

CHAPTER 33:04
SECTIONAL TITLES

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An Act to provide for the division of buildings into sections and common property for the acquisition of separate ownership of sections coupled with joint ownership of common property; the control of certain incidents attaching to separate ownership of sections and joint ownership of common property; the transfer of ownership of sections and the registration of sectional mortgage bonds over, and real rights in sections; the conferring and registration of rights in and the disposal of common property; and other matters connected therewith or incidental thereto.

[Date of Commencement: 1st May, 2003]

PART I
Preliminary (ss 1-3)

1. Short title

This Act may be cited as the Sectional Titles Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires-

"architect" means a person holding a professional qualification recognised by Architects Association of Botswana;

"association", in relation to a building and the land on which the building is situated, means the association of that building formed in terms of section 39(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 as are not included in a section; and
- (c) land referred to in section 28;

"conveyancer" has the meaning assigned to it under the Legal Practitioners Act;

"court" means a court of competent jurisdiction;

"Deeds Registry" means the Deeds Registry established under the Deeds Registry Act;

"developer" means a person who is the registered owner of land, situated within the area of jurisdiction of a local authority, on which is situated or to be erected a building 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 27 to extend a scheme, or his successor in title, and includes-

- (a) for the purposes of sections 11 and 18(3)(c), also the agent of any such person or his 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 specified in section 51, the association concerned;

"development scheme" means a plan in respect of which a building situated or to be erected on land within the area of jurisdiction of a local authority is, for the purposes of selling, letting or otherwise dealing therewith, to be divided into two or more sections;

"Director" means the Director of Surveys and Mapping appointed under the Land Survey Act;

"exclusive use area" means a part or parts of the common property for the exclusive use by the owners of one or more sections, as mentioned in section 29;

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

"land surveyor" has the meaning assigned to it under the Land Survey Act;

"lease" for the purposes of section 20(1) means a lease which-

- (a) was entered into for a period of not less than 10 years;
- (b) was entered into for the natural life time of the lessee or any other person mentioned in the lease; or
- (c) is renewable from time to time at the will of the lessee indefinitely or for periods which, together with the first period, amount in all to not less than 10 years;

"notary public" has the meaning assigned to it under the Legal Practitioners Act;

"owner" means, in relation to-

- (a) immovable property, subject to paragraph (b), the person registered as owner or holder thereof and includes the trustee in an insolvent estate, or the liquidator of a company or close corporation which is an owner, and the executor of an owner who has died, or the representative, recognised by law, of an owner who is a minor or of unsound mind or is otherwise under a disability, if such trustee, liquidator, executor or representative is acting within the scope of his authority;
- (b) immovable property, real rights in immovable property and notarial bonds-
 - (i) registered in the names of both spouses in a marriage in community of property, either one or both of the spouses;

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

"owned" and **"ownership"** have a corresponding meaning;

"participation quota", in relation to a section or the owner of a section, means the percentage determined in accordance with the provisions of section 35(1) or (2) in respect of that section for the purposes referred to in section 35(3) and shown on a sectional plan in accordance with the provisions of section 7(3)(g);

"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 appointed under the Deeds Registry Act;

"scheme" means a development scheme;

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

"sectional mortgage bond" means a mortgage bond hypothecating-

- (a) a unit or an 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 common property or the rights referred to in sections 27 and 29;

"sectional plan", in relation to a scheme, means a plan approved by the Director-

- (a) which is described as a sectional plan;
- (b) which shows the building 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 7, and includes a sectional plan of a 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 in respect of a sectional title;

"sectional title register" means the register referred to in sections 3 and 13(1)(b) and includes any sectional plan registered under this Act, and the Deeds Registry's duplicate of any certificate of registered sectional title deemed to be incorporated in such register;

"special resolution" means, subject to subsection (2), a resolution passed by a majority of

not less than three-fourths of the votes (reckoned in value) and not less than three-fourths of the votes (reckoned in number) of members of an association who are present or represented by proxy or by a representative recognized by law at a general meeting of which at least 30 days written notice, specifying the proposed resolution, has been given, or a resolution agreed to in writing by at least 75 per cent of all the members of the association (reckoned in number) and at least 75 per cent of all such members (reckoned in value) personally or by proxy or by a representative of any such member recognized by law:

Provided that in circumstances determined in the rules, a meeting of the association 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 association;

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

- (a) passed unanimously by all the members of an association who are present or represented by proxy or by a representative recognized by law at a general meeting of the association of which at least 30 days' written notice, specifying the proposed unanimous resolution, has been given, and at which meeting at least 80 per cent of all the members of an association (reckoned in number) and at least 80 per cent of all the members (reckoned in value) are present or so represented:

Provided that in circumstances determined in the rules, a meeting of the association 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 association; or

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

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

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

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

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

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

- (a) a notice referred to in that definition shall be deemed adequate if it has been delivered to, or despatched to the address of, a member, referred to in paragraphs (a) and (b) respectively of subsection (2);
- (b) a member present or represented at a meeting referred to 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.

3. Registers

There shall be kept in the Deeds Registry by the Registrar-

- (a) a register for the registration of sectional plans; and
- (b) a register for the registration of sectional titles.

PART II

Concept of Sectional Ownership of Buildings (ss 4-5)

4. Sectional ownership of buildings

- (1) Notwithstanding anything to the contrary in any law-
 - (a) a building comprised in a scheme and the land on which the building is situated, may be divided into sections and common property in accordance with the provisions of this Act;
 - (b) separate ownership of the sections or an undivided share thereof may be acquired in accordance with the provisions of this Act;
 - (c) the owners of the sections shall own the 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.
- (2) Subject to subsection (3), a scheme may relate to more than one building erected or to be erected on the same piece of land, or more than one piece of land, whether contiguous or

non-contiguous.

(3) The building 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 in respect of which a certificate of consolidation of title has been registered.

5. Application of Cap. 33:02

(1) Except as is otherwise provided in this Act or any other enactment, the provisions of the Deeds Registry Act shall, with such adaptation as may be necessary, apply 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 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 effect as the original document.

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

PART III

Preparation of Development Schemes (ss 6-15)

6. Application to Director for approval of sectional plan

(1) Where a developer intends to carry out a development scheme, he shall cause to be prepared by a land surveyor or an architect, a sectional plan in accordance with the provisions of section 7 to be submitted to the Director in terms of section 9.

(2) Where an existing building, which is to be converted into a development scheme, is a residential building occupied by tenants under a tenancy agreement, no application shall be made by a developer to the Director under subsection (1) unless the developer-

- (a) has, prior to the making of the application, notified, every tenant, in writing by a letter delivered either personally or by registered post, of a meeting of all tenants in possession to be held at a date, at least 14 days after the delivery of the letter, in the building or such other building as may be specified in the letter which is within a reasonable distance from the building in question and is located within the area of jurisdiction of the local authority;
- (b) has, by himself or his agent at the meeting, furnished the tenants with full particulars of the proposed development scheme;

- (c) has given every tenant the option to acquire the unit he occupies in accordance with the provisions of section 11; and
- (d) has attached to his application, a certificate in the prescribed form that he has complied with the provisions of paragraphs (a) - (c).

