

SECTIONAL TITLES ACT, 2003

Date of assent: 22nd April, 2003

Date of commencement to be proclaimed

Arrangement of Sections

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An Act to regulate the division of buildings into sections and common property and the acquisition of separate and joint ownership in sections and in common property.

PART I

PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Sectional Titles Act, 2003, and shall come into operation on a date to be fixed by the Minister by notice published in the *Gazette*.

Interpretation

2. (1) In this Act, unless the context otherwise requires —

“alienate”, in relation to any unit or any undivided share in a unit in respect of any building and land, or any interest purporting to be a proposed unit or undivided share in a unit in respect of a building and land, means to sell, exchange or donate, irrespective of whether such sale, exchange or donation is subject to a suspensive or resolutive condition, and “alienation” has a corresponding meaning;

“architect” means a person registered as an architect in terms of the law relating to the registration of architects in Eswatini and practising as such;

“Board” means the Sectional Titles Regulation Board established and appointed under section 54;

“body corporate”, in relation to a building and the land on which such buildings is situated, means the body corporate of that building referred to in section 37(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 in section 27;

“consideration”, in relation to any unit or any undivided share in a unit in respect of any building and land, or any interest purporting to be a proposed unit or undivided share in a unit in respect of building and land, means the purchase price and interest thereon, excluding rental or occupational interest, constituting a reasonable compensation for the use and enjoyment of such unit or undivided share in such unit;

“conveyancer” means a conveyancer as defined in section 2 of the Deeds Registry Act;

“Council” means, in relation to architects, the relevant professional body for architects in Eswatini; in relation to land surveyors, the relevant professional body for land surveyors in Eswatini; and in relation to valuers, the relevant professional body for valuers in Eswatini;

[Definition of “Council” amended A.6/2018.]

“court” means the High Court of Eswatini;

“deed of alienation” means a document or documents under which a unit or any undivided share in a unit in respect of any building and land, or any interest purporting to be a proposed unit or undivided share in a unit in respect of a building and land is being alienated;

“Deeds Registry” means the Deeds Registry established under section 3 of the Deeds Registry Act;

“Deeds Registry Act” means the Deeds Registry Act, No. 37 of 1968 or its successor, and any Regulations made thereunder;

“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 26 to extend a scheme, or the person’s successor in title, and includes —

- (a) for the purposes of sections 10 and 11, the agent of any such person or 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 49, 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 3(a);

“draft sectional plan” means a sectional plan prepared in accordance with the provisions of section 6, 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;

“engineer” (*Deleted.*)

[Definition of “engineer” deleted A.6/2018.]

“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, as contemplated in section 28;

“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 4 of the Land Survey Act;

“Land Survey Act” means the Land Survey Act, No. 46 of 1961;

“Local Authority” means any institution or body constituted as such in respect of any urban area in Eswatini established in terms of the Urban Government Act or its successor;

[Definition of “Local Authority” amended A.6/2018.]

“majority resolution” means, subject to subsection (3) of this section, a resolution

- (a) passed by two-thirds of the members of a body corporate who are present or 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 majority 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 and 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; 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 recognised by law;

“Minister” means the Minister responsible for Housing and Human Settlements;

[Definition of “Minister” amended A.6/2018.]

“notary public” means a notary public as defined in the Deeds Registry Act;

“owner”, in relation to a unit, or section, or an undivided share in the common property forming part of a unit, means —

- (a) the person (including the Government of Eswatini) in whose name the unit is registered in a deeds registry or in whom the ownership of the unit is vested by virtue of any law;
- (b) the person (including the Government of Eswatini) by whom the unit is held under a lease for a period of ninety-nine years or longer or for the life of the scheme, and such lease is registered in a deeds registry; or
- (c) the trustee in an insolvent estate, the liquidator of a company which is an owner and the legal representative of an owner who has died or who is a minor or is of unsound mind or is otherwise under disability, provided such trustee, liquidator or legal representative is acting within the authority conferred upon such person by law; and “owned” and “ownership” have a corresponding meaning;

“participation quota”, in relation to a section or the owner of a section, means the percentage determined in accordance with the provisions of section 33(1) or 33(2) in respect of that section for the purposes referred to in section 33(3), and shown on a sectional plan in accordance with the provisions of section 6(3)(g);

“prescribed” means prescribed by this Act or Regulations;

“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 Registry Act;

“Registrar” means the Registrar of Deeds as defined in the Deeds Registry 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 36(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 sectional mortgage bond hypothecating —

- (a) a unit or an undivided share in a unit or land held under a separate sectional title deed; or
- (b) a registered lease or sub-lease of any such unit or undivided share in a unit or land; or
- (c) any other registered real right in or over any such unit or undivided share in a unit or land or the rights referred to in sections 26 and 28;

“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 6, 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 13(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;

“Sectional Titles Regulation Board” means the Sectional Titles Regulation Board established and appointed under section 54;

“special resolution” means subject to subsection (2) of this section, 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 recognised 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 recognised by law and, 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;

“Surveyor-General” means the Surveyor-General appointed in terms of section 3 of the Land Survey Act, No. 46 of 1961;

“this Act” includes the Regulations;

“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 that person 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” means a section together with its undivided share in a common property apportioned to that section in accordance with the quota of the section; and

“valuer” means a person registered as a valuer in Eswatini under the law relating to the registration of property valuers and practising as such.

(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 dispatched 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.

(3) For such purposes of the definition of “majority resolution” in subsection (1) —

- (a) a notice contemplated in that definition shall be deemed adequate if it has been delivered to, or dispatched 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.

