

Ref # 534467

2 November 2015

Submitted electronically

Mr T Khambule

Department of Human Settlements

Email: Thulani.Khambule@dhs.gov.za

Dear Sir,

SAICA SUBMISSION ON THE DRAFT REGULATIONS, *Sectional Titles Schemes Management Regulations*

The South African Institute of Chartered Accountants (“SAICA”) is the foremost accountancy body in South Africa and one of the leading institutes in the world. It plays an influential role in a highly dynamic business sector. SAICA currently has 39 956 members of which 32 031 are resident in South Africa and 7 565 are international members.

The strategic pillars of SAICA include SAICA playing a leadership role in South Africa by developing new material, making submissions and working with government to address social and economic issues. SAICA therefore comments on legislation that impacts SAICA members and society as a whole.

In response to your request for comments on the Draft Regulations for the Sectional Title Schemes Management Act, attached is the comment letter prepared by The South African Institute of Chartered Accountants (SAICA).

We thank you for the opportunity to provide comments on this document.

Please do not hesitate to contact us should you wish to discuss any of our comments.

Yours sincerely,

Juanita Steenekamp (CA (SA))
Project Director – Governance and Non-IFRS Reporting

Annexure 1

GENERAL COMMENTS

TRANSITIONAL ARRANGEMENTS

Section 21 of the Sectional Titles Schemes Management Act, 2011 states that the rules prescribed under the Sectional Titles Act must continue to apply to new and existing schemes until the Minister has made regulations prescribing management rules and conduct rules.

The Regulations should clarify the position of schemes with regards to the transition from the current rules to the new rules.

If nothing is stated then at the effective date schemes will be at loss on the period allowed to transition from the current rules to the new rules. Would the new rules automatically be effective immediately?

AMENDMENT OF RULES

Section 6 (3) states that when submitting an application for the opening of a sectional title register a developer may substitute, amend or withdraw management rules number 4(2) and (3), 6, 7(1) and (2) and 11 and may add management rules that are not inconsistent with any other management rule that appears in Annexure 1.

The requirement is just to not add inconsistent rules, if schemes were to withdraw the rules and replace with much less onerous requirements, the Department need to consider whether that would be acceptable.

Section 6(6) states that the management rules set out in Annexure 1 may be added to, amended or repealed by unanimous resolution of the body corporate: Provided that no such addition, amendment or repeal made be made until such time as there are owners, other than the developer, of at least 30% of the units in the scheme save in the case of a body corporate which is established in a scheme which was approved in terms of the Sectional Title Act, 1971.

The question arises that currently a scheme comprising more than 10 units require an audit of the annual financial statements. Should schemes remove the audit requirement and only require the preparation of annual financial statements, the Department need to consider whether this is acceptable, as the scheme would move from the requirement of an audit which provides assurance to the members to only the preparation of annual financial statements, which would have no assurance provided. The public interest need to be considered.

The Department could consider certain minimum requirements in the rules, if so desired to ensure that the public interest is protected.