

SECTIONAL TITLE

Often the only common factor of a Sectional Title life-style is ownership of a Unit in the Scheme in which they live. The Sectional Title Act No. 95 of 1986 prescribed Management and Conduct rules that apply to every Sectional Title Scheme and laid down the framework for running such a Scheme. The Act allows some rules to be changed, providing none of the changes go against the spirit of the Act. The procedures to effect these changes are prescribed in the Act and must be carefully followed.

The role of a Trustee is not an easy one. The Trustees are for the most part responsible for the success or failure of most schemes. A Trustee needs to understand the Act and must be able to interpret the Rules and guide the Body Corporate. A Trustee must be able to understand and control budgets and accounts.

What part of the Sectional Title Scheme do I own?

In buying into a scheme you will acquire a Section (or Sections), and a share of the Common Property. These are collectively known as a Unit. In practical terms, a Section is usually a flat or townhouse

You own the inside of the property i.e. the space contained by the inner walls, ceilings & floors of the unit. You are entitled to paint or decorate or undertake alterations as desired, providing such alterations do not infringe on municipal by-laws.

The outside of the building is owned by the Body Corporate. In the interest of keeping uniformity, therefore, minor changes may be approved (in writing) by the trustees. This includes all external changes, i.e. aerials, satellite dishes, awnings, enclosures, changing of exterior colour schemes, etc.

Any major structural changes must be done in accordance with government and municipal approval and before proceeding, with the Body Corporate's approval, as any alterations may change the look of the property, or increase the insurance. No reasonable request may be refused.

As regards common property, allocated for individuals sole use, such areas as indicated on the original plans or subsequently in writing, from the Body Corporate, may not be altered or reclaimed without the owners consent.

What Is "Sectional Title"?

A Sectional Title Development Scheme (usually referred to as a "SCHEME"), provides for separate ownership of a property, by individuals. These schemes fall under the control of the Sectional Titles

Act, No. 95 of 1986 (and its amendments), which came into force on 1 June 1988. This Act replaced an earlier Act (No. 66 of 1971).

What is "Common Property"?

The Common Property is that part of a scheme which does not form part of any section. Driveways, gardens, swimming pools, corridors, lifts and entrance foyers are good examples of common property. Some parts of the common property are designated as Exclusive Use areas.

What is meant by "Exclusive Use"?

Often this will be a garden or patio attached to a section, in which case you do not OWN the garden or patio, but you have "Exclusive Use" of those areas for as long as you are an owner in the scheme. A balcony attached to a flat is sometimes designated as an exclusive use area, although in most cases, the balcony forms part of the section.

The 1986 Act allows an owner to sell the exclusive use of an area to any other owner in a scheme, but not to an outsider. The practical implication is that owners who have exclusive use of a garage, storeroom or parking bay which they do not require, can sell the exclusive area to another owner in the Scheme. This benefit does not apply to owners of units registered under the 1971 Act, as under that Act, exclusive use areas were allocated under the rules of the scheme, whereas under the 1986 Act they are registered at the Deeds Office.

Who controls the common property?

The common property is controlled by the Body Corporate. There are no exceptions to this rule. This means that even though parts of the common property are designated exclusive use areas, these areas are still controlled by the body corporate and therefore subject to the rules of the scheme. These rules might prohibit "braaing" in an exclusive use garden or balcony, control the type of fence or wall erected around a garden, or prevent the installation of a plunge pool or spa bath without first obtaining the consent of the trustees.

What is "The Body Corporate"?

The Body Corporate is the collective name given to all the owners of Units in a Scheme. It comes into existence as soon as the developer of the Scheme transfers a Unit to a new owner. All registered owners of Units in a Scheme are members of the Body Corporate. The Body Corporate controls and runs the Scheme. Day-to-day administration of the Scheme is vested in Trustees who are appointed by the Body Corporate.

Major decisions regarding the Scheme are made by the Body Corporate, usually at the Annual General Meeting (AGM), or at a Special General Meeting. At these meetings, matters which affect the Scheme are discussed, Budgets are approved, Rules can be changed and Trustees are appointed - often accompanied by lively discussions!