PART II
DEVELOPMENT SCHEMES, SECTIONAL PLANS, SECTIONAL TITLES AND
REGISTERS

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

3. 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 6(4) hereof, be so divided into a single section and common property;
 - (b) a 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) the Registrar may, in accordance with the provisions of this Act, register in the 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.

Application of Deeds Registry Act, reproduction of documents, and units deemed to be land

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

(5) There shall be kept in the deeds registry by the Registrar, a register for the registration of sectional plans and a register for the registration of sectional titles.

[Sub-s. (5) added A.6/2018.]

Approval of Development Schemes

5. (1) A developer who intends to establish a scheme shall make application to the Board, established under section 54, for the approval of the scheme.

(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 one or more parts of a building which is or are comprised in a proposed scheme and which after division of the building will constitute a unit or units therein, is or are wholly or partially let for residential purposes, a developer shall not make any application referred to in subsection (1), unless —

(a) every lessee of every part which is so leased for residential purposes —

(i) has been notified in writing by the developer, by letter delivered either personally or dispatched by registered post, of a date, at least 14 days after the delivery or dispatch 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 reasonable distance from the first mentioned building, within the area of jurisdiction of the local authority concerned, at which the developer or his agent intends to be available to provide lessees with —

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

(bb) the information regarding their rights as set out in Part II 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 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 lessees present.

(4) 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 predecessors in title.

(5) An application referred to in subsection (1) shall be made in the prescribed form and be accompanied by such documents and particulars as may be prescribed.

(6) The Board shall grant the application, if —

(a) the method and purpose of the proposed division into sections and common property are not contrary to the provisions of any operative town planning scheme at the date of the application for approval of the scheme;

- (b) in regard to any matter other than the proposed use, the building or buildings to which the scheme relates is or are not contrary to the provisions of any operative town planning scheme at the date of approval of the building plans;
- (c) in regard to matters other than buildings, any applicable condition of any operative town-planning scheme is complied with;
- (d) the building or buildings to which the scheme relates, was or were erected in accordance with any applicable building regulations or building by-laws in operation at the date of erection:

Provided that in regard to paragraphs (b), (c) and (d) the Board may in its discretion disregard discrepancies and infringements and may also, in respect of paragraph (d), accept an affidavit from an architect as necessary proof.

(7) If any application in terms of subsection (1) relates to a building which is in the process of being erected, the Board shall grant the application if such building —

- (a) is sufficiently completed for the measurement contemplated in section 7(1) to be undertaken; and
- (b) whilst the erection thereof is not yet completed, complies with the other applicable requirements referred to in subsection (6).

(8) At any time after the receipt of an application referred to in subsection (1), the Board may require the developer to furnish it with such further particulars, information and plans as it may deem necessary.

[Sub-s. (8) amended A.6/2018.]

(9) The Board shall not consider an application for the approval of a scheme —

- (a) unless the provisions of subsection (3) have been complied with;
- (b) if the developer has, in the period of two years immediately preceding the date on which the application is submitted to the Board, committed an act which, were it not for the provisions of subsection (2) of section 10, would have constituted the sale of a unit or an undivided share in a unit or an interest in respect of any building and land comprised in the said scheme, contrary to the provisions of subsection (1) of that section.

(10) The Board shall make its decision known in writing to the applicant within 60 days of the receipt of the application, or within 60 days after the developer complied with the requirements of the Board under subsection (8), as the case may be.

(11) When granting an application either in whole or in part, the Board may impose any registrable condition it may deem fit.

(12) Any person aggrieved by a decision of the Board on any ground, including the following:

- (a) interest in the cause, bias, malice or corruption on the part of the Board;
- (b) gross irregularity in the proceedings conducted by or on behalf of the Board as contemplated in this Act,

may, within twenty-eight days of receipt of such a decision, appeal to the Minister, whose decision shall be final.

Manner of preparing draft sectional plans

6. (1) A draft sectional plan may only be prepared and signed by a land surveyor or 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.

[Sub-s. (1) amended A.6/2018.]

(2) A draft sectional plan which has been prepared by a land surveyor or architect, who is required by the Minister or other law relating to the admission and practice of such profession, 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 8, shall not be accepted by the Surveyor-General unless the a land surveyor or architect concerned has passed such examination.

[Sub-s. (2) amended A.6/2018.]

(3) Any qualifying professional may apply for exemption when that professional has passed a relevant examination in terms of the Act.

[Sub-s. (3) added A.6/2018.]

(4) 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 or the land shall be rectified in terms of the Land Survey Act, 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 33(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.

[Sub-s. (4), previously sub-s. (3), renumbered A.6/2018.]

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

[Sub-s. (5), previously sub-s. (4), renumbered A.6/2018.]

(6) 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.

[Sub-s. (6), previously sub-s. (5), renumbered A.6/2018.]

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

[Sub-s. (7), previously sub-s. (6), renumbered A.6/2018.]

Duties of land surveyors or architects and non-liability of Government

7. (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 will ensure accurate results, and in accordance with this Act.

[Sub-s. (1) amended A.6/2018.]

(2) Neither the Government nor any officer nor employee in the service of the Government 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.

[S. 7 amended A.6/2018. Sub-s. (2) amended A.6/2018.]

Approval of draft sectional plan by Surveyor-General

8. (1) After the Board has approved a scheme the land surveyor or architect concerned shall on behalf of the developer submit to the Surveyor-General, for his approval, the prescribed number of copies of the draft sectional plan.

[Sub-s. (1) amended A.6/2018.]

(2) The submission of the draft sectional plan to the Surveyor-General shall be accompanied by a certificate of the Board signifying its approval of the scheme as reflected on the draft sectional plan and by a schedule specifying the participation quota of each section in the building or buildings depicted on the sectional plan.