(3) For the purposes of subsection (2), "tenant" means a tenant who is a party to a tenancy agreement entered into with the developer or any of his predecessors in title.

(4) Notwithstanding the provisions of subsection (2), a developer may submit his application to the Director if all the tenants have stated in writing that they do not wish to acquire the proposed units which they occupy and a conveyancer has certified in writing that all such statements have been received in respect of all the units in question.

(5) If any sectional plan relates to a building which is in the process of being erected, the developer shall cause the relevant documents to be submitted in terms of section 9 if such building-

- (a) is sufficiently completed for the measurements referred to in section 8 (1) to be undertaken, and
- (b) whilst the erection thereof is not yet completed, complies with the provisions of the Town and Country Planning Act, and the Building Control Act and the regulations made thereunder.

7. Manner of preparing sectional plan

(1) Subject to subsection (2) a sectional plan shall be prepared and signed by a land surveyor or an architect in accordance with the provisions of this section.

(2) 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.

(3) A 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;
- (b) indicate the name of the scheme;
- (c) include a plan to scale of each storey in the building shown thereon;
- (d) subject to subsections (4) and (5), define the boundaries of each section in the building 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 35(1) or (2) and the total of the quotas of all sections shown thereon; and
- (h) be drawn in such manner and contain such other particulars as may be prescribed.

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

(5) For the purposes of subsection (3)(a) 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 stoop, porch, balcony, atrium or projection) of which the boundaries cannot be defined in terms of paragraph (a) but being appurtenant to a part of that section which can be defined in terms of that paragraph, in the manner prescribed.

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

8. Duties of land surveyors and architects and non-liability of State

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

(2) The State, any officer or employee in the service of the State shall not be liable for any defective measurement or work done or performed in relation to any sectional plan by a land surveyor or architect, notwithstanding the fact that such sectional plan has been approved by the Director.

9. Approval of sectional plan by Director

(1) When a sectional plan is prepared in terms of section 7(1), the land surveyor or architect, as the case may be, shall on behalf of the developer submit to the Director, for his approval, the prescribed number of copies of the sectional plan.

(2) The submission of the sectional plan to the Director shall be accompanied by-

- (a) a certificate issued by an architect or a land surveyor stating that-
 - (i) the proposed division into sections and common property complies with the provisions of the Town and Country Planning Act and the Building Control Act and the regulations made thereunder;
 - (ii) the building to which the scheme relates, was erected in accordance with approved building plans;

- (b) where the application is signed by a person authorised to sign on behalf of the developer, a written authority by such developer in which the person concerned is authorised to sign the application on behalf of the developer;
- (c) in the case of an application in respect of a building referred to in section 6(5), a certificate from the architect or the land surveyor concerned to the effect that the building and the land comply with all the applicable requirements mentioned in this subsection;
- (d) if section 6(2) applies to the scheme-
 - (i) an affidavit by the developer stating that that section has been complied with;
 - (ii) a copy of the notice referred to in section 6(2)(a) and the certificate referred to in section 6(2)(a); and
 - (iii) where applicable, a certificate from a conveyancer in terms of section 6(4);
- (e) if section 6(4) does not apply to the scheme, an affidavit by the developer to that effect.

(3) The manner of submission of the sectional plan and other documents shall be prescribed.

(4) The Director shall not be responsible for investigating the correctness or accuracy of any document submitted to him in terms of subsection (2) or section 23, 26 or 27.

(5) The Director shall not approve a sectional plan, unless the applicable documents have been submitted to him in terms of subsection (2) and such plan has been prepared in accordance with this Act.

10. Improper conduct of land surveyors and architects

A land surveyor or architect shall be guilty of an offence if he-

- (a) signs, except as provided in such circumstances as may be prescribed, 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 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 by any other person;
- (b) signs any defective plan knowing it to be defective;
- (c) 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;
- (d) supplies erroneous information to the Director in connection with any scheme,

knowing it to be erroneous; or

- (e) contravenes any provisions of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding P2 000 or to a term of imprisonment not exceeding 12 months, or to both.

11. Restriction on sale of units occupied by tenants

(1) Subject to the provisions of this section, no developer shall sell any unit in a development scheme which is occupied by a tenant to a person other than the tenant in possession unless-

- (a) he has, first made an offer to sell the unit to the tenant in possession by a letter delivered either personally or by registered post;
- (b) he has given the tenant three months' notice within which to consider the offer; and
- (c) the tenant has either refused to accept the offer or failed to accept the offer within the period specified in paragraph (b).

(2) Where a tenant refuses an offer or fails to accept an offer within the period specified in subsection (1)(b), the developer shall not, within a period of six months from the date on which the tenant refused to take the offer or failed to accept the offer, as the case may be, offer for sale or sell the unit to any person other than the tenant in possession at a price lower than the price at which it was offered to the tenant in possession unless-

- (a) the developer has again offered the unit at that lower price for sale to the tenant in possession; and
- (b) the tenant has refused the offer within a period of three months from the date thereof, or has failed to accept the offer on the expiry of the three months.

(3) Before the expiry of the periods of three months or six months, as the case may be, specified in subsections (1) and (2), a developer shall not within either of those periods-

- (a) require or permit any tenant in possession to pay an amount of rent higher than the amount payable by the tenant at the time of his refusal or failure to accept the offer of sale made in accordance with the provisions of subsection (1) or (2);
- (b) require the tenant to vacate the unit unless the tenant has been guilty of non-payment of rent, or has done material damage to the unit, or has been guilty of conduct which is a nuisance to occupiers of other units in the building.

(4) Any contract of purchase and sale entered into contrary to the provisions of this section shall be void.

(5) A developer or any person who has performed partially or fully in terms of a contract which is void by virtue of subsection (4) shall have a claim against the other party to the extent

of such performance.

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

- (a) reasonable compensation for the use which the person may have had of the building and land in question or any part thereof; and
- (b) compensation for any damage caused to that building or land or any part thereof by the person, or any other person for whose acts or omissions such person is delictually liable.

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

- (a) interest at the prescribed rate on any payment made in terms of the contract, from the date of payment to the date of recovery thereof;
- (b) 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
- (c) 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 contract not been void and had the developer failed to effect any transfer in accordance with the contract.

(8) A developer who fails to comply with the provisions of subsections (1) to (3) shall be guilty of an offence, and liable on conviction to a fine not exceeding P2 000, or to imprisonment for a term not exceeding 12 months, or to both.

12. Application for registration of sectional plan and opening of sectional title registers

(1) A developer may, after approval of a sectional plan by the Director, apply to the Registrar for the registration of the sectional plan, and for the opening of a sectional title register in respect of the land and building thereon.

