society.
 - 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.
 - to insure against such other risks as the owners may by special resolution determine.
 - 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.
 - to pay the premiums on any policy of insurance effected by it
 - properly to maintain the common property (including elevators) and to keep it in a state of good and serviceable repair.
 - 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.

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- to comply with any reasonable request for the names and addresses of the persons who are the trustees of the body corporate or who are members of the body corporate.
 - 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
 - to ensure compliance with any law relating to the common property or to any improvement of land comprised in the common property
 - 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.
 - 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.
 - 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.
 - in general, to control, manage and administer the common property for the benefit of all owners.
- Any contributions levied 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.
 - 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:
 - the amount determined as the contribution of that owner;
 - the manner in which such contribution is payable;
 - the extent to which such contribution has been paid by the owner; and
 - the amount of any rates and taxes paid by the body corporate and not recovered by it.
 - The body corporate shall, for the purposes of effecting any insurance, 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.

8.4 POWERS OF BODIES CORPORATE

The body corporate may exercise the powers conferred upon it 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

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

8.5 FUNCTIONS AND POWERS OF BODIES CORPORATE TO BE PERFORMED OR EXERCISED BY TRUSTEES

- The functions and powers of the body corporate shall subject to the provisions of the Sectional Title 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.

8.6 FIDUCIARY POSITION OF TRUSTEES

- Each trustee of a body corporate shall stand in a fiduciary relationship to the body corporate.
- A trustee:
 - shall in relation to the body corporate act honestly and in good faith
 - 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
 - shall not act without or exceed the powers aforesaid
 - shall avoid any material conflict between his own interests and those of the body corporate
 - 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
 - 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.
- A trustee of a body corporate whose 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
 - (ii) any economic benefit derived by the trustee by reason thereof
- Where it becomes known to the body corporate that the trustee has an interest 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.

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- 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.

8.7 PROCEEDINGS ON BEHALF OF BODIES CORPORATE

- 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, 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.
- 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 will be made.
- 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.
- The court may on such application, if it is satisfied:
 - that the body corporate has not instituted such proceedings;
 - that there are *prima facie* grounds for such proceedings
 - 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.
- The Court may on the return day discharge the provisional order, 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*.

PART 9- OWNERS, ADMINISTRATORS AND BUILDINGS

9.1 DUTIES OF OWNERS

- An owner shall:
 - 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
 - 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
 - repair and maintain his section in a state of good repair and, in respect of

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- an exclusive use area, keep it in a clean and neat condition
- 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
- 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
- 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
- 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. With written consent of all owners such section may be used for another purpose.
- Any owner who is of the opinion that any refusal of consent of another owner 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.
- 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 and an order concerning costs as it deems appropriate.

9.2 INSURANCE BY OWNERS

- Notwithstanding the existence of a valid policy of insurance effected by the body corporate 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.
- Where a policy of insurance is in force, and:
 - where the damage to the section is made good by the body corporate, the insurer shall not be liable in terms of the policy of insurance effected by the owner
 - where the damage to the section is covered by the policy of insurance effected by the body corporate, 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
 - 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.
- Nothing in this section contained shall limit the rights of an owner to insure against risks other than damage to his section.

9.3 RECOVERY FROM OWNERS OF UNSATISFIED JUDGMENT AGAINST BODIES CORPORATE, AND NON LIABILITY OF BODIES CORPORATE FOR DEBTS AND OBLIGATIONS OF DEVELOPERS

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

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

9.4 DESTRUCTION OF OR DAMAGE TO BUILDINGS

- The building or buildings comprised in a scheme shall, be deemed to be destroyed:
 - upon the physical destruction of the building or buildings;
 - 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
 - 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.
- In any case where an order is made, 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.

9.5 VALUATION OF LAND AND BUILDINGS AND RECOVERY OF RATES BY LOCAL AUTHORITIES

- 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 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.
- A separate valuation shall be made of:
 - (i) the land; and
 - (ii) the building or buildings.
- The local authority may recover any rates and taxes levied by it, from the body corporate.
- 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.

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