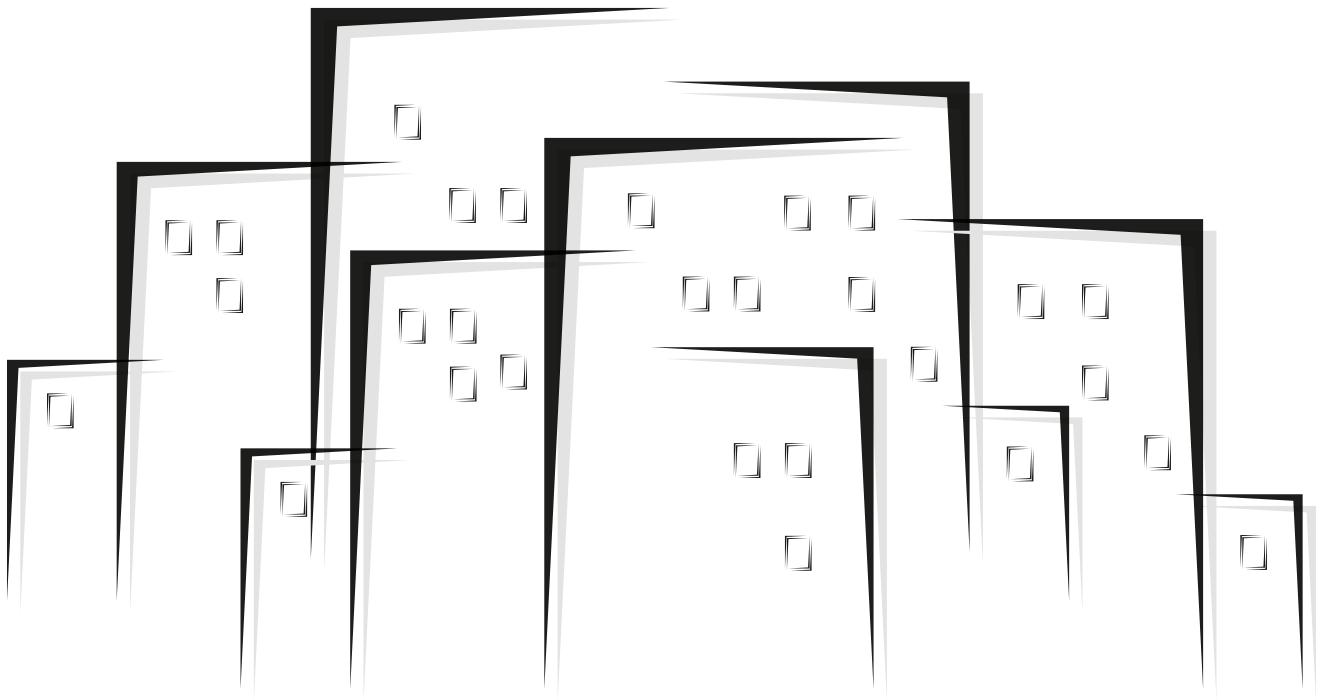


# INTRODUCING *YOU* to the WORLD of SECTIONAL TITLE

*- basic information to assist the owner to have a better understanding –*

*Leading to:-*

- empowerment*
- understanding your rights, duties and obligations*
- improved communication with your managing agent*
- easier interaction with fellow occupants.*
- a happier, forward- moving Body Corporate*



*With compliments from*



## INTRODUCING *YOU* to the WORLD of SECTIONAL TITLE

### *- basic information to assist the owner to have a better understanding -*

Compiled by Shirley Baillie of S Baillie and Associates, author and publisher of Keyword Access to the Sectional Title Legislation. [www.keywordaccess.co.za](http://www.keywordaccess.co.za)

This publication is intended to be used as a basic introduction and information document only- it is not a legal document, nor does it encompass all that there is to know about Sectional Title. Whilst the greatest care has been taken in the compilation of this document the editor/publisher cannot accept responsibility for errors or omissions contained herein.