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

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

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

prescribed;

- (c) the title deed of the land in question;
- (d) any mortgage bond to which the land may be subject, together with the consent of the mortgagee to the opening of the sectional title register and to the endorsement of such bond to the effect that it attaches to-
 - (i) the sections and common property shown on the sectional plan;
 - (ii) the certificate of real right in respect of a right reserved by him in terms of section 27(1); and
 - (iii) the certificate of real right in respect of a right of exclusive use referred to in section 29(1):

Provided that section 38 (5) and (6) of the Deeds Registry Act shall apply with the necessary changes to any bond which is registered against one or more pieces of land shown on the sectional plan;

- (e) a certificate by a conveyancer stating that the rules prescribed in terms of section 38(2) are applicable, and containing the other rules (if any) substituted by the developer for those rules mentioned in that section;
- (f) certificates of registered sectional title in the prescribed form in respect of each section and its undivided share in the common property, made out in favour of the developer; and
- (g) such other documents and particulars as may be prescribed.

13. Registration of sectional plans and opening of sectional title registers

(1) When the requirements of the preceding provisions of this Act have been complied with the Registrar shall-

- (a) register the sectional plan and allot a distinctive number to it;
- (b) open a sectional title register in respect of the land and building thereon in the prescribed manner;
- (c) keep by means of a computer or in any other manner such registers containing such particulars as are necessary for the purpose of carrying out the provisions of this Act 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 27(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 referred to in section 29(1), subject to any mortgage bond registered against the title deed of the land;
- (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 Director of the registration of the sectional plan.

14. Effect of registration of sectional plans

(1) Upon the registration of a sectional plan the building 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 to 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 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.

15. Amendment and cancellation of sectional plans

(1) The Director may require a land surveyor or architect who has prepared a registered sectional plan to amend, or the developer or the association to cause to be amended, any registered sectional plan found to be incorrect, or to substitute another sectional plan for the incorrect sectional plan.

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

(3) If in the opinion of the Director any person is likely to be prejudiced by an incorrect sectional plan, he shall advise the Registrar as to which sections are affected by any such defect in question, and thereafter no transfer of such section and its undivided share in the common property or the registration of a real right therein shall be registered until the defect in

the sectional plan has been rectified, unless the Registrar is satisfied that the delay in causing the defective sectional plan to be rectified will cause undue hardship and the person in whose favour transfer of the section and its undivided share in the common property or of a real right therein is to be registered, consents in writing to the transfer or other registration being effected prior to the rectification of the defect.

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

(5) The Director shall advise the Registrar of any amendment 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 indicating any change of description or extent upon the Deeds Registry copy of the sectional title deed and upon any other registered document affected by such change, and shall likewise endorse the owner's or holder's copy of that sectional title deed or any such other registered document whenever subsequently lodged at the Deeds Registry for any purpose.

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

- (a) that all the units of a scheme are registered in the developer's name;
- (b) that, if applicable, the developer is the holder of a right referred to in section 27 or 29; and
- (c) that no unit or right referred to in section 27 or 29 is encumbered by a sectional mortgage bond or a lease or in any other way,

close the sectional title register, and notify the Director that the sectional title register has been closed, whereupon the Director 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 amendments, endorsements and entries on the developer's sectional title deeds and in the registers and records kept by him, as may be necessary to record such cancellation and the reversion of the land in question to the applicable land register, and shall in the manner prescribed cause the developer's title deed referred to in section 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 land in question, 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 20(15), only be cancelled by an order of 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 Director, who shall cancel the original sectional plan and the Deeds Registry copy thereof.

PART IV

Registration and Common Property (ss 16-22)

16. Preparation of deeds by conveyancer

Subject to the provisions of this Act or any other enactment, 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 admitted and enrolled in terms of the Legal Practitioners Act and practising in Botswana.

17. Proof of certain facts in connection with deeds and documents by means of certain certificates

(1) A conveyancer or any person other than a conveyancer who is authorised thereto by or under any law, 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.

(2) Subject to subsection (3), 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 the said subsection (1) has been signed, have for the purposes of such examination been conclusively proved.

(3) The provisions of subsection (2) 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.

18. Registration of transfer of ownership and other rights

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

- (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, so however that where the State acquires all the units or land held under any sectional title deed, the Registrar shall make such alterations and entries in his registers and such endorsements on any such title deed as may be necessary to register transfer to the State of the property;
- (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, so however 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, except in the case of any real right which has elapsed, register any other real right (which is incorporated in a notarial deed) in or over a unit or an undivided share in a unit or land held under a sectional title deed, and any notarial cancellation or modification of such a real right, by means of an endorsement made by him on the sectional title deed.

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

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

- (a) a conveyancer's certificate confirming, that as at the date of registration-
 - (i) the association deemed to be formed in terms of section 39(1), has certified that all moneys due to it by the transferor in respect of the unit have been paid, or that provision has been made to the satisfaction of the association for the payment thereof, or in the case where no association has been formed that no moneys are payable;
 - (ii) that no real right of extension of a scheme referred to in section 27 is registered in favour of a developer or the association or, if such right is so registered, that it is disclosed in the deed of sale to the transferee referred to in section 27(16) or, if it is not so disclosed, that the transferee after the conclusion of the deed of sale has in writing exercised his option in terms of section 27(17), and that he has elected not to annul the sale on the ground of the defect;
- (b) a clearance certificate from the local authority that all rates and moneys due to such local authority in terms of any law in respect of the land and buildings of the scheme have been paid if-

- (i) provision is made by law for the separate rating of units; or
 - (ii) the transfer will result in the formation of an association in terms of section 39;
- (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.

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

(5) 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.

19. Ownership of common property

(1) The common property shall be owned by owners of sections jointly in undivided shares proportionate to the quotas of their respective sections as specified on the 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 treated as 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 20, 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.

20. Dealings with common property

(1) The owners and the holders of a right of extension referred to in section 27 may by unanimous resolution direct the association on their behalf to transfer common property or any part thereof, or to let common property or any part thereof under a lease, and thereupon the association shall, notwithstanding any provision of section 20 of the Deeds Registry Act, but subject to compliance with any enactment relating to the subdivision of land or to the letting of a part of land, as the case may be, have power to deal with such common property or such part thereof in accordance with the direction, and to execute any deed required for the

purpose:

Provided that if the whole of the right referred to in section 27 is affected by the sale of common property, such right shall be cancelled by the Registrar with the consent of the holder thereof on submission of the deed of transfer of the right.

(2) Any transaction in pursuance of a resolution referred to in subsection (1) shall be accompanied by a copy of the relevant resolution, certified by two trustees of the association.

(3) 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.

(4) The Registrar shall-

(a) register the transfer of the land comprised in the common property, and thereupon the land shall revert to the land register and the Registrar shall make an appropriate endorsement and entry on such title deed and in his records to give effect thereto:

Provided that if a portion only of the land comprised in the common property and on which no section or part of a section is erected, is so transferred, no endorsement thereof shall be made on the sectional title deeds of the owners of units:

Provided further that in such a case where a portion only of the land comprised in the common property is transferred, a diagram of such portion approved by the Director in terms of the Land Survey Act, shall be annexed to the title deed;

(b) notify the Director and the local authority of any reversion of any land to the land register under paragraph (a), and upon receipt of such notification the Director shall make an appropriate endorsement on the original sectional plan and the Deeds Registry copy thereof; and

(c) register a notarial lease of land comprising common property by making an appropriate endorsement against the schedule of conditions referred to in section 12(3)(b), and no endorsement thereof shall be made on the sectional title deeds of the units:

Provided that where a lease is registered over a portion only of the land comprised in the common property, a diagram of such portion approved in terms of the Land Survey Act shall be annexed to the deed of lease.

