



SECTIONAL TITLE - SOME BRIEF EXPLANATIONS:

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. As mentioned above, 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?

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.

Ideally, a trustee should possess skills or qualities which will be of benefit to the scheme. Accounting or legal knowledge, organisational abilities, knowledge of electrical or mechanical matters, the ability to type or bookkeeping skills are much in demand, and can save the Body Corporate a lot of time and trouble! 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.

In cases where these rules were amended, these amendments still apply as long as they are not irreconcilable with the 1986 Act. An excellent and detailed discussion regarding Rules will be found in "The Sectional Title Handbook," by Graham Paddock, published by Juta.

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.