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

(4) The Surveyor-General shall not approve a draft sectional plan unless it has been prepared in accordance with provisions of this Act.

[ISSUE 1]

Improper conduct of land surveyors and architects

9. (1) A land surveyor or architect shall 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 has not carried out or personally supervised the measurements, and has not carefully examined and satisfied himself of the correctness of the entries in any records and of the calculations in connection therewith which may have been made of 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 Board finds after investigation to be incompetent or unsatisfactory; or
 - (g) contravenes a provision of this Act or fails to comply therewith, and the Board or any other official authorised by the Board, may refer a complaint in this regard to the relevant professional body or such land surveyor or architect for investigation and the taking of such steps as such professional body may deem fit.

[Sub-s. (1) amended A.6/2018. Para. (g) amended A.6/2018.]

(2) Without derogation to, and notwithstanding anything contained in subsection (1) any person who contravenes any provision of this section commits an offence, and on conviction, shall be liable to a fine not exceeding twenty thousand Emalangeni (E20,000.00) or a term of imprisonment not exceeding two (2) years or to both the fine and imprisonment on subsequent convictions.

[S. 9 amended A.6/2018.]

Prohibition of certain acts before opening of sectional title register

10. (1) No developer or other person shall, by virtue of a deed of alienation receive any consideration in respect of any unit or any undivided share in a unit in respect of any building and land, or any interest purporting to be a proposed unit or undivided share in a unit in respect of a building and land, until such unit or undivided share in such unit is registrable.

(2) Any deed of alienation concluded contrary to the provisions of subsection (1), shall be void.

(3) The provisions of subsection (1) shall not apply to any amount paid by way of consideration which by virtue of a deed of alienation is paid to the alienator if, before such payment, the alienee is furnished with an irrevocable and unconditional guarantee by a banking institution registered in terms of the Financial Institutions Order, No. 23 of 1975, Building

Societies Act, No. 1 of 1962, or such other law governing the registration of insurance institutions, in terms of which the said banking institution, building society or insurer undertakes to repay the said amount to the alienee if such unit or undivided share in such unit is not registrable.

(4) If, in the circumstances contemplated in subsection (3), the alienator becomes an insolvent before such unit or undivided share in such unit has become registrable, any amount in repayment the repayment of which was guaranteed in terms of section 10(3), shall immediately be payable to the alienee concerned by the banking institution, building society or insurer concerned.

(5) A developer or any other person or purchaser who has performed partially or fully under a deed of alienation which is void under subsection (2), shall be entitled to reclaim from the other party what he has so performed, and

(a) a developer may in addition claim from any such person or purchaser —

- (i) reasonable compensation for the use that the person or purchaser may have had under the deed of alienation in question; and
- (ii) compensation for any damage caused to that building or land or any part thereof by the person or purchaser, or any other person for whose acts or omissions such person or purchaser is dialectically liable;

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

- (i) interest at the prescribed rate of interest on any payment made under the deed of alienation, from the date of payment to the date of recovery thereof;
- (ii) reasonable compensation for any expenses incurred by him 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 with the express or implied consent of the developer; and
- (iii) compensation for any damage or loss suffered by him which he would otherwise have been entitled to claim from the developer on the ground of breach of contract had the deed of alienation not been void and had the developer failed to effect any transfer in accordance with the deed of alienation.

(6) A developer or any other person who commits an act which, were it not for the provisions of subsection 2, would have constituted the sale of a unit or an undivided share in a unit, or of any interest, or the granting of an option for the acquisition of such unit, undivided share of interest, contrary to the provisions of subsection (1), commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand Emalangeni or to imprisonment for a period not exceeding two (2) years or to both such fine and such imprisonment on subsequent convictions.

(7) In this section “sell” includes to sell subject to a suspensive condition or to exchange or to dispose of for any consideration whatsoever.

Sale by developers of certain units occupied by certain lessees

11. (1) Notwithstanding anything to the contrary contained in this Act or other law, for purposes of national development, the operation of subsections (3), (4) and (5) shall not take place where a developer intends to sell any unit of a building unless that developer, first —

- (a) publishes, for a reasonable period, the offer to sell in daily newspapers circulating in most parts of the country such offer, and therein invites Eswatini Nationals to lodge, with the developer within a specified period, applications or written intention to buy the advertised units;
- (b) considers and gives preference to Eswatini Nationals who have applied or lodged their intentions to buy such units; and
- (c) informs, by registered post or such acceptable means, all the persons who have lodged applications or written intentions in terms of this subsection the decision arrived at under paragraph (b).

(2) For purposes of subsection (1)(b), the order of preference shall be as follows:

- (i) Eswatini National who is a lessee and entitled to be notified in terms of section 5(3)(a)(i);
- (ii) Eswatini National who is not a lessee.

(3) In default of subsection (1) a developer shall not, notwithstanding that a sectional title register has been opened in respect of a building and land, and subject to subsection (7), 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 5(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, or has, on expiration of such period, not accepted the offer.

(4) If a lessee refuses an offer referred to in subsection (3) 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 persons mentioned in subsection (1) and the lessee concerned at a price lower than the price at which it was offered for sale in terms of subsections (1) and (3) to the persons mentioned in subsection (1) and to the lessee, unless the developer has again offered the unit at that lower price for sale to the persons mentioned in subsection (1) and to the lessee and, in the case of the lessee, the lessee 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.