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

(6) Where pursuant to subsection (1) it is sought to let land which forms part of the common property or a portion thereof on which a section or part of a section is erected, the Registrar

shall not register the lease, unless it is made subject to any right which the owner of the section or part of the section may have.

(7) When the registration of a section is cancelled under subsection (5), the quota of the section shall lapse and the quotas of the remaining sections shall be proportionately adjusted.

(8) The Registrar shall notify the Director and the local authority whenever the registration of a section has been cancelled under subsection (5), and upon receipt of such notification the Director 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.

(9) Where part of a section is erected on a portion of the common property the unaffected part of the section in the scheme shall be substituted in accordance with an amended participation quota schedule, which shall be referred to the Director for approval.

(10) The Director shall notify the Registrar of a change or amendment of a sectional plan in terms of subsection (9) which affects the description or extent of a section, and thereupon the Registrar shall, simultaneously with the registration of the transfer of the part of the land included in the scheme, make the necessary endorsement against the title deeds in question :

Provided that the Registrar shall not register the transfer of the common property, unless the sectional title deed of the affected section is endorsed with the new extent as reflected in the amended participation quota schedule.

(11) The Registrar shall notify the Director and the local authority whenever an endorsement has been made in terms of subsection (10), and on receipt of such notice the Director shall make the necessary amendments on the original sectional plan, the Deeds Registry copy of the sectional plan and the schedule thereto specifying the quota of each section.

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

(13) The Registrar shall notify the Director and the local authority when the registration of an exclusive use area or part thereof has been cancelled in terms of subsection (12), and on receipt of such a notice the Director shall make the necessary amendments on the original sectional plan and on the Deeds Registry copy of the sectional plan.

(14) When the whole of the land comprised in the common property shown on the sectional plan is transferred by the association pursuant to this section, the sectional title deeds of the owners of units and the title deeds of the holders of any registered real right in the units, and the title deeds of the holders of exclusive use areas shall be surrendered to the Registrar for cancellation, and the title deed of any other registered real right in the land, excluding mineral rights, shall be surrendered to the Registrar for endorsement, and the Registrar shall close the sectional title register and notify the Director and the local authority that the sectional title

register has been closed.

(15) Upon receipt of the notification referred to in subsection (14), the Director shall cancel the original sectional plan and the Deeds Registry copy of the sectional plan.

21. Transfer of mortgaged unit, etc.

The provisions of sections 54 and 55 of the Deeds Registry Act shall have effect with reference to the transfer of any mortgaged unit or undivided share in a unit, the cession of any mortgaged lease of a unit or undivided share in a unit, the cession of any mortgaged real right in or over a unit or an undivided share in a unit, and the transfer under section 20 of any mortgaged common property or land or an undivided share therein.

22. Compulsory acquisition of common property or rights therein

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

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

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

- (a) in accordance with a division approved by unanimous resolution; or
- (b) in accordance with a division approved by an arbitrator, being a practising advocate of not less than 10 years' standing or a practising attorney of not less than 10 years' standing, nominated by the trustees.

(3) The provisions of section 20(4)(a) and (b) shall apply to a transfer pursuant to an acquisition 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 acquisition, the Registrar shall cancel the registration of such section in his records and shall endorse the Deeds Registry copy of the 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 20(6), (7), (9) to (14), shall apply to the cancellation of a section in terms of subsection (4).

PART V

Subdivision, Consolidation and Extension of Sections (ss 23-26)

23. Approval of plan of subdivision or consolidation by Director

(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 association, which consent shall not unreasonably be withheld, cause the land surveyor or architect concerned to submit the sectional plan of the subdivision or consolidation, as the case may be, to the Director for approval.

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

- (a) the documents referred to in section 9(2);
- (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 9(3) and (5) shall apply to the preparation and submission of a sectional plan of a subdivision or consolidation to the Director.

24. Registration of subdivision of section

(1) An owner may, after approval of a sectional plan of a subdivision of a section, apply to the Registrar to register the sectional plan of the subdivision.

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

- (a) two copies of the sectional plan of 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) the partition agreement (if any), if the section is owned by more than one owner; and
- (f) such other documents and particulars as may be prescribed.

(3) When the requirements of this section and any other enactment have been complied with, the Registrar shall register the sectional plan of the subdivision referred to in subsection (1), furnish a copy of the sectional plan of the subdivision to the local authority and shall notify the Director of the registration of the sectional plan of the subdivision, and thereupon the Director shall amend the original sectional plan and the Deeds Registry copy of the sectional plan to reflect such subdivision.

(4) Upon registration of the sectional plan of a 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) On the registration of the sectional plan of a subdivision the Registrar shall, in lieu of the sectional title deed referred to in subsection (2)(b), issue the certificates of registered sectional title referred to in subsection (2)(d), and make such endorsements on the superseded and newly issued certificates of registered sectional title, any sectional mortgage bond, lease or other deed embodying any other real right registered against the section at the time of the 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 a subdivision 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 to such plan and the certificates of registered sectional title issued in terms of subsection (5).

25. Registration of consolidation of sections

(1) An owner may, after approval of a sectional plan of consolidation of two or more sections, apply to the Registrar to register the sectional plan of the consolidation.

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

- (a) two copies of the sectional plan of the consolidation;
- (b) the sectional title deeds 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 as shown 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 enactment have been complied with, the Registrar shall register the sectional plan of the consolidation referred to in subsection (1), furnish a copy of the sectional plan of consolidation to local authority and notify the Director of the registration of the sectional plan of the consolidation and thereupon the Director shall amend the original sectional plan and the Deeds Registry copy of the sectional plan to show such consolidation.

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

(5) Simultaneously with the registration of the sectional plan of the 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)(a), and thereupon the provisions of subsection (5) of section 24 relating to the endorsements and entries to be made in the Deeds Registry records, and of subsection (6) of that section, shall apply.

(6) The provisions of section 38(5) and (6) of the Deeds Registry Act shall apply with reference to any mortgage bond registered over one or more component sections of the section represented on the sectional plan of the consolidation.

26. Extension of sections

(1) If an owner of a section proposes to extend the limits of his section, he shall with the approval of the association, authorized by a unanimous resolution of its members, cause the land surveyor or architect concerned to submit a sectional plan of the extension to the Director for approval.

(2) The submission of the sectional plan of the extension of a section to the Director shall be accompanied by-

(a) the documents referred to in section 9(2); and

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

(3) The provisions of section 9(3) and (5) shall apply to the preparation and submission of a sectional plan of the extension of a section to the Director, and to the approval of such plan by him.

(4) An application to the Registrar for the registration of a sectional plan of an extension of a

section, shall be accompanied by-

- (a) two copies of the sectional plan of the extension of a section;
- (b) the sectional title deed in respect of the section to be extended;
- (c) any sectional mortgage bond to which the section may be subject, together with a certificate by a conveyancer stating that there is not a deviation of more than five per cent in the participation quota of a section as a result of a subdivision, or if there is a deviation of more than five per cent that all the mortgagees have consented to the registration of the sectional plan of extension of a section; and
- (d) such other documents and particulars as may be prescribed.

