

SECTIONAL TITLE

WHAT IS SECTIONAL TITLE?

A Sectional Title 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, which came into force on 1 June 1988. This act replaced an earlier act (no 66 of 1971).

WHAT DOES AN OWNER OWN?

In buying into a scheme, an owner acquires a section (or sections), and an undivided share of the common property. These are collectively known as a unit. In practical terms, a section is usually a flat or townhouse, but may also be a garage, storeroom or a domestic staff room. Please note that in many schemes, the garage and external rooms may not be sections, but may be part of the common property in which the owner has exclusive use.

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. As mentioned above, some parts of the common property are designated as exclusive use areas.

WHAT IS AN EXCLUSIVE USE AREA?

Often this will be a garden or patio attached to a section, in which case the owner will not own the garden or patio, but will have exclusive use of those areas. 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 which is registered under the act 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 use 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. The practical implication of this is that even though parts of the common property are exclusive use areas these areas are still controlled by the body corporate and are 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 the consent of the trustees or the other members of body corporate.

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 (SGM). At these meetings, matters which affect the scheme are discussed. Budgets are approved. Rules can be changed, trustees are appointed, often accompanied by lively discussion. Every member of the 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. Unless otherwise determined by the developer at the time that the register was opened, or subsequently by the body corporate by means of a special resolution, an individual member's voting power is governed by the members' percentage ownership of the entire scheme. This percentage is known as the participation quota.

WHO ARE THE TRUSTEES?

The trustees are usually owners in a scheme who have been entrusted with the task of looking after the scheme on day-to-day basis. Trustees are appointed by the body corporate at an AGM. The minimum number of trustees for a scheme is two. The act does not specify a maximum number. Ideally, a trustee should possess skills or qualities which will be of benefit to the scheme. Accounting or legal knowledge, organizational abilities, knowledge of electrical or mechanical

matters, the ability to type and bookkeeping skills are much in demand, and can save the body corporate a lot of time, trouble and money. It is permissible to appoint a trustee 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 (or the spouse of an owner of units in the scheme. Trustees work on a voluntary, unpaid basis, although in special circumstances the body corporate may, by special resolution, agree to remunerate a trustee. A trustee who is not an owner or spouse of owner may be paid for acting as trustee. All trustees are, of course, entitled to be reimbursed for all legitimate costs incurred by them in execution of their duties. At the first meeting of the trustees elect a chairman who usually holds office until the next AGM. While it is important to remember that the trustees are appointed to serve the body corporate and to carry out the wishes of the owners, the duties of trustees are time consuming and members of bodies corporate should play their part in assisting the trustees in any way possible.

WHO MAKES THE RULES?

At the inception of a scheme, management and conduct rules are established. These rules form annexures 8 & 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 occupiers 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. In cases where the rules were amended and the amendments were registered, they may still be in force, except where the old rules conflict with the current rules in which case the latter take effect. An excellent and detailed discussion regarding rules will be found in "the Sectional Title handbook".

CAN THE RULES BE CHANGED?

Yes. The body corporate can change or amend the rules, providing that these changes are not against the intentions or 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 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 the changes. Changes to management rules require an unanimous resolution, while conduct rules can be changed by a special resolution. As an alternative to convening a general meeting, both types of resolution can be obtained by a door-to-door poll of all the owners. Proposed changes must be submitted to the registrar in prescribed form and will not come into effect until registered at the deeds office.

WHAT IS THE LEVY?

The costs incurred in running a scheme have to be paid by the body corporate. These costs include: rates & taxes, insurance premiums, repairs & maintenance of common property, wages & salaries of the cleaners and other staff, water & electricity used on common property. These costs are paid by individual owners in the form of monthly levy, calculated in accordance with the participation quota for their unit, unless the developer at the time of opening the register, or the body corporate by means of a special resolution, allocated a different value to a particular unit. Costs incurred in the upkeep of exclusive use areas must be recovered from the user of the 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 scheme and the 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 subsidize future levies or to improve the common property.