**The Legislation** governing the sectional title form of housing has been regularly updated, the most recent of which became effective on the 7 October 2016. The following Acts, replace all previous legislation:-

- **Community Schemes Ombud Service Act, 9 of 2011 and regulations (CSOS)**
- **Sectional Titles Schemes Management Act, 8 of 2011, regulations and prescribed Management and Conduct Rules (STSMA)**
- **Sectional Titles Act 95 of 1986 as amended (STA)**

Becoming a **member of the Body Corporate (BC)** automatically happens when you buy into a sectional title scheme and transfer takes place into your name. With it comes the legal requirement of abiding by the relevant legislation which regulates your responsibility as an owner e.g. your obligations, duties, and rights.

Now you own a **section** of the complex = **your flat**.

Your **door number** may not always be your section number, as the original plans may have allocated section numbers to the **utility sections** first ( e.g. garages, storerooms, staff rooms) before getting to the sections that are living space/flats (**primary sections**).

Each complex is given a **sectional scheme number** e.g. SS 105/1980 which would indicate that this was the 105 building to be registered at the Deeds Office and this was actioned in 1980. This identifies the scheme, as buildings in different areas may have the same name.

**Common Property (CP)** comprises all the land and buildings that are NOT part of a section. e.g. gardens, tennis court, swimming pool, attic space, foyers, lifts, perimeter wall of the complex, the outside of the windows and doors, etc.

The CP cannot be divided up into pieces and *specifically* allocated to individual owners. When an owner buys a section, that owner automatically becomes the owner of an **undivided share of the common property**. This is generally in proportion to the sq. meters of the section, unless at the time of the development taking place, or under special circumstances, this is changed to a **nominated value**. Taking the floor area of one section and dividing it by the total sq. meters of all the sections added together, multiplied by 100 gives the owner of that section, the **Participation Quota (PQ)**. This is the portion of the CP he/she owns in his/her undivided share. The result has to be shown to four decimal place.

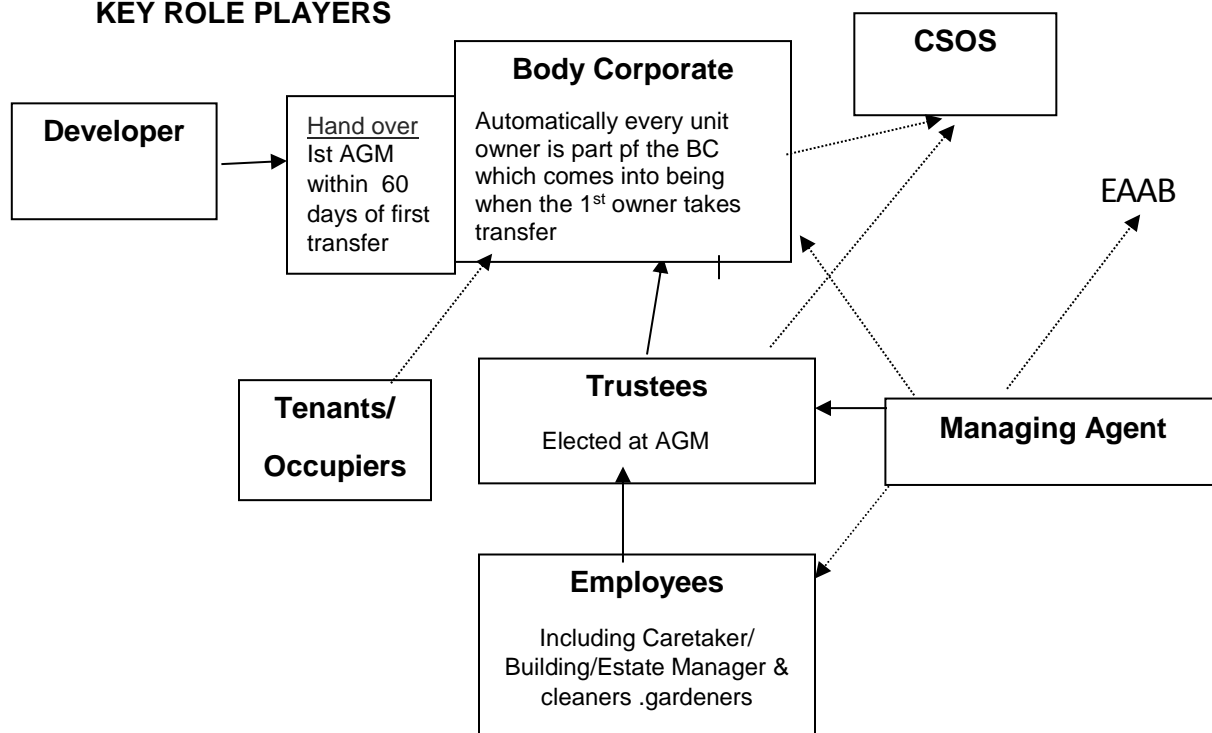
A **unit** is your section plus the undivided share of the common property, and this is used for e.g. ascertaining your insurance value.

