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Mz P Nyamza,  
3<sup>rd</sup> Floor  
91 Plein Street  
CAPE TOWN.  
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Dear Mz Phumla Nyamza,

I avail myself of the opportunity to present the attached submissions regarding the

SECTIONAL TITLES AMENDMENT BILL


to the Honorable Portfolio Committee of Rural Development and Land Reform, upon the public invitation of the Chairperson of that Committee contained in Rapport, for members of the public to submit written commentary to the Bill should they wish to do so.

Kindly convey my heartfelt appreciation to the Honorable Mr Sizani, for the opportunity thus afforded me and all members of the public.

Yours faithfully,

  
P.J. DE KLERK  
26  
06  
2013

*P.S. This version contains a last page "REPLACEMENT PAGE"  
Kindly distribute this new page.*



## SUBMISSION

I, Petrus Jacobus de Klerk, respectfully present the following submissions regarding the SECTIONAL TITLES AMENDMENT BILL to the Honorable Portfolio Committee of Rural Development and Land Reform for their kind attention and consideration:

1.

I have served for many years on the Boards of Trustees of various Sectional Title developments (both as chairperson and as ordinary member). As such, I have gained some experience of the applicable legislation and of the way in which it is applied by those having direct and indirect interests in such schemes. However, I have no direct interest (financial or otherwise) in the outcome of my submissions, nor do I represent any interest or group outside of Parliament. But, I am affected by legislative provisions which tend to be difficult to apply.

2.

I respectfully propose consideration of the following amendments to the Bill:

2.1. By the insertion in Subclause 2(b), between the words “... by the lessees” and “present. Provided that ....”, of the words: “or their representatives”.

### Reasoning

2.1.1. Clause 2 seeks to amend section 4. Section 4 aims at providing a platform for affected lessees to be informed of matters of great (also, financial) importance to them and to have their reasonable questions answered.

2.1.2. It is conceivable that such a lessee may be unable to attend the meeting for reasons beyond his or her control.

2.1.3. The proposed deletion by sub clause 2(b) of the words in section 4(3)(b) (no longer allowing for an agent of such developer representing him/her thereat), may *a fortiori* lead to the perception that such lessee may also, not be represented by someone under such unfortunate circumstances, at such a meeting.

2.1.4. The insertion of the words hereby proposed, will hopefully bring about clarity to such circumstances where such a lessee's interests are threatened and where administrative law, it is submitted, should at any rate be applied to protect such lessee. The proposal could conceivably be extended by the addition of conditions such as “*should he or she be unable to attend*” or “*if such lessee is unable to present his or her interests adequately at such meeting*” or the like, but such qualifications will probably create further uncertainties without really adding to the solution of the problem in the first place.

2.1.5. By leaving the clause unchanged will cause lessees prejudiced by having no alternative presentation at such a meeting, to have to approach a High Court for relief at high costs (and risk) to him- or herself.

2.1.6. It is respectfully suggested that this proposal is both legitimate and constitutionally valid .

2.2 By the insertion of the following clause in the Bill, for the substitution of Section 27A of Act 95 of 1986, as follows:

**“Substitution of section 27A of Act 95 of 1986 inserted by section 21 of Act 44 of 1997**

**6A. The following section is hereby substituted for section 27A of the principal Act:**

### **Rules regarding exclusive use areas**

**27A.** A developer or a body corporate may make management rules, in the prescribed manner which confer rights of exclusive use and enjoyment of parts of the common property of the body corporate: Provided that such rules shall-

(a) not create rights contemplated in section 27(6) unless and until such rights have been processed in the way set out in, and in compliance with the provisions of section 27(2), and have been transferred to the owner or owners in whom such rights are to vest under such management rules,

(b) include a lay-out plan to scale on which is clearly indicated-

(i) the locality of the distinctly numbered exclusive use and enjoyment parts; and

(ii) the purpose for which such parts may be used;

(c) include a schedule indicating to which member or members each such part is allocated”.

### Reasoning

2.2.1 Various types of ‘rights of exclusive use’ are provided for in laws dealing with sectional titles. Currently, section 27A allows such rights to be created by ‘rules’ meaning Management and Conduct Rules.