HOW IS THE LEVY CALCULATED?

Before every AGM, the trustees have to prepare a budget for the following year. The proposed budget is sent to all members of the body corporate for their consideration before the AGM, at which the members can either accept the budget or can ask for changes to be made. Once the budget has been accepted by the body corporate, the total annual cost is divided into a monthly amount and each owner is then "levied" a monthly amount, as mentioned above.

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 specialized knowledge and talents, this is seldom successful. Most bodies corporate decide to appoint a managing agent, usually a company or close corporation which specializes in this aspect of Sectional Title administration. The managing agent collects the monthly levies and all other money due by owners to the body corporate. They keep the books, recover unpaid debts, prepare the annual budgets, arrange for quotes for repairs and maintenance, send out notices and generally assist the trustees with numerous time-consuming tasks which arise in administering a scheme. A good managing agent can save the body corporate a lot of time, trouble and expense.

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 rules involves a failure on the part of an owner to maintain his section or exclusive use area in 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 responsible 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 NEIGHBOURS BREAK THE RULES?

If your neighbors 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 HAPPENS 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 special 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 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 trustee to increase the amount for which it is insured, you are at liberty to ask the trustee to increase the amount for which your unit is insured, in which case you will be responsible for the extra premium. Please note that the body corporate insurance only covers damage and destruction of the building. 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.

POINTS TO CONSIDER WHEN BUYING SECTIONAL TITLE UNITS

This section is intended for prospective purchasers of a Sectional Title unit. Often, in the excitement of buying a new home, a purchaser will overlook some very important questions. This is particularly true of Sectional Title purchasers. In addition to all the obvious questions regarding area and local amenities and facilities, the prospective owner of a townhouse or flat should seek answers to specific questions regarding the complex. Let's look at some of the most important of these.

WHAT ARE THE MOST IMPORTANT POINTS?

Every purchaser of a Sectional Title unit should pay particular attention to the physical condition of the scheme, the financial state of the body corporate, the sectional plan and the rules of the scheme.

WHAT DO YOU MEAN BY THE PHYSICAL CONDITIONS?

Apart from examining the unit which you intend to purchase, you should inspect as much of the common property as soon as possible. If parking areas, gardens, swimming pools, corridors, lifts and staircases are in poor condition, you can assume that the present levy is insufficient to cover essential repairs and maintenance. Inevitably, substantial increases in the monthly levy can be expected in the future. As a prospective purchaser, you should be aware of the monthly levies in similar complexes in the area and should be especially careful about the electrical and mechanical conditions of the lifts, as the replacement of a lift, is a very expensive item. It is advisable for the body corporate to have a full maintenance contract with a reliable lift repair company, under which the body corporate pays a monthly sum which covers all routine maintenance, as well as repair and replacements. Another item of concern to a purchaser of a flat is the hot water system in the building. It is common practice in some of the older blocks of flats to have a central hot water system which supplies hot water throughout the scheme, in which case the cost of the hot water will form part of the levy. A prospective purchaser should ascertain the condition of the central boiler since replacement is a costly item.

CAN I ENCLOSE MY BALCONY?

The question regarding enclosing balconies is a 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 USE GARDEN?

As 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 still 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/GENERATOR?

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 neighbors. In a block of flats the compressor and fan noise will travel vertically and horizontally and will affect the flats above the 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 may 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 please remember that as the owner of the unit, you remain a member of the body corporate and are responsible for payment of the levy. As 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 a matter of courtesy, it is a good idea to notify the trustees, the caretaker and your neighbors.

WHAT ELSE DO THE TRUSTEES NEED TO KNOW?

If your unit is bonded to a bank or building society you must notify the body corporate of any changes to the bond. An example of this would be registering a second bond over the unit, or canceling an existing bond. The reason for this is that the bond is registered over the unit which means that the bond is registered over your section and an undivided share of the common property.

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 in any scheme.

Extracts from articles by Bob Gauld