(5) When the requirements of this section and of any other relevant enactment have been complied with, the Registrar shall register the sectional plan of the extension of a section, and shall make an appropriate endorsement on the title deed referred to in subsection (4)(b), 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 the extension to the local authority and notify the Director of the registration of the sectional plan of the extension, and thereupon the Director shall amend the original sectional plan and the Deeds Registry copy of the sectional plan to reflect such extension of a section.

(6) A sectional plan of an 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 to such plan.

PART VI

Extension of Schemes (ss 27-28)

27. Extension of schemes by addition of sections

(1) A developer may, subject to the provisions of section 4(2) and (3) 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 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 made 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 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 to be erected is 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 to be erected and those used in the construction of the existing building;
- (e) particulars of such applicable expenses as are specified in section 40(1)(a), which will be borne by the developer from the date of establishment of the association until the sectional plan of the 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 association.

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

- (a) shall for all purposes be deemed to be a right to urban immovable property which admits of being mortgaged; and
- (b) may be transferred by the registration of a notarial deed of cession in respect of the whole, a portion or a share in such right:

Provided that in the case of a cession affecting only a portion of the land comprising the scheme only such portion shall be identified to the satisfaction of the

Director.

(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 was made by a developer in terms of subsection (1), or if such a reservation was made and for any reason has lapsed, the right to extend a scheme including land referred to in section 28, shall vest in the association which shall be entitled, subject to this section and after compliance with the necessary changes, with the requirements of paragraphs (a), (b), (c), (d), and (g) of subsection (2), to obtain a certificate of real right in the prescribed form in respect thereof:

Provided that the association shall only exercise or sell or transfer such right with the written consent of all the members of the association 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) If no reservation has been made by a developer in terms of subsection (1) and the association has not yet been formed, the Registrar may issue a certificate of real right of extension referred to in section 13(1)(e) on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder.

(8) Upon compliance with subsection (7) this Act shall apply with the necessary changes to such real right as if it had originally formed part of the application for the opening of the sectional title register and such certificate of real right shall be issued subject to any sectional mortgage bond against the land.

(9) Subject to the provisions of subsection (10), the provisions of sections 7, 8 and 9 shall apply to the submission of a sectional plan of an extension to the Director in terms of this section and the approval thereof by him.

(10) The sectional plan of an extension submitted to the Director, shall be accompanied by a revised schedule specifying the participation quota of each section in the building depicted on the sectional plan and the sectional plan of an extension, calculated in accordance with the provisions of section 35 as if the plan of the extension formed part of the sectional plan when it was registered, and the Director shall file such revised schedule with the sectional plan.

(11) A developer or his successor in title to a right reserved in terms of subsection (1), or the association in terms of subsection (6), as the case may be, may, after approval of a sectional plan of an extension by the Director in terms of this section, apply to the Registrar for the registration of such plan of the extension and the inclusion of the additional section in the sectional title register.

(12) An application under subsection (11) shall be accompanied by-

- (a) two copies of the sectional plan of the extension;
- (b) 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 the 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;
- (c) certificates of registered sectional title in the prescribed form in favour of the developer, his successor in title or the association, as the case may be, in respect of each section reflected on the plan of the extension;
- (d) such other documents and particulars as may be prescribed.

(13) When the requirements of this section and of any other enactment have been complied with, the Registrar shall-

- (a) register the sectional plan of the extension;
- (b) extend the sectional title register to include the sections depicted on the plan of the extension;
- (c) on the registration of the sectional plan of the extension, issue to the developer, his successor in title or the association, as the case may be, a certificate of registered sectional title in respect of each section depicted on the sectional plan of the extension and its undivided share in the common property, furnish the local authority with a copy of such plan of extension and notify the Director of the registration of such plan of the extension, and thereupon the Director shall amend the original sectional plan and the Deeds Registry copy of the sectional plan to show such an 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 (12)(b), and any sectional mortgage bond registered against the certificate of real right, as are necessary to give effect to this section.

(14) Upon registration of a sectional plan of an extension referred to in subsection (13)(a)-

- (a) the owners of sections in the building in the scheme that is being extended, the mortgagees of sectional mortgage bonds and the holders of any real rights registered over such sections, shall be divested of their share or interest in the common property to the extent that an undivided share in the common property is vested in the developer, his successor in title or the association, as the case may be, by the issue of the certificates of registered sectional title referred to in subsection (13)(c);
- (b) a sectional mortgage bond whereby a real right held by a certificate of real right referred to in subsection (12)(b) is mortgaged, shall be deemed to be a sectional

mortgage bond over the sections depicted on the sectional plan of the extension and their undivided share in the common property and registered against the certificates of sectional title issued in terms of subsection (13)(c); and

- (c) the sectional plan of an 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 have effect.

(15) A developer or his successor in title who exercises a reserved right referred to in subsection (1), or an association exercising the right referred to in subsection (6), shall be obliged to erect and divide the building into sections strictly in accordance with the documents referred to in subsection (2), due regard being had to changed circumstances which would make strict compliance impracticable, and an owner of a unit in the scheme who is prejudiced by his failure to comply in this manner, may apply to the court, whereupon the court may order proper compliance with the terms of the reservation, or grant such other relief, including damages, as the court may deem fit.

(16) In all cases where a developer or an association has a real right to extend a scheme as mentioned in this section, such right shall be disclosed in the agreement by which the unit is sold conditionally, or disposed of, to every purchaser of a section in the scheme concerned.

(17) An agreement by which a unit is sold conditionally or is disposed of in which a real right has not been disclosed as mentioned in subsection (16), shall be voidable at the option of the purchaser; and it shall be void if the purchaser notifies the seller that he annuls the conditional sale or disposal, and thereupon the provisions of section 11(5) to (7) shall apply.

28. Extension of schemes by addition of land to common property

(1) An association, authorized thereto in writing by all of its members, may purchase land to extend the common property.

(2) Land purchased by an association 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 sectional plan.

(3) The provisions of section 9(2)(a), (3) and (5) shall, with such necessary adaptation, apply for the preparation and submission to the Director of a plan of an extension of the common property, and the approval of such plan by him.

(4) The Registrar shall register a plan of the extension of the common property in terms of this section by making an endorsement on the title deed to show that the land in question 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 the extension to the local authority and notify the Director of the registration of such plan of the extension, and thereupon the Director shall amend the original sectional plan and Deeds Registry copy of the sectional plan to reflect such extension.

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

(6) Upon the registration of a plan of an 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 the extension relates shall be deemed to be incorporated as common property in such registered sectional plan.

PART VII

Exclusive Use of Common Property and Servitudes (ss 29-34)

29. Rights of exclusive use of parts of common property

(1) If any part of a common property is delineated on a sectional plan in terms of section 7(3)(i), the developer shall, when making application for the opening of a sectional title register and the registration of the sectional plan, impose a condition in terms of section 12(2) in the schedule referred to in section 12(3)(b), by which the right to the exclusive use of the part 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 of the common property is 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.