(5) A developer —

- (a) shall not as from the date on which a lessee has been notified in terms of section 5(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 subsections (1) and (3) and the offer has been refused or the relevant period referred to in subsection (3) has expired, as the case may be, until the

date of expiry of the applicable period or applicable period of 180 days referred to in subsection (4) or, where applicable, the period of 60 days referred to in the last mentioned subsection, whichever date occurs last,

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 not, in any case contemplated in paragraph (a)(ii), until the date of expiry of the applicable period or the applicable period of 180 days mentioned therein or, where applicable, the period of 60 days mentioned in that paragraph, whichever date occurs last, 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 (3) 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.

(6) Any deed of alienation concluded contrary to the provisions of subsection (1), (2), (3) or (4) shall be void, and the provisions of section 10(5) with regard to a deed of alienation referred to therein, shall apply *mutatis mutandis* in respect of such void deed of alienation.

(7) A developer who —

(a) commits or does an act which, were it not for the provisions of subsection (6), would have constituted the sale of a unit contrary to any provision of subsection (1), (2), (3) or (4); or

(b) contravenes any provision of subsection (5),

commits an offence, and liable on conviction to a fine not exceeding twenty thousand Emalangeni or to imprisonment for a period not exceeding two years or to both such fine and imprisonment on subsequent convictions.

Application for opening of sectional title registers

12. (1) A developer may, after approval of a draft sectional plan by the Surveyor-General, apply to the Registrar 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 Board when approving the scheme, or by the developer in terms of subsection (2), as well as such other particulars as may be prescribed;

[Para. (b) amended A.6/2018.]

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

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- (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 26(1); and
 - (iii) the certificate of real right in respect of a right of exclusive use as contemplated in section 28(1);
- (e) a certificate by a conveyancer stating that the rules prescribed in terms of section 36(2) are applicable, and containing the other rules (if any) substituted by the developer for those rules as contemplated in that section;
- (f) a certificate 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) in the case of an application in respect of a building referred to in section 5(7) a certificate of the local authority concerned that the building and the land comply with all the applicable requirements of section 5(6); and
- (h) such other documents and particulars as may be prescribed.

Registration of sectional plans and opening of sectional title registers

13. (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 or an identifying 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 electronic means or in any other manner, such registers containing such particulars as are necessary for the purpose of carrying out the provision 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 26(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 28(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 Board of the registration of the sectional plan and furnish the Board with a copy thereof.

Effect of registration of sectional plans

14. (1) Upon the registration of 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 12(3)(b), shall upon the registration of such plan be deemed to be part of the sectional title deed, and an owner's title in his section and his 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 the local authority or the Minister when approving the scheme, or by a developer in terms of section 12(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.

Amendment and cancellation of sectional plans

15. (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.

[Sub-s. (1) amended A.6/2018.]

(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.

[Sub-s. (2) amended A.6/2018.]

(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 of Deeds 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 Board 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

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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 26 or 28; and
- (c) that, no unit or right referred to in section 26 or 28 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 Board 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, sectional title deeds and in the registers and copies kept by him, as may be necessary to record such cancellation and the reversion of the land in question to the land register, and shall in the manner prescribed cause the developer's title deed referred to in section 12(3)(c) to be revived, or shall issue to the developer a certificate of registered title in the form prescribed under the Deeds Registry 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 18(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 Board of the cancellation of the registration of a sectional plan.

PART III

REGISTRATION AND COMMON PROPERTY

Preparation of deeds by conveyancer, proof by means of certificates, registration and transfer of rights

16. (1) Subject to the provisions of this section 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 practising within Eswatini.

(2) A conveyancer referred to in subsection (1) shall be entitled to his fees and charges and may only recover those fees and charges prescribed by regulations.

(3) A conveyancer who prepares a deed or other document for the purposes of registration or filing in the 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

regulations 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 regulations.

(4) The provisions of subsection (1) shall apply *mutatis mutandis* to any person other than a conveyancer who is prescribed by regulations and who has in accordance with the regulations prepared a deed or other document, prescribed by regulations, for registration or filing in the Deeds Registry.

(5) The 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 the 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.

(6) Where a sectional title register is opened and the sectional plan concerned is 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 Government 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 Government or such authority, as the case may be, of the property so acquired free of charge, and that the provisions of section 17 of the Deeds Registry Act, 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 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 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.

(7) 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.

(8) 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 —

- (i) that, if a body corporate is deemed to be established in terms of section 37 (1), that the 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 that, if a body corporate is not deemed to be established, no moneys are payable;
- (ii) that no real right of extension of a scheme as contemplated in section 26 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 26(14) or, if it is not disclosed, that the transferee after the conclusion of the deed of alienation has in writing exercised his option in terms of section 26(15) and that he has elected not to annul the alienation on the ground of the said defect;

- (b) if by any law provision has been made for the separate rating of units, a clearance certificate of the local authority to the effect that all rates and moneys due to the local authority under any law before any such proof can be issued, have been paid;

- (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 11 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.

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

(10) Any person who is the joint owner of a unit held by such person and one or more other persons under one sectional title deed may, upon application to the Registrar in the prescribed manner, obtain a certificate of registered sectional title in the prescribed form in respect of his undivided share in such unit, and no transfer of a fraction only of his undivided share in such unit and no hypothecation or lease of the whole or any fraction of his undivided

share in such unit shall be registered in the Deeds Registry, unless a certificate of registered sectional title in the prescribed form in respect of such undivided share is produced to the Registrar.

(11) The conveyancer who has prepared a deed of transfer in terms of this section shall retain his file, with such documents as may be prescribed relating to the transaction in question, for a period of at least six years after the date of registration of such deed of transfer.

Ownership of common property

17. (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 18, 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.