Each member of a Body Corporate is entitled to vote at these meetings, providing that the member is not in arrears with levy payments or in serious breach of the Rules. Members in default can only vote in certain circumstances.

An individual member's voting power is governed by the member's percentage ownership of the common property. This percentage is known as the "Participation Quota".

Who are the trustees?

A Sectional Title Scheme or Complex, as it is often called, is controlled and managed by a Body Corporate.

Trustees are persons who are appointed to look after the finances and running of the Sectional Title scheme on behalf of the Body Corporate.

A developer or any other person may not, amongst other things, advertise for sale, or sell any unit in respect of any building or and land unless a sectional title register has been opened.

The registrar in charge of the deeds registry in which the land comprised in the scheme is registered shall register the plan and allot a distinctive number to it once the requirements of the Act and any other relevant law have been complied with.

The developer shall be the owner of any sections/units in respect of which the ownership is not held by any other persons, and the quota of such sections shall determine the share of the developer in the overall quota of the common property. Sect 34(1) of the Act

The Body Corporate comes into existence from the date on which any person other than the developer becomes an owner of a unit in a registered scheme. The developer and such persons as registered unit owners and every person who thereafter becomes an owner of a unit shall be a member of the Body Corporate. Sect 36 of the Act

The Body Corporate is responsible for the control, administration and management of the common property for the benefit of all owners.

There may be many units in a sectional title scheme resulting in many owners, in many cases too many owners to form a working committee. This problem is acknowledged by the law makers an

provision has been made in the Act for the Body Corporate to appoint Trustees to hold office in terms of the regulations of the Act.

The Trustees are usually owners in a Scheme who have been entrusted with the task of looking after the scheme on a day-to-day basis. Trustees are appointed by the Body Corporate. The minimum number of Trustees for a scheme is two. The Act does not specify the maximum number.

It is permissible to appoint as trustee someone who does not own a unit in the scheme, although this is not common practice. At all times, the majority of trustees must be owners in the Scheme.

Trustees work on a voluntary, unpaid basis, although a trustee who is not an owner in a scheme may receive payment for acting as a Trustee. At the first meeting after being appointed, the trustees elect a chairman who usually holds office until the next AGM.

Who makes the rules?

At the inception of a Scheme, Management and Conduct Rules are established. These rules form Annexures 8 and 9 to section 35 of the 1986 Sectional Titles Act. As their names imply, the management rules control the running or management of the Scheme, while the conduct rules lay down guidelines for the conduct of owners and their guests or tenants.

Where a Scheme was established under the 1971 Act, the Rules were made in accordance with the provisions of that Act. In Schemes where the Body Corporate did not amend the standard rules under the 1971 Act, those Rules were automatically replaced by the Management and Conduct Rules of the new Act.

Can the rules be changed?

Yes. The Body Corporate can change the Rules, providing that these changes are not against the spirit of the Sectional Titles Act. The procedure which must be followed before rules can be changed is clearly defined in the Act. Proposed changes must be put to the members of the Body Corporate at a General Meeting, at which members will be able to discuss the proposed changes before being asked to vote for or against them. Some changes require an Unanimous Resolution, while others require a Special Resolution.

What is "The Levy"?

The costs incurred in running a scheme have to be paid by the body corporate. These costs include:

- Rates and taxes
- Water and electricity used on the Common Property

- Sewerage
- Insurance premiums for the Common Property
- Repairs and maintenance of the Common Property
- Wages and salaries of the cleaners and other staff
- Security

These costs are paid by individual owners in the form of a monthly levy, calculated in accordance with the participation quota for their unit. Some costs incurred in the upkeep of 'Exclusive Use' areas can be recovered from the user of that area.

In addition to the above, the body corporate is obliged to establish a fund for future maintenance and unexpected expenses. The size of this fund is not specified in the Act, but a wise body corporate will make sure that the fund is adequate for the size of the complex and present condition of the property. If the fund becomes excessively large, the Act does not allow any part of the excess to be refunded. However, the excess could be used to subsidise future levies or to improve the common property.

How is the levy calculated?

