

Paddocks

PRESS

WHY KNOWLEDGE REALLY IS POWER

WHAT IS PADDOCKS PRESS?

An ad-hoc **free** digital newsletter published to educate and update the sectional title community.

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By Judith van der Walt

In this very competitive world we are living in, the person with the combination of the best qualifications and relevant industry experience will probably get the job. Even though experience is invaluable, a knowledge foundation will allow a person to interpret experience quicker, making him or her the better person for the job.

In a technical field such as the management of sectional title buildings, managing agents are faced with a minefield of issues every day, such as illegal parking on the common property, unauthorised changes to the buildings, difficult tenants who have no regard for the rules of the scheme, the enforcement of the rules, how to make and implement new rules, who may spend the body corporate's money, how to collect money for the body corporate, etc. Wrong decisions can be costly and lead to confusion and resentment amongst the owners. And the longer the problems remain, the more difficult it becomes to restore good rela-

tionships and keep the peace and harmony in these densely populated communities.

A managing agent who understands the requirements of the Sectional Titles Act and how to manage a body corporate in general, is a valuable asset for any set of trustees. The more a managing agent knows, the more secure the trustees can be in the knowledge that the scheme is managed in accordance with the provisions of the Act, and that conflict between the owners and the body corporate can be avoided even before it starts. People living in sectional title ...to page 2

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By Prof. Graham Paddock

BUYING SECTIONAL TITLE PROPERTY – BASICS AND CHECKLIST

Sectional title is a system in which 'sections' of buildings are individually owned. A 'sectional plan' shows the sections – which are individually owned – and the 'common property', which is the land and all parts of buildings that are not part of any section. Copies of the sectional plan for a scheme are

available both from the local Surveyor-General's office and from the relevant Deeds Registry. The common property is owned jointly/in common by all the people who own sections. Some parts of the common property may be set aside for 'exclusive use' by particular owners.

Sectional title ownership is secure. As with conventional property, the Deeds Registry keeps records of the owner of each section and of any registered 'exclusive use rights', to areas such as parking bays and garden areas.

Sectional title is not only used for homes, it can ...to page 2

WHY KNOWLEDGE REALLY IS POWER ...continued

...from page 1 buildings usually do not have time to concern themselves with the daily management of the scheme, which is all the more reason why a competent managing agent should be employed to assist the trustees and the owners in the administrative and general management of the building.

The more knowledge and experience one has in a specific field, the more confident one is when implementing the management decisions on a practical level. A set of trustees will soon

realize if their managing agent does not have enough sectional title knowledge to assist them in their tasks, something which could be to the detriment of the scheme and the managing agent's business.

Knowledge is indeed power and in our small sectional title communities where every owner wants his voice heard, this power in the form of a confident and qualified managing agent is exactly what a scheme needs to function optimally without unnecessary conflict and mismanagement.

If you are interested in learning about the legal aspects of managing a scheme, please contact Christina at christina@paddocks.co.za or on 021 674 7818 for information on the UCT Sectional Title Scheme Management Certificate course. This part-time course is presented nationally by Paddocks in conjunction with the University of Cape Town. Should you wish to find out whether your managing agent has completed this course and has received the certification, please contact Christina or check the list of graduates at www.paddocks.co.za. ■

BUYING SECTIONAL TITLE PROPERTY...continued

...from page 1 be applied to offices, hotels, shops, factories, holiday accommodation and resorts, etc. Sectional title ownership is possible in high-rise buildings, low-rise clustered structures or entirely separate buildings.

As a sectional owner you own your section - perhaps a number of sections, such as an apartment or townhouse and a garage. The boundaries of your section are the centre lines of the walls, floors and ceilings that surround it. You will also own a share of all the common property in the scheme. The size of your share in the common property is usually based on the floor area of your section and is shown in a 'Participation Quota Schedule' at the back of the sectional plan. This is usually the basis for the calculation of each section owner's contribution to the common expenses of the scheme - known as their 'levy' - and the value of the owner's vote at all meetings for the body corporate.

Your section, with its share in the common property, is known as a 'unit'. You may also have 'exclusive use rights' to one or more parts of the common property. These parts, known as 'exclusive use areas', are defined parts of the common property set aside for exclusive use by particular owners.

Scheme management

Every scheme has a body corporate which exists to administer the scheme and manage the common property. It is run by owners, who by law and by requirement of the prescribed management rules meet at least once in each financial year, and by its elected trustees. As a sectional owner you have a right to make yourself available to act as a trustee, but you do not have to do so.

The trustees are not normally paid for their services and in most schemes they employ 'managing agents' to help them

perform the day-to-day management tasks. The managing agent usually provides a full accounting and levy collection service, deals with the payment of body corporate accounts and generally assists in all aspects of managing the scheme.

The body corporate must insure the buildings (which include the sections and the common property), all the common facilities and any movable property it owns to full replacement value. Owners must insure their own furniture, fittings and personal effects.