(2) A developer shall cede the right to the exclusive use of part of the common property to the owner to whom such rights are allocated, by the registration of a unilateral notarial deed in his favour, except that when the developer has transferred the last section in a scheme, he shall cede to the association the right to any exclusive use area still registered in his name free of charge and without any compensation.

(3) Notwithstanding subsection (1), if no reservation was made by a developer in terms of the said subsection (1) and the association has not yet been formed, the Registrar may issue a certificate of real right in respect of a right of exclusive use as referred to in section 13(1)(i) on application by the developer accompanied by the sectional mortgage bond and the written consent of any bondholder.

(4) Upon compliance with subsection (3), this Act shall apply with the necessary changes to such real right as if it had originally formed part of the application for the opening of the sectional title register and such certificate of real right shall be issued subject to any sectional mortgage bond against the land.

(5) An association, duly authorized thereto by a unanimous resolution of its members, may, subject to the provisions of section 7(1), request an architect or land surveyor to apply to the Director for the delineation on a sectional plan in the manner prescribed of a part of the common property in terms of section 7(3)(i) for the exclusive use by the owner of the section; so however that no 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.

(6) The association, duly authorized thereto by a unanimous resolution of its members, shall transfer the right to the exclusive use of a part or parts of the common property delineated on the sectional plan in terms of subsection (5) to the owner on whom such right has been conferred by the association, by the registration of a notarial deed entered into by the parties and in which the association shall represent the owners of all the sections as transferor.

(7) 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.

(8) 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 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 association, duly authorized by a special resolution of its members, on behalf of all the owners of sections in the scheme.

(9) 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 can be mortgaged and burdened with a real right.

30. Rules regarding exclusive use areas

A developer or an association may make rules which confer rights of exclusive use and enjoyment of parts of the common property upon members of the association:

Provided that such rules shall-

- (a) not create rights referred to in section 29(9);
- (b) include a layout plan to scale on which is clearly indicated-
 - (i) the locality of the distinctively numbered exclusive use and enjoyment parts; and
 - (ii) the purposes for which such parts may be used;
- (c) include a schedule indicating to which unit each such part is allocated.

31. Implied servitudes

(1) There shall be implied-

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

- (ii) a servitude for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services, including telephone, radio and television services, through or by means of any pipes, wires, cables or ducts existing on or under the land or in the building, to the extent to which such pipes, wires, cables or ducts are capable of being used in connection with the utilization of the section; and
- (b) against each section-
 - (i) a servitude for the subjacent and lateral support of the common property and of any other section capable of enjoying such support;
 - (ii) the servitudes referred to in paragraph (a)(ii) through or by means of any pipes, wires, cables or ducts existing within such section, in favour of the common property and in favour of any other section capable of enjoying such servitudes.
- (2) The servitudes referred to in subsection (1)-
 - (a) shall be deemed to be incorporated in the title deeds of the owners affected thereby; and
 - (b) shall confer on the owners of sections the right, to be exercised by the association, 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.

32. Creation of servitudes

- (1) The owners may by special resolution direct the association-
 - (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 incorporated 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.

33. Ancillary servitudal rights

All ancillary rights and obligations reasonably necessary to make servitudes effective, shall

apply in respect of servitudes implied or created under this Act.

34. Non-application of Deeds Registry Act to implied servitudes

The provisions of the Deeds Registry Act shall not apply with reference to servitudes or restrictions as to user implied under this Act, and accordingly such servitudes and restrictions shall take effect and be enforceable immediately upon the formation of the association.

PART VIII

Participation Quotas and Developers (ss 35-37)

35. Participation quotas

(1) Subject to the provisions of section 51, in the case of a scheme for residential purposes only, the participation quota of a section shall be a percentage expressed to four decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the section by the floor area, correct to the nearest square metre, of all the sections in the building comprised in the scheme.

(2) Subject to the provisions of section 51, 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, 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 conditionally sold or disposed of 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 agreement by which the unit is conditionally sold or disposed of; and
- (c) where such disclosure is not made, the agreement by which the unit is sold conditionally or disposed of shall be voidable at the option of the purchaser and the provisions of section 27(17) shall apply in respect of any such sale.

(3) Subject to the provisions of subsection (4), 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 40(1)(b), the proportion in which the owner of the section shall make contributions for the purposes of section 40(1)(a), or may in terms of section 50(1) be held liable for the payment of a judgment debt of the association

of which he is a member.

(4) Subject to the provisions of section 40(1)(b), the developer may, when submitting an application for the opening of a sectional title register, or the members of the association may by special resolution, make rules under section 38 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 40(1)(a) or 50(1) as modified:

Provided that where an owner is adversely affected by such a decision of the association, his written consent must be obtained:

Provided further that no such change may be made by a special resolution of the association until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme:

Provided further that, in the case where the developer transfers 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 sale 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 comprised in a scheme, shall for all purposes be deemed to be correct in the absence of proof to the contrary.

36. Sale or letting of sections

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

37. Shares of developers in buildings and land

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

(2) When the ownership in every section is held by any person other than the developer, the developer shall, subject to the provisions of section 27(1), cease to have a share or interest in the common property.

(3) When a developer has in one transaction sold the whole of his interest in the land and the building comprised in a scheme, or a share in the whole of such interest, to any other person, the Registrar shall register the transaction by means of a deed of transfer in the case of units and by means of a bilateral notarial deed of cession in the case of rights reserved under sections 27 and 29.

(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 an enactment provides for the separate levying of rates in respect of a unit, all such rates due to the 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, an association has been formed in terms of section 39(1), that the association has certified that all moneys due to the association 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 association.

PART IX

Rules and Formation of Associations (ss 38-46)

38. Rules

(1) Subject to the provisions of this section, a scheme shall be governed by means of rules on the formation of an association for the scheme in accordance with the provisions of section 39.

(2) Rules shall be made providing for the control, management, administration, use and enjoyment of the section and the common property.

(3) Rules made under this section shall consist of management rules and conduct rules.

(4) The form of the rules shall be as may be prescribed or as near to that form as circumstances of the scheme admit.

(5) A developer may amend or substitute new rules when he submits an application for the opening of a sectional title register.

(6) The association of a scheme may-

- (a) by unanimous resolution amend or substitute new management rules;
- (b) by special resolution amend or substitute new conduct rules.

(7) Any amendment or substitution effected by a developer or an association-

- (a) shall not be inconsistent or conflicting with the rules; and
- (b) shall be reasonable and apply equally to all the owners of the units in the scheme.

(8) The association shall notify the Registrar in the prescribed form of any amendment

made to the rules.

(9) The Registrar shall not be involved in the enforcement or application of the rules referred to in subsection (2) and is not required to examine or note any amendment thereof against any certificate or other document.

(10) An amendment referred to in subsection (8) shall come into operation on the date of filing of the notification referred to in that subsection.

39. Formation of association as bodies corporate

(1) There shall be deemed to be formed an association which shall be a body corporate whenever any person other than the developer becomes an owner in a scheme.

(2) The association shall be called by the name of the scheme referred to in section 7(3)(b) and shall have as its number, the number allotted to it under section 13(1)(a).