At the inception of a Scheme and again before every AGM, the trustees have to prepare a budget for the following year. This budget is then presented to all members of the body corporate at the AGM. The body corporate can either accept the budget or can ask for changes to be made.

Once the budget has been accepted, the total annual cost is divided into a monthly amount. Each owner is then "levied" a monthly amount, which is his or her share of the common budget. The amount is calculated in accordance with the Participation Quota (PQ) of the owner unit. Larger Units have a higher PQ than smaller units and the amount paid by each owner will vary accordingly.

Can the levy be changed at other times?

Yes. In an emergency, the Trustees can impose a Special Levy to cover expenses of an unforeseen nature.

What are managing agents?

Managing and administering a Scheme, particularly a large Scheme, is complicated and time consuming. Occasionally, the Body Corporate and Trustees undertake the entire task. Unless the Body Corporate is unusually well endowed with specialised knowledge and talents, this is seldom successful. Most Bodies Corporate decide to appoint Managing Agents, usually a company or close corporation that specialises in this aspect of Sectional Title administration.

The Managing Agents collect the monthly levies and all other moneys due by owners to the Body Corporate. They keep the books, recover unpaid debts, prepare the annual budgets, arrange for quotations for repairs and maintenance, send out notices and generally assist the Trustees with the numerous time consuming tasks that arise in administering a Scheme.

A good Managing Agent can save the Body Corporate a lot of time, trouble and expense.

COMMON QUESTIONS

Can I keep a pet?

It is not surprising that permission to keep a pet is covered by the very first rule (rule 1) of the conduct rules. Much unhappiness and heartache has been caused by failure to understand this rule. An occupant of a Sectional Title unit may not keep a pet in a scheme without the permission of the trustees. On the other hand, the trustees may not refuse consent without good reason.

In considering an application, the trustees have to be guided by the type of pet, the nature of the scheme and the wishes of the other owners. In granting permission, the trustees may impose special conditions, such as insisting that dogs may not be allowed on common property except on a leash. Permission to keep the pet may be withdrawn if the pet becomes a nuisance to other owners. Passions run high when it comes to pets!

Can I make alterations inside my section?

Generally, it is not necessary to obtain permission to make alterations inside a section. However, if these alterations involve structural changes or affect the electrical or water supply or the drainage system, it is essential to discuss this with the trustees. At their discretion, the trustees may ask for expert advice from an architect or engineer if the changes involve major structural changes, such as the removal of a wall. As a matter of courtesy, you should advise your neighbours if the alterations are going to cause them any inconvenience or create excessive noise. Builders can cause a lot of noise and dust! Many owners renovate their kitchens and bathrooms, add extra cupboards, re-tile or re-carpet floors without causing any problems.

Please remember that any changes that affect the common property require consent.

Can I install a security gate outside my front door?

It depends where you want to fit the gate. In a townhouse, this seldom causes a problem.

In a flat, the situation is somewhat different as the area immediately outside the front door is common property. In this case the consent of the trustees will certainly be required, although it is unlikely that

permission will be refused. Where the front door is in a recess and the recessed area is part of the section, permission is usually not required. However if the security gate is visible from a landing or passage, the rules of the scheme may stipulate, in the interest of uniformity, that security gates must conform to an approved pattern.

Can I fit an awning outside a window?

The outer walls form part of the common property, consent will be required. It is common practice to fit awnings to north and west windows and it would be very unreasonable to refuse permission. However, the rules of a scheme usually specify the type and colour of such awnings.

Can I fit a different type of front door?

The front door is part of your section but it is visible from common property. Again in the interests of uniformity, the door may have to conform to an approved design.

Can I change the style of my windows?

Windows are generally considered to be part of the common property. Permission will be required. In the case of a block of flats, permission would probably not be granted. This matter would have to be discussed with the trustees.

Can I enclose my balcony?

The question regarding balconies is a very complicated one. A balcony may form part of a section, or it may be an exclusive use area. Even though the balcony forms part of a section, it is by no means certain that it can be enclosed. Often Municipal Planning's permission would be needed.