The PQ determines the **value of your vote** and also defines what portion of the expenses/**budget** will be paid by you, as the owner of that particular section. This is the **levy**. The budget is required to determine what money needs to be raised for the following year to keep the BC in good running order and to maintain the required reserves. The budget is drawn up by the trustees and voted on at the AGM by the BC. An **interim levy**, to a maximum of 10% increase over the previous year's levy, can be raised by the Trustees from the first day of the new financial year. This will remain in place until the budget is approved at the AGM at which time it may change, depending on the final budget approved by owners. The Trustees are then required to pass a resolution based on this budget and setting out the levy and circulate it to owners within 14 days of the AGM.

**Exclusive Use Areas (EUAs)** can be created on the CP through the legislation. The holder of the EUA, has the right to use it exclusively. (*He/she does not own it.*) For this benefit, the holder will have to keep it clean and neat and also defray costs of repairs and maintenance. This can be by means of a EUA levy, or the holder must pay for the repairs and maintenance. Because an EUA remains part of the CP, the BC retains responsibility for seeing that the maintenance and repairs are done. Should the holder fail to do so, then the cost will be recovered from the holder, if the contributions/levies are not paid. EUAs could be parking bays, staff rooms, storerooms, garages, carports, etc. There are different ways that EUAs can be created, and the EUA may not necessarily be on the Title Deed, as they could be "scheduled" and approved by means of including them in the Conduct or Management Rules.

EUAs are linked to a section; *a person who is not an owner may not be the holder of an EUA.*

## KEY ROLE PLAYERS



**Trustees**, now called **Scheme Executives**, are the people who are nominated and voted for, at the AGM, by the owners and are entrusted with the control, administration and management of the complex. Since they are voted in by the owners, they can only be voted off as a trustee, by the owners, at a meeting specially called, the reasons for which must be provided.

STSMA clause 8 (1) clearly sets out the following fiduciary and minimum requirements expected of trustees. These are especially relevant as trustees are running a BC with a budget often the size of that of a small- to- medium business, in which owners have made a lifetime investment.

**8. (1) Each trustee of a body corporate must stand in a fiduciary relationship to the body corporate.**

**(2) Without derogating from the generality of the expression “fiduciary relationship”, the provision of subsection (1) implies that a trustee–**

- (a) must in relation to the body corporate act honestly and in good faith, and in particular–**
  - (i) exercise his or her powers in terms of this Act in the interest and for the benefit of the body corporate; and**
  - (ii) not act without or exceed those powers; and**
- (b) must avoid any material conflict between his or her own interest and those of the body corporate, and in particular–**
  - (i) not receive any personal economic benefit, direct or indirect, from the body corporate or from any other person; and**
  - (ii) notify every other trustee of the nature and extent of any direct or indirect material interest which he or she may have in any contract of the body corporate, as soon as such trustee becomes aware of such interest.**

**Education of trustees.** The CSOS Act specifies in clause 14(1) “ (a) to further substantiate the need for knowledge a scheme executive must (a) take reasonable steps to inform and educate himself or herself about the community scheme, its affairs, activities, and the legislation and governance documentation in terms of which the community scheme operates”.

e.g. if a trustee owning a paint company has an interest in supplying paint or has been supplying paint, and wishes to continue to do so, he needs to tell the trustees at the first possible opportunity which shall be minuted. He then will need to excuse himself on every occasion that decisions are taken on this item/matter.

