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SECTIONAL TITLES SCHEMES MANAGEMENT ACT

The Sectional Titles Schemes Management Act No. 8 of 2011 (the “Act”) and Regulations came into operation on 7 October 2016. Our previous article on this topic dealt with the additional requirement placed on Body Corporates to establish and maintain a reserve fund sufficient to cover the costs of future maintenance and repairs of common property. In addition to the reserve fund the Act has made some notable changes to sectional titles schemes. This article intends to briefly outline and deal with some of the other relevant changes applicable to sectional title schemes as imposed by the Act:

- Prior to the amendment of the Sectional Titles Act 95 of 1986 (“STA”) by the Act, if a Body Corporate underestimated expenses the trustees could pass a special levy to cater for the unexpected expense. Thus when an owner sold his unit, the owner would normally be liable to pay the full special levy amount prior to registration and no pro-rata contribution split was passed onto the new owner. With the additional obligation for a Body Corporate to keep a reserve fund, the likelihood of a Body Corporate not catering for expenses should be reduced. However, in terms of section 3(3) of the Act, should the Body Corporate not have catered for an expense in terms of the reserve fund the Body Corporate may elect to pass a resolution calling for a “special contribution”. In such instance the owner at the time of passing such resolution is liable for such special contribution. However, upon change of ownership of the property the successor in title now becomes liable for the pro-rata payment of such special contribution from date of change of ownership (as opposed to the previous position in the STA regarding special levies).
- In terms of section 5(c) of the Act, the Body Corporate may upon unanimous resolution extend the period of the time limit of a developer’s right to extend the scheme in terms of section 25 of the STA in the form of a notarial agreement.
- Section 6(5) limits the number of proxies which each owner is entitled to hold. While previously a person could hold numerous proxies, in terms of the Act a person may not act as a proxy for more than two owners. Section 6(7) further provides that if a vote is calculated in number, each member has only one vote irrespective of the numbers of units owned in the scheme.

- Section 10 of the Act provides for substitution, addition, amendment or repeal of the rules of a scheme. Any substitution, addition, amendment or repeal must now be lodged with the Chief Ombud established in terms of the Community Schemes Ombud Service Act No. 9 of 2011 (“CSOSA”). The Chief Ombud is obligated to examine the proposed substitution, addition, amendment or repeal of the rules and if the Chief Ombud approves the same, the Chief Ombud must issue a certificate to such effect. Only once the certificate is issued does the substitution, addition, amendment or repeal come into operation. Previously there was no inspection of the rules and any substitution, addition, amendment or repeal came into effect upon filing of the rules at the Deeds Office.
- The CSOSA replaces the arbitration dispute mechanism previously contemplated in the STA and now provides for disputes to be raised in terms of the CSOSA (visit our website for our article on the CSOSA; <http://www.dvh.law.za/community-schemes-ombud-service-act/>)
- The Act also establishes a Sectional Titles Schemes Management Advisory Council (section 18) whose duty is to make recommendations to the Minister of Human Settlements concerning the regulations in terms of the Act. The Council is to keep the implementation of the Act and the Regulations under regular review and make further recommendations to the Minister regarding any amendment thereof or actions which may be advisable.

This newsflash has been prepared for information purposes only and does not constitute legal advice, or a legal opinion, the practical application of the provisions of this newsflash will vary depending on the facts of each case.

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