An open balcony is not considered to be a habitable area. Enclosing the balcony would convert it to a habitable area, in which case municipal permission would be essential, and may not be granted. In any event, enclosing a balcony would alter the outer appearance of the scheme and would certainly necessitate the consent of the trustees.

Can I build a wall around my exclusive garden?

The exclusive use garden forms part of the common property, consent is necessary.

Can I extend my patio?

A patio is usually an exclusive use area, which of course means that it is common property and consent would therefore be required. In certain cases, patios form part of a section. In these cases, it may be necessary to notify the trustees, if the patio is visible from any part of the common property.

Can I fit a gate to my carport?

A carport is common property. Consent is required.

Can I install a spa bath inside my section?

The installation of a spa bath, such as a Jacuzzi, requires alterations to the plumbing and electrical installation, so permission is needed. Please note that a spa bath may require more electrical power than is available in your section, in which case it might be necessary to provide a three-phase supply to the section. This is a major task and would certainly require expert advice.

Can I fit an air-conditioner?

Air-conditioning units which take air from outside the building are partly fitted outside the section, therefore permission is necessary. Another consideration is the noise generated by the compressor in the air-conditioner. These compressors often cause considerable vibrations, which will certainly affect your neighbours. In a block of flats, the compressor and fan noise will travel vertically and horizontally and will affect the flats above and below as well as the flats on either side. These noises may not be intrusive during the day, but will certainly prove to be a problem during the night. The trustees may therefore give consent but stipulate that the air-conditioner may not be used late at night or early in the morning.

Can I sell my unit?

Yes, of course you can. However you must notify the body corporate that you have sold your unit.

Can I rent my unit to a tenant?

Yes, but remember that as the owner of the unit, you remain a member of the body corporate and are responsible for payment of the levy. You are also responsible for the behaviour of your tenant. It is advisable to furnish the tenant with a copy of the management and conduct rules. Some schemes require an owner to notify the trustees that a unit is being rented to a tenant. As matter of courtesy, it is a good idea to notify the trustees, the caretaker and your neighbours.

Are the trustees as powerful as they seem to be?

No, not at all, the trustees are appointed by the body corporate to look after the interests of the scheme and to accept the instructions of the members of the body corporate. A trustee who is also an owner in a scheme may not derive any financial or economic benefit from his or her position as a trustee. The body corporate can remove a trustee from office at a general meeting. A trustee who is declared insolvent or of unsound mind, or is convicted of any offence involving dishonesty, is disqualified from holding office.

The role of a trustee is a responsible one, and very time-consuming. It is considered by many to be a thankless task. A good trustee is a valuable asset to any scheme.

What happens if I break the rules?

The Act requires that the trustees make sure that the owners in a scheme adhere to the rules of the scheme. Trustees are empowered to apply to the Supreme Court for an order instructing an owner to comply with the rules. Where the breach of the rules involves a failure on the part of an owner to maintain his section or exclusive use area in a good condition, the trustees are entitled to carry out such repairs or maintenance that they consider necessary, and to charge the owner for the costs involved. These are extreme measures and, in practice, are seldom required.

Most owners are reasonable people and are prepared to comply with the rules, which are there to benefit all the owners. Please note that any owner who is, in spite of warnings, in breach of the rules may not (except for special or unanimous resolutions) vote at a general meeting.

What should I do if my neighbour breaks the rules?

If your neighbours consistently break the rules by making too much noise or being a nuisance in some other way, you should report them to a trustee. Please remember however that you should involve the trustees only in the case of serious disagreement and not in trivial disputes.

What if I fail to pay my levy?

The body corporate can take action in an appropriate Court to recover unpaid levies. All owners in a scheme have to pay a levy. Any owner who fails to pay a levy, while continuing to enjoy the benefits of living in the scheme, is doing so at the expense of all the other owners. An owner who is in arrears with his or her levy may not vote at a general meeting of the body corporate, except for proposed or unanimous resolutions.

What about insurance?

The Sectional Title Act requires the body corporate to ensure that the buildings are insured to the value of the replacement cost in the event that the complex is totally destroyed. The insurance must cover all the sections and all the improvements to the common property. The premiums for this insurance form part of the monthly levy.