If any trustee breaches these, he/she can be held responsible in their personal capacity.

There are some limitations on **who can be a trustee**, (e.g. the managing agent or employee unless that person owns a section in the scheme), but a trustee does not have to be an owner. Owners who are trustees may not be paid, unless there is a special resolution, and the amount is budgeted for. Trustees can be reimbursed for costs.

**Trustee meetings** should take place regularly so that the matters of the complex can be managed smoothly and move forward and get the required attention. Minutes have to be taken and include e.g. all decisions, the voting outcomes thereof, who attends, apologies and there has to be the required quorum present. Any owner may attend and speak, but not vote. But should there be any item which particularly concerns an owner, or a personal issue, those who are *not* trustees will be asked to excuse themselves.

On request, any owner is entitled to receive a notice of a trustee meeting and the minutes.

**Owners - Key obligations and duties** include:

- **Allowing access** to authorized staff into his/her section on notice, unless it is an emergency, in which case no notice is required
- Carry out any **work/repairs** required by the public, local authorities or BC
- **Use of the CP** without disturbing or interfering with others
- **Use the section or EUA** only for the original purpose for which it was intended (per sectional title plan) - unless the written consent of all owners is obtained
- Only make alterations to the section or the EUA that are approved in terms of the legislation.
- Maintain the **hot water cylinder = geyser**. Note - they are not always insured by the BC.
- Keep the section in a good state of repair and cleanliness
- Pay levies and contributions on time
- Abide by the **Conduct and Management Rules**, and take responsibility for their tenants, staff and visitors to do the same.

**The Community Schemes Ombud Service (CSOS)**

**[www.csos.org.za](http://www.csos.org.za)**

Key **functions/duties/responsibilities** include but are not limited to:-

- Regulating the **conduct of parties** owning property in schemes (not only sectional title **but** all community schemes)
- Providing **dispute resolution** through mediation and arbitration at a low cost.
- Ensure **compliance** with the legislation which pertains to ST
- Taking **legal action** against defaulting owners in respect of outstanding levies when requested by the BC.
- Approving (or not) proposed changes of Management and Conduct Rules
- Any person owning/occupying a property in the scheme may make use of CSOS if party to, or affected materially by a dispute (i.e. owners, and tenants and MA on certain aspects)

**Funding of CSOS** is via a levy to be paid by each owner; it is currently 2% of the BC levy (the first R500 is exempt). Maximum is R40 per month. This is to be added to the levy statement.

CSOS is empowered to hand-down **adjudication orders**, which may be enforced by the Court.

**The Managing Agent (MA)** may be appointed by the BC or the Trustees as an agent to carry out such duties and functions as may be delegated to them. These will vary from contract to contract, but the general duties/functions include:- the financial administration, maintaining governance documents, collecting of levies, wages, maintaining of bank accounts, payment of accounts, dealing with breach of rules etc. The ambit of the work needs to be in a detailed contract, to ensure areas of responsibility and liability. Trustees cannot automatically delegate everything to the MA. The MA is an **agent of the BC**, and as such may not take any decisions without a trustee resolution.

If the Trustees do not act on something, or take a decision, an owner needs to look to the Trustees for action, *and not the managing agent*.

## **Resolutions = Taking decisions**

Different levels of decision-making form part of the running of a BC. Underlying all decision-making is the need for a democratic process. The more serious a decision, or far reaching an outcome that is required, the higher the percentage of owners who need to vote in favour. These are all laid down in the STSMA.