Each year a budget is prepared by the trustees or managing agent if you have one, estimating the scheme's income and expenditure for the forthcoming year. This must include a reasonable provision for future maintenance and repairs to the common property. The budget is approved by owners at an annual general meeting and is the basis for the annual levies ...to page 3

BUYING SECTIONAL TITLE PROPERTY . . . continued

...from page 2 raised by the trustees and payable by all owners.

Levies are the contributions, usually paid in monthly installments, which each owner makes to the scheme's running costs. If the body corporate encounters a necessary and unbudgeted expense, the trustees can declare a 'special levy' without calling a general meeting and each owner will be liable for their share of the additional

amount.

Rates have historically been paid by bodies corporate and recovered from owners, but local authorities are in the process of introducing separate rating of units. By mid-2009 owners of units throughout South Africa will pay their own rates and taxes calculated on the value of their units.

Consumable utilities such as electricity, water and gas are sometimes supplied to

the body corporate which then recovers the costs from individual owners. When they have the capacity to do so local authorities will bill sectional owners separately for these supplies.

An informal extension of a section is irregular and gives rise to inequities in levy liabilities – in order to cure such a situation the section has to be formally/legally extended and this has cost implications.

Checklist for buying sectional title property

In addition to carefully considering the content of the offer/sale document, prospective purchasers of sectional property should also carry out the following checks before committing to a purchase:

- Look at the sectional plan, to determine your section boundaries, the scheme boundaries and that any section you are buying has not been informally "extended" or altered. An informal extension of a section is irregular and gives rise to inequities in levy liabilities – in order to cure such a situation the section has to be formally/legally extended and this has cost implications.
- Establish by looking at the sectional plan and the rules of the scheme who owns or has exclusive use rights to parking, garden, storage areas, etc. Make sure that you are obtaining rights to any area you expect to be able to use exclusively, such as a parking bay or garden area and whether they will be recorded at the Deeds Registry or in terms of the scheme rules.
- Check the participation quota of the sections. This usually determines your share of the body corporate expenses which you pay monthly in the form of a levy and the value of your vote.
- Get a copy of the scheme rules - read these and look particularly for any rules that change your liability for levies, restrict your rights to deal with your property or create exclusive use rights.
- Check what, if any, title deed conditions were imposed by the developer or the local authority for the scheme – these could restrict your ability to lease or transfer your property.
- Check the current monthly levies and what expenses are included in the most recent operating budget.
- Inspect the condition of the scheme's common property, to assess the likelihood of any significant expenses for repairs and maintenance in the near future.
- Read the most recent set of financial statements - look particularly to see if there are sufficient reserves for maintenance and unexpected expenses.
- Find out whether the body corporate owes money to a levy financier (An entity which lends money to a body corporate to supplement its funds depleted by the non-payment of levies so as to give it the cash flow it needs to pay its regular expenses), the local authority or a supplier, and if it is involved in litigation or has judgments against it.
- Check the amount and type of insurance cover and the current insurance replacement value allocated to the section. ■

BACK TO BASICS

BY JUDITH VAN DER WALT

The Common Property Gardens**Judith van der Walt**

When a family buys an apartment in a scheme with a big expansive garden which forms part of the common property, they probably contemplate that the children can play in the garden in the afternoons after school, or maybe even on a Saturday morning. Until one morning, when they see the bulldozers coming to prepare the area to be paved or to place elaborate water features in an area which was previously covered with thick grass and beautiful shrubs. The questions on everybody's lips would be: who authorized the changes to the gardens and were they entitled to change the gardens without taking the views of the other members of the body corporate into account?

If the presence of the gardens or open spaces is a motivating factor for purchasers to buy an apartment in that specific scheme, it would be worth their while to enquire from the trustees or the managing agent whether any plans have been

approved to make changes or improvements to the gardens. If, on the other hand, changes are made to the gardens at a later stage without consulting them, the owners will be able to argue that the trustees are interfering with their legitimate expectation to use the gardens for recreational activities.

The motivating factor behind sudden changes to gardens could be the fact that children play in the gardens and cause a disturbance to some of the owners or tenants in the scheme. The presence of children in a scheme and the sounds associated with their playing outside could never serve as a reason to change the basic nature of a part of the scheme which belongs to all owners in undivided shares, namely the common property gardens. Children will always play outside and except in circumstances where their playing causes a real nuisance, they cannot be prohibited from playing in the gardens and enjoying that which they are entitled to.

The other argument against changes to gardens is the fact that trustees have to be authorized by the owners to make improvements to the common prop-

erty, after duly informing owners of all proposed changes. All improvements to the gardens which go beyond the scope of maintenance have to be approved by members by special resolution if any owner requests a meeting to discuss the suggestion. Where grass is to be replaced with paving, it could even be argued that paving is unnecessary and therefore a luxurious improvement to the gardens, which improvement has to be authorized by a unanimous resolution.

