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SECTIONAL TITLES SCHEMES MANAGEMENT ACT 8 OF 2011

Purpose of Act

To provide for the establishment of bodies corporate to manage and regulate sections and common property in sectional titles schemes and for that purpose to apply rules applicable to such schemes; to establish a sectional titles schemes management advisory council; and to provide for matters connected therewith.

Definitions

“body corporate”, in relation to a building and the land in a sectional title scheme, means the body corporate of that building referred to in section 2(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;

“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

“competent authority” means a person or organisation that has the legally delegated authority or power to perform a designated function

“Department” means the Department of Human Settlements.

“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 municipality is or are, for the purposes of selling, letting or otherwise dealing therewith, to be divided into two or more sections;

“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;

“ombud” means ombud as defined in section 1 of the Community Schemes Ombud Service Act, 2010;

“owner”, in relation to a unit or a section or an undivided share in the common property forming part of such unit, means, subject to subsection (5), the person in whose name the unit is registered at a deeds registry in terms of the Sectional Titles Act or in whom ownership is vested by statute, including the trustee in an insolvent estate, the liquidator of a company or close corporation which is an owner, the executor of an owner who has died, or the representative of an owner, who is a minor or of unsound mind, recognised by law, and **“owned”** and **“ownership”** have a corresponding meaning;

“rules”, in relation to a building which is divided into sections and common property, means the management rules and conduct rules;

“special resolution” means a resolution -

(a) passed by at least 75% calculated both in value and in number, of the votes of the members of a body corporate who are represented at a general meeting; or

(b) agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes;

“unanimous resolution” means a resolution—

(a) passed unanimously by all the members of the body corporate at a meeting at which—

(i) at least 80% calculated both in value and in number, of the votes of all the members of a body corporate are present or represented; and

(ii) all the members who cast their votes do so in favour of the resolution; or

(b) agreed to in writing by all the members of the body corporate.

Bodies Corporate

S2 (1) Any person other than the developer becomes an owner of a unit in a scheme

(5) The body corporate is, subject to the provisions of this Act, responsible for the enforcement of the rules and for the control, administration and management of the common property for the benefit of all owners.

(7) The body corporate has perpetual succession and is capable of suing and of being sued in its corporate name in respect of –

a. any contract entered into by the body corporate;

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.

Functions of Bodies Corporate

S3 (1) A body corporate must perform the functions entrusted to it

(a) to establish and maintain an administrative fund

i. for the repair, maintenance, management and administration of the common property (including reasonable provision for future maintenance and repairs)

ii. for the payment of rates and taxes and other local municipality charges for the supply of electricity, gas, water, fuel and sanitary or other services to the building or land;

iii. for the payment of any insurance premiums relating to the building or land; and

iv. for the discharge of any duty or fulfilment of any other obligation of the body corporate

(b) to establish and maintain a reserve fund

(c) to require the owners to make contributions to such funds: Provided that the body corporate must require the owners of 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, to make such additional contribution to the funds

- (d) to require from a developer who is entitled to extend the scheme to make such additional contribution to the funds
 - (e) to determine the amounts to be raised
 - (l) to maintain all the common property
 - (p) to ensure compliance with any law relating to the common property or to any improvement of land comprised in the common property
 - (t) in general, to control, manage and administer the common property for the benefit of all owners
- (2) Liability for contributions levied, accrues from the passing of a resolution to that effect and may be recovered by the body corporate by an application to an ombud from the persons who were owners of units at the time when such resolution was passed: Provided that upon the change of ownership of a unit, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership.**
- (3)** Any special contribution becomes due and may be recovered from the persons who were owners of units at the time when such resolution was passed: Provided that upon the change of ownership of a unit, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership.

Powers of bodies corporate

S4 The body corporate may exercise the powers conferred –

- (a) to appoint agents and employees
- (b) when essential for the proper fulfilment of its duties and upon special resolution, to purchase or otherwise acquire, take transfer of, mortgage, sell, give transfer of or hire or let units
- (e) upon special resolution, to borrow moneys
- (h) upon special resolution, the right to let a portion of the common property to any such owner or occupier by means

Additional powers of bodies corporate

- S5 (1) In addition to the body corporate's main function and powers, the body corporate –
- (a) may, upon unanimous resolution, alienate common property, or deal with such common property
 - (b) may, with the written consent of all the owners as well as the written consent of the mortgagee of each unit in the scheme, alienate, a right of extension of the scheme
 - (d) may purchase land to extend the common property

Meetings of bodies corporate

- S6 (2) The body corporate must, at least 30 days prior to a meeting of the body corporate where a special resolution or unanimous resolution will be taken, give all the members notice

Trustees of body corporate

- S7 (1) The functions and powers of the body corporate must be performed and exercised by the trustees

Fiduciary position of trustees

*(Definition: A **fiduciary** is a person who holds a legal or ethical relationship of trust with one or more other parties.)*

- S8 (1) Each trustee of a body corporate must stand in a fiduciary relationship to the body corporate. A trustee:
- (a) must act honestly and in good faith

- (b) must avoid any material conflict between his or her own interests and those of the body corporate, and in particular—
 - (i) not receive any personal economic benefit, direct or indirect, from the body corporate
 - (ii) notify every other trustee of the nature and extent of any direct or indirect material interest as soon as such trustee becomes aware of such interest.

Rules

- S10 (1) A scheme must be regulated and managed by means of rules.
- (2) (a) Management rules
(b) Conduct rules
- (7) A developer or a body corporate may make management or conduct rules which confer rights of exclusive use and enjoyment of parts of the common property
- (8) The rules must—**
- (a) include a layout plan to scale**
 - (b) include a schedule**

Effect of quotas and variation thereof

- S11 (1) The quota of a section must determine—
- (a) the value of the vote of the owner of the section
 - (b) the undivided share in the common property
 - (c) the proportion in which the owner of the section must make contributions
- (2) the developer may by special resolution, make rules by which a different value is attached to the vote of the owner of any section
- (3) (1)(c) The members of the body corporate may not make rules by which a different value is attached to the vote until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme.

Duties of owners

- S13 (1) An owner must -
- (a) permit any person authorised in writing by the body corporate for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section
 - (b) carry out all work that may be ordered by any competent authority
 - (c) repair and maintain his or her section
 - (d) use and enjoy the common property in such a manner as not to interfere unreasonably with the use and enjoyment thereof by other owners or other persons lawfully on the premises
 - (e) not use his or her section or exclusive use area, or permit it to be used, in a manner or for a purpose which may cause a nuisance to any occupier of a section
 - (g) when the purpose for which a section or 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 to be used for any other purpose.

Amendment of Act 95 of 1986

See Schedule of Amendments