Dealings with common property

18. (1) The owners may by majority 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 lease, and thereupon the body corporate shall, notwithstanding any provision of any law to the contrary, but subject to compliance with the provisions of any relevant 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.

(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) if the holders of bonds over units in the scheme consent in writing thereto, register 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: Provided that if a portion only of the land comprised in the common property 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, shall be annexed to the said title deed;

- (b) notify the Surveyor-General of any reversion of any land to the land register under the provisions of 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) if the holders of bonds over units in the scheme consent in writing thereto, register a notarial lease of land comprising common property by making an appropriate endorsement against the schedule of conditions referred to in section 12(3)(b), and no endorsement thereof shall be made on the sectional title deeds of the units.

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

(b) Where 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.

(c) The Registrar shall notify the Surveyor-General 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.

(5) Where 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 the common property shall be surrendered to the Registrar for cancellation, and the Registrar shall close the sectional title register and notify the Surveyor-General, the local authority and the Board 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.

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

19. The provisions of sections 54(1), (2) and (3), 55(1) and (2), 56 and 79(a) of the Deeds Registry Act shall apply *mutatis mutandis* with reference to the transfer of any mortgage unit or undivided share in a unit, the cession of any mortgaged lease of a unit or an undivided share in a unit, and the transfer under section 18 of this Act of any mortgaged common property or land or an undivided share therein.

Expropriation of common property or rights therein

20. (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 authorised agents and representatives —

- (a) to negotiate and settle the compensation payable to him, and to that end to employ attorneys, advocates, valuers and other experts; and
- (b) on his behalf to accept and give valid acquittance for any compensation received.

(2) Any compensation received by the trustees on behalf of the owners in terms of subsection (1), shall be paid or transferred 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 compensation is so distributed that he considers such a distribution inequitable, in which event the compensation shall be distributed —

- (a) in accordance with a division approved by majority 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 18(3)(a) and (b) of this Act and sections 3, 5 and 7 of the Acquisition of Property Act, No. 10 of 1961, 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 18(4)(b) and (c), and (5) shall apply *mutatis mutandis* to the cancellation of a section in terms of subsection (4).

PART IV

SUBDIVISION, CONSOLIDATION AND EXTENSION OF SECTIONS

Approval by the Board for subdivision of section or consolidation of sections

21. (1) If an owner of a section proposes to subdivide his section or to consolidate two or more sections registered in his name, he shall with the consent of the trustees of the body corporate, which consent shall not be unreasonably withheld, make application to the Board for approval of the proposed subdivision or consolidation, as the case may be.

(2) The provisions of sections 5(3), (5), (6), (8), (9) and (10) shall apply *mutatis mutandis* to an application referred to in subsection (1).

[Sub-s. (2) amended A.6/2018.]

Approval of plan of subdivision or consolidation by Surveyor-General

22. (1) After the Board has approved the proposed subdivision of a section or the consolidation of two or more sections, the land surveyor or architect concerned may on behalf of the owner submit the draft sectional plan of subdivision or consolidation, as the case may be, to the Surveyor-General for approval.

[Sub-s. (1) amended A.6/2018.]

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

- (a) a certificate of the Board approving the subdivision or consolidation;
- (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 8(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.

Registration of subdivision of section

23. (1) An owner may, after approval of a sectional plan of subdivision of a section, apply to the Registrar 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 together with a schedule, certified by a conveyancer, of any registrable conditions imposed by the Board when approving the 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) proof of partition (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 plans of subdivision to the local authority concerned and the Board, and notify the Surveyor-General of the registration of the sectional plan of

subdivision, and thereupon the Surveyor-General shall amend to 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), 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 a sectional plan registered in terms of section 13(1)(a), and the provisions of section 14(2) shall apply *mutatis mutandis* to such plan and the certificates of registered sectional title issued in terms of subsection (5).

Registration of consolidation of sections

24. (1) An owner may, after approval of a sectional plan of consolidation of two or more sections, apply to the Registrar 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, together with a schedule certified by a conveyancer, of any registrable conditions imposed by the Board when approving the 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 Board 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 23 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 39(4)(a) and (b), and (5)(a), (b) and (c) of the Deeds Registry 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.

Extension of sections

25. (1) If an owner of a section proposes to extend the limits of his section, he shall with the approval of the body corporate, authorised by a majority resolution of its members, make application to the Board for approval of the proposed extension of his section.

(2) The provisions of section 5(3), (5), (6), (8), (9) and (10) shall apply *mutatis mutandis* to an application to the Board for its approval of a proposed extension of section.

[Sub-s. (2) amended A.6/2018.]

(3) After the Board has approved of the proposed extension of a section, the land surveyor or architect concerned may on behalf of the owner submit the draft sectional plan of extension of a section to the Surveyor-General for approval.

[Sub-s. (3) amended A.6/2018.]

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

(5) The provisions of section 8(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) a schedule, certified by a conveyancer, of any registrable conditions imposed by the Board when approving the extension;
- (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 the consent of the mortgagee of each section in the scheme 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 the Board 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 13(1)(a), and the provisions of section 14(2) shall apply *mutatis mutandis* to such plan.

PART V

EXTENSION OF SCHEMES

Extension of schemes by addition of sections

26. (1) A developer may, subject to the provisions of section 5(2), in his application for the registration of a sectional plan, reserve, in a condition imposed in terms of section 12(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 12(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 38(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 13(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.

(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.

(6) If no reservation is made by a developer in terms of subsection (1), or if such a reservation is made and for any reason has lapsed, the right to extend a scheme shall vest in the body corporate, which shall be entitled, subject to the provisions of this section and after compliance, *mutatis mutandis*, 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.