If you feel that your unit is worth more than the amount for which it is insured, you are at liberty to ask the trustees to increase the amount for which your unit is insured, in which case you will be responsible for the extra premium.

It is important to note that the body corporate insurance only covers damage and destruction of the buildings. It does not cover the contents of your unit. You must make sure that your furniture and personal belongings are separately and adequately insured by means of a suitable policy.

LATEST PROPOSED AMENDMENTS TO THE SECTIONAL TITLES ACT

Proposed amendments to the Sectional Titles Act were published on 17 August 2009. The amendments eliminate many problems and clarify uncertain aspects.

Some of the most important amendments relate to:

Court Order to Ratify Unanimous Resolution Clarified

Under the present act, an order of the High Court may be obtained to ratify a unanimous resolution where the body corporate is unable to obtain one on an important matter. This provision is, however, effectively nullified by the requirement of Section (3) (c) requesting that where the 'proprietary right or powers of any member as an owner' are adversely affected, the written consent of such member must first be obtained.

The latter qualification has now been removed leaving the entire matter and the balancing of the various interests in the discretion of the court.

Existence of Doors and Windows Recognised

The maintenance responsibilities in respect of doors and windows located in boundary walls of sections has long been a contentious. An amendment to section 5(5) (a) of the Act prescribes that

any feature situated in a boundary wall (or floor, or ceiling) of a section, shall be considered to form part of such floor, wall or ceiling. The effect is that such features are regarded as private property inside the unit and as common property outside the unit.

Extensions of Sections Facilitated

To extend a section in terms of section 24 of the act, the consent of the bondholder over all units in the scheme was necessary in respect of deviations of more than 10%. This resulted in costly delays. The amendment requires that bondholders be notified in writing of the proposed extension's and, if the notice is not responded to within 30 days, such bondholders are deemed to have no objections.

Rights to Extend Extended

The proposed amendment to section 25 of the act allows a developer to lengthen the time during which a real right to extend may be exercised by agreement with the body corporate.

The agreement must be recorded in a bilateral notarial deed concluded before the expiry of the real right to extend, as recorded in the section 11 (3) (b) certificate.

The provision does not indicate the form of resolution required by the body corporate to sanction such agreement, in terms of section 29 (1) of the act a special resolution is required to "execute" a servitude or restrictive agreement burdening the land shown on the relevant sectional plan." In the absence of any provision to the contrary it should be accepted that the execution of the required deed must be authorized by means of a special resolution of the members.

Developer to Pay Expenses Relating to Extension Areas

Developers previously had no obligation to contribute to the expenses such as municipal rates and maintenance for areas of the common property reserved for future extensions. This situation has been addressed by proposed amendments to sections 25 and 38 of the act so that a developer who is entitled to extend the scheme must make a reasonable contribution to the body corporate to defray rates and taxes, insurance, and maintenance of the affected parts of the common property, including the use of "electricity and water and other expenses and costs in respect of and attributable to the relevant part of parts."

The determination which, must be reasonable, is not necessarily dependent upon an agreement being reached between the developer and body corporate. Contributions are determined in an ordinary manner by approval of a budget by the members at the annual general meeting, followed by a trustees resolution.

An amendment to section 25 requires that the Registrar may not register a cession of a real right to extend without having received a certificate that all monies due to the body corporate in respect thereof have been paid.

Special Levies Receive Attention

Section 37 of the act will be amended to provide that ordinary levies, rather than becoming due and payable on the passing of a trustees resolution, accrue from the date of the resolution, in such installments as are determined by the resolution.

Need for Tri-Partite Agreements Eliminated

A further amendment to section 37 eliminates the need to enter into a tri-partite agreement at the time of change of ownership to ensure the continued flow of levies.

In terms of the proposed amendment the new owner automatically becomes liable for his/her share of the annual levies as from the date of registration of transfer into the new owner's name.

Use of Use Area Restricted

The purpose for which a section may be used is currently restricted to the purpose indicated on the sectional plan of a scheme. Usage of exclusive use areas was however, not similarly restricted. This has now been rectified with an adjustment to section 44 (1) (g).