

FROM SHARES TO TITLE DEED

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CONVERSION OF A SHARE BLOCK TO SECTIONAL TITLE OWNERSHIP

Share Block schemes are governed by the Share Blocks Control Act No. 59 of 1980 ("the Act"). Certain provisions of the Companies Act and the Sectional Titles Act are also relevant when share block schemes are converted to sectional title ownership.

The conversion by a shareholder of his rights in a share block company to rights of ownership in a sectional title unit takes place in three stages.

STEP 1 – THE COMPANY DECIDES TO OPEN A SECTIONAL SCHEME

Schedule 1 to the Act provides that a share block company may open a sectional register in respect of the land it owns and the buildings situate thereon if it follows the prescribed procedure.

Before a company can meet to decide whether to convert to sectional title, the following procedure must occur:

1. At least 30% in number of the shareholders must require the company to apply for the opening of a sectional title register, or the directors of the company may resolve to do so. The directors may therefore of their own accord decide to convene a general meeting (or if for example only 10% of the shareholders in number call for conversion), but are only obliged to do so if at least 30% so require;
2. the directors must prepare details of the proposed conversion for consideration by
 - (a) the mortgagee (bondholder), if the property is mortgaged; and
 - (b) by the general meeting of shareholders.

The details of the conversion should include sketch and other plans and rules and anything else the directors consider necessary. 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;

3. 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. The mortgagee may require the bond to be settled simultaneously with, or prior to, the opening of the sectional register. This consent will obviously not be a requirement if the property is not bonded.
4. After the mortgagee's consent (if applicable) has been obtained, the directors must give written notice to the shareholders of a meeting 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.

At the meeting the scheme must either be approved by a special resolution (there must be a 25% attendance and the resolution must be approved by a 75% majority as set out in the Companies Act), or by 50% in number of the shareholders of the company having the right to attend and vote at any meeting of the company. The shareholders comprising this 50% majority must in addition hold not less than 30% of the total votes held by all the shareholders 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.

STEP 2 – THE SCHEME IS OPENED BY THE COMPANY

The first requirement after the decision to convert has been taken as set out above, is for the company to give written notice, within 21 days of registration of the special resolution in the Companies Office, to all shareholders and other interested parties (including tenants who are not shareholders) calling for objections to the conversion. The details of this step are as follows:

1. The notice to interested parties must:
 - (a) be delivered by hand or by registered mail;
 - (b) state that it is the intention of the company to apply for the opening of a register;
 - (c) state that the addressee may inspect the plans and rules (in the same way as outlined above) and either consent to the application or within one month of the date of the notice, lodge a written objection with the company (the procedure once an objection is filed is set out in Schedule 1 to the Share Blocks Control Act and should be included in the notice).
2. Any person who lodges a written objection referred to above must give 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.
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. On hearing the application, the court will rule on the objection and make an order as to whether (and on what conditions) the company may proceed with the opening of the sectional register. The court will also make an order as to who pays the costs of the court application.
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.

The second requirement is that that company must give proof of the following (in the prescribed manner) to the Registrar of Companies in Pretoria:

1. That the notices to interested parties were duly dispatched;
2. no valid objection was received, or, if valid objections were received, they are deemed to have been removed, or the court has rejected all applications arising from such objections;
3. 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. that the mortgagee (if applicable) has consented to the opening of the sectional register.

The third requirement is that the Company must instruct a land surveyor or architect to draw up the sectional plans (including a PQ schedule), which are then submitted to the Surveyor-General for approval. This can be done simultaneously with the first requirements but, if there are objections, it may be prudent to await the outcome of these objections before incurring the costs of the land surveyor. It is also advisable for your Conveyancer to be



involved throughout but particularly at this stage as most of his preliminary documents can be prepared from the information contained in the Land Surveyor's draft plans.

The fourth requirement is that the company's conveyancer must submit 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.

Once the register has been opened, all of the units will be owned by the company. At this stage the shareholder merely holds a share or shares in the company which amounts to something movable. The company may at this stage, and on request by interested shareholders, transfer the units in the scheme to its shareholders but there is no obligation on shareholders to take transfer of their units.

STEP 3 – OWNERS CONVERT THEIR SHARES AND ACQUIRE UNITS

A shareholder is entitled to ask the share block company to transfer the unit which the owner has a right to use, to that owner if:

1. That person has discharged his obligations to the company;
2. that person requests the company in writing to transfer the unit into his name;
3. all arrangements have been made for payment of the costs involved and signing of the transfer documents;
4. where there is a tenant in the unit, that tenant has been given notice in terms of section 10 of the Sectional Titles Act and that tenant has not exercised his right to buy the unit;
5. where the unit is mortgaged, the bondholder has consented to the release of the unit from the operation of the bond or to the cancellation of the bond; and
6. that owner has delivered to the Body Corporate (or to the Company):
 - (a) his share certificates and signed share transfer forms in blank; and
 - (b) a written waiver of any rights he may have (including rights of occupation) against the company in relation to that unit.

By taking transfer, something movable (shares which give a right of occupancy) is converted into something immovable (ownership of a unit).

The Conveyancer attending to the transfer will need to certify the following:

1. that according to a sworn declaration furnished by the company the levies contemplated in Section 13 of the Act have been paid by the transferee or payment thereof has been secured to the satisfaction of the company; and
2. the developer's real right of extension (if it exists) was disclosed in the deed of alienation or, if it wasn't, the transferee is happy to proceed with the transfer despite the non-disclosure.
3. the share transfer form and the written waiver of occupancy rights have been delivered to the company.

THE COSTS OF A SHARE BLOCK CONVERSION

It is difficult to give an exact figure for the costs of conversion because there are a number of issues (for example the number of units) which will differ in each case. In all cases, however, provision should be made for the following costs:



1. The costs of the company's attorneys in drawing, passing and registering the special resolution and all notices and letters relating to this stage.
2. The costs of the land surveyor or architect in drawing and registering the sectional plans.
3. The conveyancing costs in transferring each unit to a shareholder.

In each case a cost estimate should be obtained so that the shareholders can make an informed decision whether to proceed with the conversion.

ADVANTAGES OF CONVERTING FROM SHARE BLOCK TO SECTIONAL TITLE

Some advantages are the following:

1. The shareholder becomes an owner of immovable property and gets a title deed.
2. Arguably the property acquires a higher resale value.
3. The property can be mortgaged more easily (banks are reluctant to lend money on the security of a pledge of shares – mortgage bonds offer far better security).
4. The shareholder has more control over the unit (decisions are no longer made by the directors).
5. Ownership of shares no longer has any transfer duty advantages.

DISADVANTAGES OF CONVERTING FROM SHARE BLOCK TO SECTIONAL TITLE

Some disadvantages are the following:

1. the cost of conversion will be irrecoverable if the value of the property does not increase as a result of the conversion.
2. it may take 6 – 12 months to comply with all of the requirements outlined in steps 1 and 2 above.
3. the trustees of the body corporate may not be as skilled as the directors were in administering the property.