(7) The provisions of section 5(3), (5), (6), (8), (9) and (10) shall apply *mutatis mutandis* to an application to the Board for its approval of an extension of a scheme in terms of this section.

[Sub-s. (7) amended A.6/2018.]

(8) The provisions of section 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 33 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.

(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;
- (b) a schedule, certified by a conveyancer, of any registrable conditions imposed by the Board when approving the extension of the scheme;
- (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;
- (e) 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 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, furnish the local authority concerned and the Board 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 paragraph (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) 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 section, 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 13(1)(a), and thereupon the provisions of section 14(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 complying 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) Under this Act —

- (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; and
- (b) after notice by any such purchaser to the seller that he annuls the alienation, the alienation shall be void, and thereupon the provisions of section 10(3) shall apply *mutatis mutandis*.

Extension of schemes by addition of land to common property

27. (1) A body corporate, authorised thereto in writing by all of its members, may purchase land to extend the common property for the purpose of providing amenities and facilities to its members.

(2) Land purchased by 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.

(3) The provisions of section 5(3), (5), (6), (8), (9) and (10) shall apply *mutatis mutandis* to an application to the Board for approval of the extension of a scheme by the incorporation of land purchased in terms of subsection (1).

[Sub-s. (3) amended A.6/2018.]

(4) The provisions of section 8(2), (3) and (4) shall apply *mutatis mutandis* 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.

(5) The Registrar shall 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 records as may be necessary to give effect thereto, and shall furnish a copy of the sectional plan of extension to the Board 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 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 13(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 SERVITUDE

Rights of exclusive use of parts of common property

28. (1) Under this Act —

(a) if a part or parts of common property is or are delineated on a sectional plan in terms of section 6(3)(i), the developer shall, when making application for the opening of sectional title register and the registration of the sectional plan, impose a condition in terms of section 12(2) in the schedule referred to in section 12(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, and the Registrar shall not accept for registration a sectional plan on which a part or parts of the common property is or are so delineated, unless the developer imposes any such condition conferring any such right for a specific purpose on the owner or owners of a section or 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 to whom such rights are allocated, by the registration of a unilateral notarial deed in their favour and provided that when the developer has transferred the last section in a scheme, he shall cede to the body corporate the right to any exclusive use area still registered in his name free of charge and without any compensation.

(2) A body corporate, duly authorised thereto by a majority resolution of its members, may, subject to the provisions of section 6(1), request an architect or land surveyor to apply to the Surveyor-General for the delineation of a sectional plan in the manner prescribed of a part or parts of the common property in terms of section 6(3)(i) for the exclusive use by the owner or owners of one or more sections and 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.

[Sub-s. (2) amended A.6/2018.]

(3) The body corporate, duly authorised thereto by a majority 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.

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(4) 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 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.

(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 authorised 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 which admits of being mortgaged.

Implied servitudes

29. (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 utilisation 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.

Creation of servitudes

30. (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 12(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.

Ancillary servitudal rights

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

Deeds Registry Act and implied servitudes

32. The provisions of the Deeds Registry 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

Participation quotas

33. (1) Subject to the provisions of section 49, in the case of a scheme for residential purposes only as defined in any applicable operative town planning scheme, the participation quota of a section shall be a percentage expressed to four decimal places, and arrived at by —
- (a) determination by a valuer on the basis of the relation of the market value of the section to the market value of all the sections in the building or buildings comprised in the scheme, or
 - (b) in cases where the developer concludes that use of floor areas will result in an equitable use of the participation quota, 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 49, 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, 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 26(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 38(1)(b), the proportion in which the owner of the section shall make contributions for the purposes of section 38(1)(a), or may in terms of section 48(1) be held liable for the payment of a debt of the body corporate of which he is a member.

(4) Subject to the provisions of section 38(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 36 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 38(1)(a) or 48(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 which consent shall not be unreasonably withheld:

Provided further that no such change may be made by special resolution of the body corporate until such times 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.

Sale or letting of sections

34. 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 an sections therein.

Shares of developers in buildings and land

35. (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 26(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 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.

(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 37 (1), that body corporate has certified that all monies 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

Rules

36. (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 regulations, 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 regulations, and which rules may be substituted, added to, amended or repealed from time to time by the majority resolution of the body corporate as prescribed by regulations;

(b) conduct rules, prescribed by regulations, 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 rules 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 rules contemplated in paragraph (a).

(3) Any management or conduct rules 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 thereof.

(5) 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 of the rules concerned, and no such substitution, addition, amendment or repeal shall be of force or effect until noted by the Registrar against the certificate referred to in section 12(3)(e).

(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 authorised in writing by such owner or person, make any rules then in force available for inspection to such owner, person or authorised person.

Bodies corporate

37. (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 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 35(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:

Provided that if a lease of a unit referred to in paragraph (b) of the definition of “owner” in section 2 expires, the developer or the person who granted the lease shall again become a member of the body corporate.

(3) The body corporate shall be designated as “the Body Corporate of the (name) Scheme, Number ”

such name and number to be inserted being the name and number referred to in sections 6(3)(b) and 13(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 36, and for the control, administration and management of the common property for the benefit of all owners.

(5) The provisions of the Companies Act, (of 1912 or its successor), shall not apply in relation to the body corporate unless it specifically refers to this Act or section or Part of this Act.

(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 sixty days after the establishment of the body corporate, the agenda of the meeting to be as prescribed in the management rules, at which meeting the developer 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.

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

(c) A developer who fails to comply with any provisions of paragraph (a) or (b), commits an offence and shall be liable on conviction to a fine not exceeding twenty thousand Emalangeni and in default of which, imprisonment to a period not exceeding two years.