(3) The association shall, subject to the provisions of this Act, be responsible for the enforcement of the rules referred to in section 38, and for the control, administration and management of the common property for the benefit of all owners.

(4) The provisions of the Companies Act, shall not apply in relation to an association.

(5) The association 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 association 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.

(6) A developer shall convene a meeting of the members of the association not later than 60 days after the formation of the association, the agenda of the meeting to be as prescribed in the management rules, at which meeting he shall furnish the members with-

- (a) a copy of the sectional plan;
- (b) a certificate from the local authority to the effect that all rates due by the developer up to the date of the formation of the association have been paid; and
- (c) 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 formation of the

association.

(7) The developer shall refund to the association any residue, if any, by proof referred to in subsection (6)(c).

(8) A developer who fails to comply with any provisions of subsections (6) and (7), shall be guilty of an offence and liable on conviction to a fine not exceeding P1 000.

(9) The developer shall cease to be a member of the association when he ceases to have a share in the common property referred to in section 37(2), and any other member of the association shall cease to be a member thereof when he ceases to be the owner of a unit in the scheme in question.

40. Functions of associations

(1) An association for a scheme shall perform the functions conferred on it by this Act and the rules made thereunder, and shall in addition carry out the following functions-

- (a) establish a fund which shall be used for-
 - (i) defraying administrative expenses;
 - (ii) repairs, upkeep, the control, management and administration of the common property;
 - (iii) payment of rates and taxes;
 - (iv) payment for the supply of amenities and services;
 - (v) payment of insurance premiums; and
 - (vi) the discharge of any duty or obligation of the association;
- (b) require the owners of units in the scheme to contribute to the fund referred to in paragraph (a) in order to satisfy any claim against the association;
- (c) to determine the amount to be raised periodically for the fund;
- (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 and keep it insured to the replacement value thereof against fire and such other risks as may be prescribed;
- (g) to insure against such other risks as the owners may by special resolution determine;
- (h) subject to the provisions of section 51 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, in rebuilding and reinstating the building in so far as this may be effected;

- (i) to pay the premiums on any policy of insurance effected by it;
- (j) properly to maintain the common property (including elevators) and to keep it in a state of good and serviceable repair;
- (k) to comply with any notice or order by any competent authority requiring any repairs to or work in respect of the relevant land or building;
- (l) to comply with any reasonable request for the names and addresses of the persons who are the trustees of the association in terms of the rules referred to in section 38, or who are members of the association;
- (m) to notify the Registrar and the local authority concerned of its *domicilium citandi et executandi*, which shall be its address for service of any process;
- (n) to ensure compliance with any enactment relating to the common property or to any improvement of land comprised in the common property;
- (o) to keep in a state of good and serviceable repair and properly maintain the plant, machinery, fixtures and fittings used in connection with the common property and sections;
- (p) subject to the rights of the local authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the common property or in favour of one section over the common property;
- (q) on the written request of any owner or registered mortgagee of a section, to produce to such owner or mortgagee, or any person authorized in writing by such owner or mortgagee, the policy or policies of insurance effected by the association and the receipt for the last premium 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 association, and may be recovered by the association by action in a court from the persons who were owners of units at the time when such contributions became due.

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

- (a) the amount determined as the contribution of that owner;
- (b) the manner in which such contribution is payable;
- (c) the extent to which such contribution has been paid by the owner; and
- (d) the amount of any rates and taxes paid by the association in terms of section 54 and not recovered by it.

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

41. Powers of associations

The association may exercise the powers conferred upon it by or under this Act or the rules made thereunder, 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, or in connection with the enjoyment or protection of the common property;
- (d) where practicable, to establish and maintain on the common property suitable lawns and gardens and recreation facilities;
- (e) to borrow moneys required by it in the performance of its functions or the exercise of its powers;
- (f) to secure the repayment of moneys borrowed by it and the payment of interest thereon, by negotiable instrument or the hypothecation of unpaid contributions (whether levied or not), or by mortgaging any property vested in it;
- (g) to invest any moneys of the fund referred to in section 40(1)(a);
- (h) to enter into an agreement with the local authority or any other person or body for the supply to the building and the land of electric current, gas, water, fuel and sanitary and other services;
- (i) to enter into an agreement with any owner or occupier of a section for the provision of amenities or services by the association to such section or to the owner or occupier thereof; including the right to let a portion of the common property to any such owner or occupier by means of a lease other than a lease referred to in section 20(1); and

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

42. Functions and powers of associations to be performed or exercised by trustees

(1) The functions and powers of an association shall, subject to the provisions of this Act, the rules made thereunder and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the association 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.

43. Fiduciary position of trustees

(1) Each trustee of an association shall stand in a fiduciary relationship to the association.

(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 association act honestly and in good faith, and in particular-

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

(ii) shall not act without or exceed the powers conferred on him; and

(b) shall avoid any material conflict between his own interests and those of the association, 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 association, from the association or from any other person in circumstances in which that benefit is obtained in conflict with the interest of the association;

(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 association.

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

(a) any loss suffered as a result thereof by the association; or

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

(4) Where a trustee fails to comply with the provisions of subsection (2)(b)(ii) and it becomes known to the association that the trustee has an interest referred to in that

subsection in any contract of the association, the contract in question shall, at the option of the association, be voidable; so however that where the association 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.

(5) 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 association, if such conduct was preceded or followed by the written approval of all the members of the association where such members were cognizant of all the material facts.

44. Proceedings on behalf of associations

(1) When an owner is of the opinion that he and the association have suffered damages or loss or have been deprived of any benefit in respect of a matter mentioned in section 39(5), and the association has not instituted proceedings for the recovery of such damages, loss or benefit, or where the association does not take steps against an owner who does not comply with the rules, the owner may initiate proceedings on behalf of the association in the manner prescribed in this section.

(2) Any owner referred to in subsection (1) shall serve a written notice on the association calling on the association to institute such proceedings within one month from the date of service of the notice, and stating that if the association fails to do so, an application to the court under subsection (3) will be made.

(3) If the association fails to institute such proceedings within the period of one month specified in subsection (2), the owner may make an application to the court for an order appointing a *curator ad litem* for the association for the purposes of instituting and conducting proceedings on behalf of the association.

(4) The court may, if after considering the application, it is satisfied-

- (a) that the association 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.

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

ad litem.

45. Powers of curators *ad litem*

(1) A provisional *curator ad litem* appointed by the court under section 44(4) and a *curator ad litem* whose appointment is confirmed by the court under section 44(5) 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 regulations.

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

46. Security for costs by applicants for appointment of curators *ad litem*

The court may, if it appears that there is reason to believe that an applicant in respect of an application under section 44(2) and (3) will be unable to pay the costs of the respondent association 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 X

Owners, Administrators and Buildings (ss 47-56)

47. Duties of owners

- (1) An owner shall-
- (a) permit any person authorized in writing by the association, at all reasonable hours on notice (except in case of emergency, when no notice shall be required), to enter his section or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and capable of being used in connection with the enjoyment of any other section or common property, or for the purposes of ensuring that the provisions of this Act and the rules made thereunder are being observed;
 - (b) forthwith carry out all work that may be ordered by any competent public or local authority in respect of his section, other than such work as may be for the benefit of the building generally, and pay all charges, expenses and assessments that may be payable in respect of his section;
 - (c) repair and maintain his section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition;
 - (d) use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other owners or other persons lawfully on the premises;

- (e) not use his section or exclusive use area, or permit it to be used, in such a manner or for such purpose as shall cause a nuisance to any occupier of a section;
- (f) notify the association forthwith of any change of ownership in his section and of any mortgage or other dealing in connection with his section; and
- (g) when the purpose for which a section is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section to be used for any other purpose:

Provided that with the written consent of all owners such section may be used for another purpose.

