

Conversion from Shareblock to Sectional Title Procedures

1. Commencement of conversion proceedings

1.1 In terms of schedule 1 to the Share Blocks Control Act No. 59 of 1980 a procedure is prescribed according to which a share block company may open a register in respect of the land it owns and the buildings situate thereon. The company may then transfer the units in the scheme to its shareholders. There is no obligation on shareholders to take transfer of their units once a register has been opened.

1.2 There are three pre-requisites before a meeting to consider conversion may be convened:

1.2.1 Firstly, at least 30% in number of the members must require the company to apply for the opening of a sectional title register, or the directors of the company must so resolve. The directors may therefore decide to convene a general meeting if for example only 10% of the members in number petition for conversion, but are only obliged to do so if at least 30% so require;

1.2.2 secondly, the directors must prepare such particulars of the proposed conversion as they consider necessary for consideration by the mortgagee, if the property is mortgaged, and by the general meeting. The particulars include sketch and other plans and rules. With a view to restricting expenditure in the preliminary stages, a formal sectional plan need not be prepared until the consent of the general meeting to the conversion has been obtained;

1.2.3 thirdly, if the land is mortgaged, the company must apply to the mortgagee for its consent, which consent must be given to the company within 30 days of receiving the company's application for its consent. This will obviously not be a requirement if the property is not bonded.

1.3 Notice of a meeting to shareholders must be given for the consideration of a special resolution (as defined in the Companies Act) to the effect that the

company shall open a register. The notice must comply with the requirements of section 199 of the Companies Act relative to special resolutions. It must state that the particulars and rules referred to above are available for inspection free of charge during normal business hours at the property or at some other place of which the company has given the Registrar of Companies due notice.

- 1.4 At the meeting the scheme must either be approved by a special resolution, or by 50% in number of the members of the company having the right to attend and vote at any meeting of the company. The members comprising this 50% majority must in addition hold not less than 30% of the total votes held by all the members of the company. Once registered, the resolution has sufficient authority for the directors to take the necessary steps for the opening of a sectional title register.

2. **Additional formalities for the opening of a sectional title register**

- 2.1 The statutory conversion procedure contains a number of extra requirements for the opening of a sectional title register in addition to those of the Sectional Titles Act. Firstly the company is required to give notice to interested parties calling for objections to the conversion. This notice must state that it is the intention of the company to apply for the opening of a register and that any person to whom the notice is addressed may either consent to the application or within one month of the date of the notice, lodge a written objection with the company and, unless he withdraws any objection within two months from the date thereof or within such extended period as the company may allow him, he may apply to the High Court to prevent the company proceeding with the application.
- 2.2 Any person who lodges a written objection referred to above must set out fully therein the reasons for his objection to the opening of the register or to any aspect of the particulars or rules. An objector may, within two months from the date of his objection or within any extended period the company may allow, either withdraw his objection or apply to the High Court for relief.
- 2.3 If he chooses to apply to court, an objector may ask for an order in terms of which the company is either directed to modify the particulars or rules or is prohibited from taking such steps as the court may determine to effect the opening of the register. Notice of the application to court must be given to the company and to the Registrar of Companies.

- 2.4 If an objector fails to apply to court within the two month period or any extended time period and fails to withdraw his objection then his objection is deemed to have been removed.
- 2.5 On hearing the application, the court may prohibit the company from taking steps to open the register either indefinitely or for a certain period or refuse the application, but impose such conditions for opening the register as it deems fit, or make such order as it deems appropriate under the circumstances and such order as to costs as it deems fit.

3. **Information to be furnished to the Registrar of Companies**

Before the company applies to the Registrar of Deeds for the opening of a register, proof of certain matters must be furnished to the registrar of companies in the prescribed manner. These matters are that the notices to interested parties were duly dispatched and either that no valid objection was received or that any valid objections are deemed to have been removed, or the court has rejected all applications arising from such objections and that no proceedings pursuant to an application are pending in any court, or that the company has complied with the terms of any court order.

4. **The opening of a sectional title register and transfer formalities**

- 4.1 After any objections to conversion have been withdrawn or removed and the prescribed information has been furnished to the Registrar of Companies and the sectional plan has been drawn up, the share block company applies to the surveyor general for the approval of the sectional title plans. Once the plans are approved the attorney submits an application to the Registrar of Deeds for the opening of the register. Depending on how quickly the sectional plans are prepared by the architect and/or surveyor, the sectional title register would take in the region of six months to open.
- 4.2 When the sectional title register is opened, all the units are registered in the name of the share block company. The Act does not compel a member to take transfer of the unit occupied by him and he may therefore choose whether to take transfer or not. Until such time as the member takes transfer of the unit, his rights and liabilities against the company remain unaltered. Once the register

has been opened the company is obliged to transfer a unit to the person having the right to use such unit if he makes a written request to that effect.

Relationship between the body corporate and the share block company

- 4.3 A body corporate, whose members comprise the owners of the units of the sectional title scheme, is deemed to be established as soon as the share block company transfers the ownership of a unit to another person. From the date of its establishment, the body corporate takes over control of the land and building subject to the scheme from the share block company and assumes responsibility for administration and maintenance. Expenditure incurred by the body corporate is recovered out of a fund established by the body corporate for that purpose. The company is liable to the body corporate to pay the contributions to the levy fund levied on units which have not yet been transferred by the company. These contributions are in turn defrayed out of the company's levy fund. Only members of the company who have not taken transfer of their units are obliged to contribute to the company's levy fund.

5. Levy fund

- 5.1 Item 6(2) of Schedule 2 to the Share Blocks Control Act provides that the contribution by a member towards the levy fund under the Sectional Titles Act shall be determined in accordance with the memorandum or articles of the company or "any agreement or arrangement between that company and its members". In other words the levy contribution under sectional title must be in accordance with the provisions of the use agreement of the company. However there is a proviso to this which states that the status quo need not be maintained in the event that the shareholders in that special resolution passed by the company to open a sectional title register, decide to amend the existing levy fund contribution formula. This item would have to be raised in the same special resolution and the same support referred to in 1.4 would have to be obtained.
- 5.2 The Sectional Titles Act further provides that the members of the body corporate may by unanimous resolution make rules 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 towards the levy fund, provided that where an owner is adversely affected by such a decision of the body corporate, his written consent must be obtained.

6. Costs

6.1 The costs involved in a share block company opening a sectional title register generally comprise the following :

6.1.1 preparation of sectional plans by architect and/or surveyor

a quote will need to be obtained for the professional fees of the architect and/or surveyor including the submission of plans to the Surveyor General;

6.1.2 resolution and formal procedures under Share Blocks Control Act

a resolution together with various formal procedures need to be complied with under the share block system.

6.1.3 conveyancing formalities under the Sectional Titles Act

Fees are based on the recommended tariff based on the number of units in the scheme.

6.2 Once the Sectional Title Register has been opened only those shareholders who wish to take transfer under sectional title need do so. The costs involved in taking transfer depend on the fair market value of the shares or unit as this value determines the amount of transfer duty payable to the Receiver of Revenue and the conveyancing fees.

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