The different levels of resolutions are :

- **Trustee resolutions** need to be taken by a majority; if there is a tie, then the Chairman has a casting vote. This is for day- to-day running of the BC in compliance with the legislation and any restrictions/directions given at the AGM  
Trustee resolutions can also be taken by **Round Robin** – whereby the proposed resolution can be sent to each trustee, who then must make his/her decision known, by a certain date/time.
- BC decision- **Ordinary resolutions** which require a quorum generally of one third of the owners, and 51% in value, to vote in favour (e.g. to approve the budget at the AGM).
- **Special resolutions to be taken by the BC** require at least 75% of a quorum of one third of the owners to vote in favour, counted both in number and value (PQ) (e.g. to change the Conduct Rules). If the quorum is less than 50%, wait one week before actioning the resolution.
- **Unanimous resolutions** require at least 80% attendance and all to vote in favour (both in number and value) - no opposition or abstentions (e.g. change management rule/s or lending of BC money)
- **Written Resolutions from every owner** are required for matters which have a far-reaching impact on the owners. (e.g. purchasing more land to increase the CP or change of use of a section or EUA)

**Insurance** is one of the key responsibilities of the BC, which is delegated to the Trustees. STSMA 3(1) sets out the following:- *“(h) to insure the building or buildings and keep them insured to the replacement value against fire and such other risks as may be prescribed.*

*(i) to insure against such other risks as the owners may by special resolution, determine.”*

If upgrades to the section or an EUA have been done by the owner, then it is the responsibility of the owner to increase the insurance to meet the full value of the upgraded section or EUA. It can be done relatively cheaply through the BC policy with the owner paying for the increase in premium. This will ensure that in the event of a claim, *the average clause will not be applied.*

The household contents of the section are *not covered* by the BC insurance, but built-in structures are (e.g. fitted carpets, desk, bookshelves, kitchen cupboards i.e. affixed to the walls). The owner is responsible for the excess.

The Trustees must obtain an updated valuation for the complex at least every three years.

**Special Levies:-** Trustees have the right to raise a special levy (being in addition to the current levy approved at the AGM), should an unbudgeted expense of an urgent nature, occur.

## Meetings:-

- **First meeting of the BC** – This happens when the developer hands over the complex to the BC comprising a minimum of one owner, and within 60 days of the establishment of the BC. There is a set agenda for it - STSMA 2 (8)
- **Annual General Meetings** need to be held every year, within a four-month period of the financial year end. This also has a formal agenda with prescribed items.
- **General Meetings** are also referred to as **Special General Meetings** (Not to be confused with Special General Resolutions). This refers to any BC meetings called which are neither the first meeting of the BC nor the annual general meeting.

The notice period depends on what decisions have to be taken, but the minimum is 14 days,

## Alterations and Renovations:-

*MR30 "The BC must take all reasonable steps to ensure that a member or any other occupier of a section or EUA area does not:-(d) make any alterations to a section or an EUA that are likely to impair the stability of the building or interfere with the use and enjoyment of other sections, the CP or any EUA*

*(e) do anything to a Section or an EUA that has a material negative affect on the value or utility of any other section or EUA"*

Alterations by the owner may only take place **in** the section, or **on** an EUA, but *not on the CP*. It is best to get permission from the trustees (who may not unreasonably withhold it,) The trustees need to ensure that the building or other owners are not put at risk (e.g. some walls are loadbearing and tampering with them could be very dangerous; plumbing or electricity changes could affect many owners.) Most schemes have their own renovation/alteration requirements, (sometimes in the Conduct Rules) and will cover such issues as the need for contractors' insurance, a deposit payable in case of damage to the CP, restricted working hours, and requirements to maintain a harmonious appearance etc.

In the event that an owner wishes to **extend the section by incorporating the EUA**, there is specific legislation that needs to be followed. The EUA is part of the CP which belongs to every owner in undivided shares. By including it into one owner's section, the size of the CP is reduced, and that owner's section *increases in sq. meters* (=higher PQ). Because of the PQ formula calculation, the PQ will *decrease for every other owner*, and affects the levies payable and voting rights.

The manual **Keyword Access to the Sectional Title Legislation** will assist you **to become further empowered as an owner or trustee** and to work with the sectional title legislation easily and quickly. It offers the chance of **finding what you need to know in <60 seconds**. It is a legitimate expense for the BC to have a copy/ies for the trustees. Look up the word /aspect in the comprehensive index which will provide the page number/s and the relevant clause/s of the relevant Acts; all together in one manual. [www.keywordaccess.co.za](http://www.keywordaccess.co.za)