SUBMISSION BY THE LAW SOCIETY OF SOUTH AFRICA (LSSA) ON THE SECTIONAL TITLES AMENDMENT BILL PUBLISHED IN THE GOVERNMENT GAZETTE OF 30 JUNE 2017

The Law Society of South Africa (LSSA) represents approximately 25 000 practising attorneys and almost 6 000 candidate attorneys countrywide. It is the umbrella body of the attorneys' profession in South Africa and its constituent members are the Black Lawyers Association (BLA), the National Association of Democratic Lawyers (NADEL) and the four statutory provincial law societies, namely the Cape Law Society (CLS), the KwaZulu-Natal Law Society (KSNLS), the Law Society of the Northern Provinces (LSNP) and the Law Society of the Free State (LSFS).

We would be grateful if you would consider the following submission on the Bill. For ease of reference, we have referred to the section number of the Bill, followed by the section number of the existing Sectional Titles Act (STA) in brackets.

Section 1: (Section 1(a) of the STA)

The phrase "*or by the occupant or occupants thereof recognised by law as contemplated in this Act*" seems to be confusing and convoluted. We suggest the wording be changed to read "*the persons lawfully occupying the relevant section in the scheme*".

Section 5: (Section 15B(1)(e)of the STA) – new subsection:

The LSSA vigorously opposes the provision in this proposed subsection that a **certificate by a conveyancer** must be submitted to prove that the title deed for the rights of extension is not available.

The application contemplated in this subsection must be brought either by the **Developer** or the **Body Corporate** – we propose that the section be changed to require an **affidavit** by either the Developer or the Body Corporate, as the case may be - to the effect that the title deed is not available. If the Developer or the Body Corporate is going to be signing the application anyway, it is advisable to get the signatory to depose to an affidavit at the same time. The conveyancer is in no better position to certify this than these two parties are able to depose to under affidavit.

Section 6(a): (Section 17(4)(b) of the STA)

This section should, in our view, read: "*Where pursuant to subsection (1) it is sought to **register** a lease of land which forms part of the common property*. "

We do not agree to the inclusion of the word "let", which could be an oral lease or an underhand lease. This would require an additional amendment to the Bill.

Section 6(c): (Section 17(4C) of the STA)

The last part of this subsection requires ‘*’the written consent of the holder thereof*’ to the cancellation of the real right or a part thereof.

As such a cancellation has to be done **by bilateral notarial deed** it is not clear why the “*written consent*” of the holder is required. The subsection should simply require cancellation by bilateral notarial deed. (We note that the same wording already appears under Section 17(4)(b)(a), which likewise does not appear to make sense).

Section 9(c): (Section 22(d) of the STA)

The current wording of Section 22(2)(d) of the Act is contrary to all the principles of substituted titles. This deletion is accordingly fully **supported** by the LSSA.

The subsection, as it stands, was the subject of much debate at the Registrars’ Conference of 2015, where it was pointed out, if we recall correctly, that the wording of the subsection had been inserted in error.

As the subsection currently stands, a partition transfer can be effected by the registration of a CRST. This is clearly untenable.

Section 9(e): (Section 22(2A)(a) of the STA) – new subsection:

The requirement that a conveyancer must certify that, at the date of the application, no unit in the scheme has been sold, donated or exchanged is entirely untenable.

It should not be expected of a *conveyancer* to certify this. There may be several conveyancers not all acting for the Developer, and a conveyancer has no control over what agreements the Developer has signed an hour or so earlier.

We recommend strongly that any such application contemplated in this subsection must be supported by an **affidavit by the Developer** to the effect that no unit in the scheme has been sold, donated or exchanged.

Section 10(c): (Section 23(2A)(a) of the STA) - new subsection:

The comments made above apply to the requirement of a conveyancer’s certificate here.

This is vigorously opposed in favour of **an affidavit by the Developer**.

Section 11(a): (Section 24(3A) of the STA) - new subsection:

As the Developer is, in these circumstances, the owner of **all** of the sections in the scheme at this stage, this section should read "… *intends to extend the boundaries or floor area of any section*" – not '*'his or her section"*.

Section 11(c): (Section 24(3)(eA)(a) of the STA) - new subsection:

The requirement of a conveyancer's certificate in these circumstances is vigorously opposed by the LSSA in favour of an **affidavit by the Developer**.

Section 12(b): (Section 25(5A)(a))

The addition of the word "*or exclusive use area*" where it appears ***for the first time*** – seems to be irrational. It begs the question as to how an exclusive use area is "completed".

We submit that this wording should be deleted.

Consideration should be given for the wording of the first insertion to read along the lines of "… *or exercising of the right where the exercising of the right relates to the creation of only an exclusive use area*".

Section 13 (Section 26(9)(a) of the STA) – new subsection:

The requirement that a conveyancer must certify that no unit has been sold, donated etc. is vigorously opposed by the LSSA on the same basis set out above.

Section 16(b): (Section 54(2)(c)(i) of the STA)

The LSSA strongly recommends the appointment of more than just two conveyancers. The conveyancing fraternity should be much more actively involved. It is suggested that four conveyancers should be nominated.