Functions of bodies corporate

38. (1) A body corporate referred to in section 37 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 imposts 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 fulfilment of any other obligations 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 from the owner or owners of a section or sections entitled to the right to exclusive use of a part or parts of the common property, 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 risk as the owner may by special resolution determine;
- (h) subject to the provisions of section 49 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 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 36, or who are members of the body corporate;
- (m) to notify the Registrar, the Board, the local authority concerned and any other 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 or such other 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 authorised 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 contributions became due.

(3) The body corporate shall, on the application of an owner or mortgagee of a unit, or any person authorised 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 52 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 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.

Powers of bodies corporate

39. 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 fulfilment 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 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 38(1)(a);

- (h) to enter into an agreement or agreements 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 it to such section or to the owner or occupier thereof; 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.

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

40. (1) The functions and powers of the body corporate shall, subject to the provisions of this Act, the rules and any restriction imposed or directions 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, the trustees shall be deemed to be the owner of the land.

Fiduciary position of trustees

41. (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; and
 - (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) It is further provided that —
- (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, and
 - (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 cognisant of all the material facts.

Proceedings on behalf of bodies corporate

42. (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 37(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) In furtherance of the objectives of this section and in particular subsection (1) —
- (a) any such owner shall serve a written notice on the body corporate calling 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; and
 - (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 *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*.

Powers of curators ad litem

43. (1) A provisional curator *ad litem* appointed by the Court under section 42(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 the regulations.

(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 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.

Security for costs by applicants for appointment of curators ad litem

44. The Court may, if it appears that there is reason to believe that an applicant under section 42(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

Duties of owners

45. (1) An owner shall —

- (a) permit any person authorised in writing by the body corporate, at all reasonable hours on notice (except in case of emergency, where no notice shall be required), to enter his section or exclusive use area for the purpose 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 assessment 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 nuisance to any occupier of a section;
- (f) notify the body corporate forthwith of any change of ownership in his section and 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 lawful purpose.

(2) Consequent to the provisions of subsection (1) —

- (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; and
- (b) if on any such application, mentioned in paragraph (a), 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 —
 - (i) such orders as it deem fit, including an order that that it shall be deemed that the requirement stated in the proviso to subsection (1)(g) is met;
 - (ii) an order that the provisions of section 15 of this Act which the Court deems appropriate, shall be applied with reference to the amendment of the registered sectional plan in question;
 - (iii) any other supplementary order as the Court deems fit; and
 - (iv) an order concerning costs as it deems appropriate.

Insurance by owners

46. (1) Notwithstanding the existence of a valid policy of insurance effected by the body corporate pursuant to the provisions of section 38(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 damage to the section is made good by the body corporate pursuant to the provisions of section 38(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 38(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 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.

Appointment of administrators

47. (1) A body corporate, the Board, a local authority, a creditor of the body corporate for an amount of not less than five hundred Emalangeni, 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 38(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.

Recovery from owners of unsatisfactory judgment against bodies corporate, and non-liability of bodies corporate for debts and obligations of developers

48. (1) If a creditor of a body corporate has obtained against the body corporate, and such, 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 33(4):

Provided that any member who is so required to make a payment to a judgment creditor after he has paid to the body corporate in respect of the same debt, shall be entitled to obtain a refund from the body corporate of the amount of the payment so made to the said creditor.

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

Destruction of or damage to buildings

49. (1) The buildings comprised in a scheme shall, for the purposes of this Act, be deemed to be destroyed —

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

- (b) when the owners by majority 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) In terms of this Act —

- (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 majority resolution, or the Court may by order, authorise 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; and
- (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 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; and
 - (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 Board or by the local authority concerned.

(5) An 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) The Court may —

- (a) 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 of the winding-up of the affairs of the body corporate; and

(b) 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 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.

Disposal on destruction of buildings

50. (1) When in terms of section 49 the building or buildings comprised in a scheme is or are deemed to be destroyed and the owners have by majority 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 49(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 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 26, 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 Registry 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 Registry Act;

- (e) make an endorsement on the schedule referred to in section 12(3)(b) to reflect the reversion of the land; and
- (f) notify the Surveyor-General, the Board and the local authority concerned 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.

Unencumbered sections destroyed by Government or local authority

51. (1) Where the Government 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 Government 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 Deed 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, the Board and the local authority 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 amendment schedule referred to in section 6(3)(g), prepared by an architect or land surveyor and to be furnished by the Government 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.

[Sub-s. (4) amended A.6/2018.]

Valuation of land and buildings and recovery of rates by local authorities

52. (1) For purposes of this Act —

- (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
- (b) 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; and
- (c) 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 48, the local authority may recover any rates and taxes levied by it, from the body corporate.

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(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

Delegation of powers, functions and duties by Minister and the Board

53. The Minister and the Board may delegate any or all of the powers, functions or duties conferred upon or entrusted to him or it by sections 5, 21, 25, 26, 27 and 28 to an urban local authority committee, or an officer in the service of the Ministry responsible for this Act or the Board.

[S. 53 amended A.6/2018.]