2.2.2 Doubt and uncertainty about the value and meaning of potentially “2<sup>nd</sup> grade” rights of exclusive use created under section 27A, is of little benefit to the holder of such rights.

2.2.3 Are they real rights or just personal rights? Can a buyer of a unit whose owner holds such apparently unregistered rights claim to have a reasonable expectation to be afforded similar rights by a “next generation” body corporate? Where do such rights start and end? The current wording of section 27A suggests that the rights will pertain to certain individuals and not to owners of particular units (“...indicating to which member such part is allocated”).

2.2.4 This uncertainty seems to be aggravated by section 10(7) of the Sectional Titles Scheme Management Act, 8/2011 (headed, 'Rules'), which provides: " (7) A developer or a body corporate may make management or conduct rules [my underscoring] which confer rights of exclusive use and enjoyment of parts of the common property upon members of the body corporate". Are these-

(a) rights of (singular) " exclusive use and enjoyment , or

(b) rights of (plural)-

(i) exclusive use, (or)

(ii) enjoyment?

Are these "rights of exclusive use" perhaps intended to be conferred by Management Rules and "rights of enjoyment" perhaps intended to be conferred by Conduct Rules?

{ Act 8 of 2011 was assented to by the President and promulgated in Government Gazette 34367 on 14 June 2011.}

2.2.5 The issue of Conduct Rules from which exclusive rights may currently emanate, is not easy to understand: Annexure 9 to the Sectional Titles Act, 95 of 1986, which sets out the "Conduct Rules" really only deal with conduct by addressing only-

- Keeping of animals
- Disposal of refuse
- Parking of vehicles on common property
- Damage, alterations, etc to common property
- Aesthetically displeasing action regarding common property
- Signs and notices on common property.
- Littering
- Laundry
- Keeping of dangerous material
- Tenants are also obliged to follow the conduct rules
- Duty of owners to keep sections free of pests.

How can such Conduct Rules create real rights or confer exclusive use rights (whatever its nature)?

2.2.6 Similarly, the Regulations under the Sectional Titles Act, 95 of 1986, (regulation 28 dealing with exclusive use areas, last amended by GNR 438 of 2011), on the author's reading of it, does not seem to address any other or reduced form of exclusive use (and enjoyment?) areas.

2.2.7 It is respectfully submitted that a reading of these laws do not provide a clear answer to the meaning of " exclusive use rights" conferred by "rules" which, as already stated, include both Management Rules and Conduct Rules" (kindly refer to the definition of "Rules" in section 1(1) of the Sectional Titles Act, 95 of 1986).

2.2.8 How can such rights created by Management Rules, require a unanimous resolution whereas these rights, if created by Conduct Rules, only need a special resolution?

2.2.9 Equating “Exclusive Rights Rules” with only those rights and values bestowed to it by section 27(6) of the Sectional Titles Act, 95 of 1986, seems, it is submitted, a healthy and sensible solution to the problem. Section 27(6) reads-

“(6) A right to the exclusive use of a part of common property registered in favor of an owner of a section, shall for all purposes be deemed to be a right to immovable property over which a mortgage bond, lease contract or personal servitude of usufruct, *usus* or *habitatio* may be registered”.

2.2.10 The proposed amendment (actually, substitution) attempts to pave a way in this direction.

2.2.11 And what are we to do with so-called exclusive use rights currently being steamrolled through, via Conduct Rules with the aid of a multitude of powers of attorney in the hands of single trustees, before the Section Titles Management Act, 8 of 2011 becomes of full force and effect? This Act will restrict one person to acting as proxy for no more than two members of a body corporate when a unanimous or a special resolution is to be taken. Such resolutions are respectively required to create new Management and Conduct Rules.

3. Travelling to Cape Town to present oral inputs to the Committee will be financially difficult for the author, but should further written inputs be needed, these will be gladly provided upon request.

Yours faithfully,

A handwritten signature in black ink, appearing to be 'P. J. DE KLERK', with a stylized, wavy flourish extending to the right.

P. J. DE KLERK

**REPLACEMENT PAGE**