(2) 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 to the court.

(3) If on considering any application made under subsection (2), it appears to the court that the refusal in question is unfairly prejudicial, unjust or inequitable to the applicant, and if the court considers it just and equitable, the court may with a view to bringing the dispute to an end make such order as it deems fit, including an order that it shall be deemed that the requirement stated in the proviso to subsection (1)(g) is met, an order that the provisions of section 15 which the court deems appropriate, shall be applied with reference to the amendment of the registered sectional plan in question, any other supplementary order as the court deems fit, and an order concerning costs as it deems appropriate.

48. Insurance by owners

(1) Notwithstanding the existence of a valid policy of insurance effected by an association in accordance with the provisions of section 40(1)(f), an owner may effect a policy of insurance against any damage to his section arising from risks covered by the policy effected by the association.

(2) Where any damage is done to a section insured in accordance with the provisions of subsection (1), the insurer-

- (a) shall not be liable in terms of the policy of insurance effected by the owner, if the damage is made good by the association in accordance with the provisions of section 40(1)(h);
- (b) shall be liable in terms of the insurance effected by the owner if the damage is not made good by the association.

(3) Where any damage done to a section is not covered by any policy of insurance effected by the association, the terms and conditions of the policy of insurance effected by the owner shall have effect.

(4) Nothing in this section contained shall limit the rights of an owner to insure against risks

other than damage to his section.

49. Appointment of administrators

(1) An association, a local authority, judgment creditor of the association for an amount of not less than P500, 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 on the grounds-

- (a) that the affairs of the association are being conducted or the powers of the trustees of the association are being exercised in a manner detrimental to the association; and
- (b) that the association is encountering financial difficulties due to maladministration of the association.

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

(3) The remuneration and expenses of the administrator shall be administrative expenses within the meaning of section 40(1)(a).

(4) The administrator shall, to the exclusion of the association, have the powers and duties of the association or such of those powers and duties as the court may direct.

(5) The court may, *mero motu*, or on the application of any person referred to in subsection (1) remove from office or replace the administrator or, on the application of the administrator, replace the administrator.

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

50. Recovery of judgment debts from owners

(1) If a creditor of an association has obtained judgment against the association, and such judgment, despite 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 association in their personal capacities as joint judgment debtors in respect of the judgment debt.

(2) The judgment creditor may recover from the joint judgment debtors the amount of the judgment debt still outstanding from the members on a *pro rata* basis in proportion to their respective quotas or a determination made in terms of section 35(4):

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

(3) No debt or obligation arising from any agreement between the developer and any other

person shall be enforceable against the association.

51. Destruction of or damage to buildings

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

- (a) upon the physical destruction of the building;
- (b) when the owners by unanimous resolution so determine and all holders of registered sectional mortgage bonds and the persons with registered real rights concerned, agree thereto in writing; or
- (c) when the court is satisfied that, having regard to all the circumstances, it is just and equitable that the building 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 association and the owners and mutually among the owners, the holders of registered sectional mortgage bonds and persons with registered real rights.

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

- (a) for the rebuilding and reinstatement in whole or in part of the building;
- (b) for the transfer of the interests of owners of sections which have been wholly or partially destroyed, to the other owners.

(4) In the exercise of their powers under subsection (3), the owners may pass such resolution or the court may make such order as may be deemed necessary or expedient to give effect to the scheme, in connection with *inter alia*-

- (a) the application of insurance moneys received by the association in respect of damage to or the destruction of the building;
- (b) the payment of money by or to the association or by or to the owners or by or to one or more of them;
- (c) an amendment of the sectional plan so as to include in the common property an addition thereto or subtraction therefrom;
- (d) the variation of the quota of any section; or
- (e) the imposition of conditions.

(5) An application may, for the purposes of this section, be made to the court by the association 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 any section therein, or by the local authority.

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

(7) The court may, on the application of an association or any member thereof or any holder of a registered real right concerned, or any judgment creditor, by order make provision for the winding-up of the affairs of the association; and may by order, declare the association dissolved as from a date specified in the order.

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

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

52. Disposal on destruction of buildings

(1) When in terms of section 51 the building comprised in a scheme is deemed to be destroyed and the owners have by unanimous resolution resolved not to rebuild the building, the association 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 association.

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

(3) When an 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 51(2), remain co-owners of the land in undivided shares proportionate to the quotas of the respective sections previously owned by them;
- (b) any sectional mortgage bond, lease or other real right or condition then registered against or affecting a unit, shall be deemed to be converted into a mortgage bond, lease or other real right or condition registered against or affecting the undivided share in the land which formed part of such unit;
- (c) the land shall revert to the land register; and
- (d) the sectional title deeds of units which are thus deemed to be destroyed as well as the title deeds regarding any right to an exclusive use area and any right to the extension of a scheme referred to in section 27, together with any mortgage bond over the 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)(a);
- (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 Director and the local authority of the reversion of the land.

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

53. Unencumbered sections destroyed by State or local authority

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

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

(3) On receipt of such application, the Registrar shall cancel the Deeds Registry's and owner's copy of the relevant sectional title deed and shall make the necessary consequential entries in his records and notify the Director 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 amended schedule referred to in section 7 (3)(g), prepared by an architect or land surveyor and to be furnished by the State or local authority, as the case may be, the Director shall amend the original plan and the Deeds Registry copy of the sectional plan to give effect to the cancellation of the sectional

title deed referred to in the notification.

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

(1) 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 (4), be valued as if they were owned by a single owner, and for the purposes of such valuation and all purposes incidental thereto (including an objection to a valuation), the land and buildings thereon shall be deemed to be owned by the association.

(2) A separate valuation shall be made of the land and the building.

(3) Subject to the provisions of subsection (4), and section 50, the local authority may recover any rates and taxes levied by it from the association.

(4) When by any enactment 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.

55. Appointment of Sectional Titles Regulation Board

(1) Regulations may be made providing for the appointment of a Sectional Titles Regulation Board to make recommendations to the Minister for the efficient implementation of the provisions of this Act.

(2) Regulations made under this section shall specify the number of persons to be appointed to the Board, their remuneration and the period of holding office.

56. Power to make rules and regulations

The Minister may by statutory instrument make-

- (a) rules providing for any matter which under this Act is to be provided for by rules or which otherwise relates to the control, management, administration, use and enjoyment of the sections and the common property of a scheme; and
- (b) regulations providing for any matter which under this Act is to be provided for by regulations or is to be prescribed or which may be necessary or expedient for giving effect to the provisions of this Act.