Sectional Titles Regulation Board

54. (1) There is hereby established the Sectional Titles Regulation Board, which shall —
- (a) receive applications for developmental schemes and such other applications as are provided in this Act;
 - (b) carry out the duties and functions that this Act vests in it;
 - (c) make recommendations to the Minister concerning any matter specified in section 55 in regard to which the Minister may make regulations;
 - (d) 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
 - (e) advise the Minister on any matter referred to it by the Minister.
- (2) The Board shall consist of the following members:
- (a) the Registrar appointed in terms of section 4(1) of the Deeds Registry Act, who shall act as chairman at the proceedings of the Board;
[Para. (a), previously para. (c), renumbered A.6/2018.]
 - (b) ten members appointed by the Minister, who shall consist of the following persons:
 - (i) a conveyancer nominated by the Law Society of Eswatini;
 - (ii) a member nominated by a recognised professional body for land surveyors, engineers and architects in Eswatini;
 - (iii) the Surveyor-General;
 - (iv) Principal Secretary in the ministry responsible for this Act;
[Sub-para. (iv) inserted A.6/2018.]
 - (v) a member or official of the Human Settlements Authority;
[Sub-para. (v), previously para. (iv), renumbered A.6/2018.]
 - (vi) a member or official of the Eswatini Environment Authority;
[Sub-para. (vi), previously para. (v), renumbered A.6/2018.]

- (vii) an officer in the employ of an urban local authority nominated by the association for local authorities in Eswatini or local authorities, and in default of which, by the Minister;

[Sub-para. (vii), previously para. (vi), renumbered A.6/2018; amended A.6/2018.]

- (viii) two other persons having special knowledge of sectional title development schemes; and

[Sub-para. (viii), previously para. (vii), renumbered A.6/2018.]

- (ix) a Secretary, who shall be an official of the Ministry for Housing and Urban Development or its successor, appointed by the Minister.

[Para. (b), previously para. (d), renumbered A.6/2018; amended b A.6/2018. Sub-para. (ix), previously para. (viii), renumbered A.6/2018.]

(3) For every member of the Board appointed in terms of subsection (2)(b) 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 Board.

(4) The Registrar and members of the Board 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)(b)(i), (ii), (iv), (v) or (vi) becomes necessary the body concerned shall at the request of the Minister furnish the nomination required for appointment to the 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 would have appointed if the said body had not so failed to nominate a person.

(6) A member of the 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 Board dies or vacates his office before the expiration of his period of office, the Minister may, subject to the provision of subsection (2)(b), 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 Board whose period of office has expired, may for satisfactory performance and good conduct from the expired term be reappointed.

(9) A member of the Board shall, while he is engaged in the business of the 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, but subject to the quorum, the members present may nominate one of them, not being a public officer, to be the acting chairman of the Board and preside at such a meeting.

(11) For the purposes of its functions —

- (a) the Board shall from time to time meet at such times and places as are determined by the chairman; and

- (b) the Minister may at any time direct the chairman of the Board to convene a meeting of the Board at a time and place specified by the Minister.
- (c) the Board may require any person to appear before it.

[Para. (c) inserted A.6/2018.]

(12) For its quorum and lawful decisions —

- (a) five (5) members of the Board, excluding the secretary, 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; and

[Para. (a) amended A.6/2018.]

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

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

Regulations

55. The Minister may, after consultation with the Board, make Regulations in regard to —

- (a) the form of sectional title registers to be opened and kept by the Registrar and the particulars to be registered or filed in any register;
- (b) the form of any deed or document to be registered or filed in the Deed Registry;
- (c) the procedures to be followed in the Deeds Registry or the 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 measurement 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 the manner in which such draft sectional plan, sectional plan or other plan shall be prepared;
- (f) the information to be recorded thereon and the number of draft sectional plans, sectional plans or other plans to be supplied and the circumstances in which the Surveyor-General may authorise a departure from a regulation made in terms of this paragraph if it is found that compliance with such regulation is impossible or impracticable;

- (g) the method according to which draft sectional plans, sectional plans, buildings and sections shall be numbered;
- (h) 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, the Deeds Registry of the office or the 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;
- (i) the fees and charges of conveyancers and notaries public in connection with the preparation, passing and registration of deeds or other documents registered or filed or intended for registration or filing in a Deeds Registry, and the fees and other charges of any other legal practitioners in connection with the preliminary work;
- (j) required for the purpose of any such deed or other document, the manner in which and the person by whom such fees and charges shall be taxed, the costs of such taxation and by whom they shall be borne;
- (k) the fees and charges of the Board in connection with the exercise or performance of any of the powers, functions or duties of the Board in terms of sections 5, 21, 25, 26, 27 and 28;
- (l) the procedure to be followed in arbitration proceedings under the Act and the powers and duties of arbitrators appointed under this Act;
- (m) the syllabus for the examination referred to in section 6(2), and in regard to all matters incidental to conducting such examinations; or, the delegation of such power to the Registrar or such other competent person or institution;
- (n) the conditions under which copies of sectional plans may be issued by the Surveyor-General for judicial or legal use or purposes, information or other purposes;
- (o) any matter required or permitted to be prescribed by regulation under this Act; and
- (p) generally, any matter which he considers necessary or expedient to prescribe in order that the purpose of this Act may be achieved.

Other powers of the Minister

56. (1) 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.

(2) The Minister may, with Cabinet approval and by notice published in the *Gazette*, amend the amount of fines prescribed in this Act.

Notice of applications to Court

57. Before any application is made to the Court for an order affecting the performance or any act in the Deeds Registry or the office of the Surveyor-General, the applicant shall give

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

Exemption from liability

58. No act or omission of the Board, the Registrar, Surveyor-General, the Minister or any local authority, or of an official who is employed in the Board, the Deeds Registry or office of the Surveyor-General or of the Minister or of a local authority, in the course of the administration of this Act, shall make the Government or that Board, Minister, 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 Government, Board, Minister (in his representative capacity) or local authority, as the case may be, shall be liable for such damages.

59. (*Deleted.*)

[S. 59 deleted A.6/2018.]