Even though the Sectional Titles Act of 1986 clearly states that the trustees are empowered to, where practicable, establish and maintain on the common property suitable lawns, gardens and recreation facilities, this power does not entitle them to make major changes to the nature of the common property without consulting the owners, especially in circumstances where the reason behind the change is to deter children from playing outside. The decision making process in a sectional title scheme is designed to be an inclusive process, and is not a right reserved for the privileged few. ■

Registrations close on the Friday 6th June 2008 *for the*

UCT Sectional Title Scheme Management Certification Course

Please contact Christina on 021 674 7818 or Christina@paddocks.co.za for more information.

Sectional Title Certifications

To date, over 720 students have completed sectional title University courses. We, at Paddocks, are proud of our students' academic achievements and have published, via our website, a comprehensive list of students who have passed the following courses:

- UCT Sectional Title Scheme Management Certificate Course
- UCT Advanced Sectional Title Scheme Management Course
- UCT Sectional Title Specialist Realtor Certificate Course

You may now check whether your managing agent or estate agent is certified by visiting the Paddocks website

(www.paddocks.co.za) or the Sectional Titles Online (www.sto.co.za)

How do you confirm whether your managing agent or estate agent is certified?

1. Go to the Paddocks website (www.paddocks.co.za) or Sectional Titles Online (www.sto.co.za)
2. Click the link "Check now", which will be displayed on the right hand column on the website
3. You will be taken to a "check certifications" page where all students are listed alphabetically via surname.

Should you experience any problems with this page, please contact Robyn on 021 674 7818 or robyn@paddocks.co.za. ■

Does your
managing agent
or estate agent
have a sectional
title certification?
> check now

SECTIONAL TITLE SPECIALIST REALTORS



Congratulations to the class of February 2008 for completing the third presentation of the UCT Sectional Title Specialist Realtor Certificate Course!



The next course will start in August 2008 and run until November 2008.

Q & A WITH THE PROFESSOR



By Prof.

Graham Paddock

Procedures necessary to authorise improvements

Q1: We have just received a letter stating that a special meeting is to be convened to discuss security. No other information is given, no details as to what the trustees propose, the costs, how any expenditure is to be paid etc.

Over two years ago the trustees agreed to obtain quotations for various alternatives to upgrade security as it may include building a lot of boundary walls. But nothing has happened.

It seems that 25% of the owners might have called the meeting to speed things up. Has the correct procedure been followed? Can a resolution be obtained at the meeting as no notification of this intention is stated in the letter?

A1: Prescribed Management Rule 33(2) is very specific as to the procedure which must precede any expenditure of body corporate funds on improvements to the common property.

In this case the meeting called cannot make a binding decision on the amounts, if any, which will be spent and what they will be spent on. But at the meeting a majority of owners can give the trustees specific directions as to

how they must take the process forward and the trustees will be bound by those directions.

Scheme telephone directory

Q2: We have previously had an internal telephone directory for our sectional title complex. It has not been updated for some time and when I requested this from the trustees I was told that some people do not want everyone to have their contact details.

Surely we should have contact details. What if there is an emergency?

A2: The body corporate must keep the names and addresses of the persons who are the trustees of the body corporate and those of the members of the body corporate and make them available on request (in terms of section 37 of the Act) but this obligation does not extend to telephone numbers.

That does not mean that a body corporate cannot or should not keep and publish an updated internal telephone directory, only that they are not obliged to do so unless a majority of owners direct them to.

Developer delaying registration of new sections to avoid levies

Q3: Our scheme has been extended. New sections have been completed but sales are slow. As a result the developer has given specific instructions not to register the sectional plans of extension showing the extra sections that have

been built. This avoids him having to pay levies on the new units.

We have 25 houses covering the costs that 75 houses should be covering due to the slow development. What can we do?

A3: Section 25 (5A) of the Sectional Titles Act was inserted specifically to deal with this abuse of a future extension right. The developer owes the body corporate "quasi levies" (as if the section was registered) if a sectional plan is not registered within 90 days after a section is completed to the extent that it can be occupied.

Levy increase for maintenance

Q4: Our complex is twenty five years old and consists of eight residential units. Due to age, maintenance is a continual necessity with high repair costs causing rapid reduction in our financial reserves.

The trustees feel that they need to increase the levy by R250 per unit per month to cover these costs. A written request to all owners with signed acceptance is to be distributed and returned to the trustees. Would this avenue be legal?

A4: If you are going to have an annual general meeting in the next few months, this would be the time to deal with a substantial increase in the currently levies, perhaps agreeing that a portion of the levies paid each month will be credited to a reserve account for maintenance expenses.

...to page 7

Q & A WITH THE PROFESSOR ...continued

...from page 6 The first difficulty with your idea of just increasing levies by R250 per unit per month is that during the course of financial year neither the trustees nor the owners can increase the ordinary levy - which is inextricably linked to the budget approved by owners at the last annual general meeting. But if a necessary expense has arisen which does not fall within a category that was budgeted for at the last annual general meeting, then in terms of prescribed management rule 31 the trustees are entitled to raise a "special levy".

Another possible difficulty is that levies are only charged equally to each unit in the scheme if the participation quotas of all the sections are equal. If this is the case then there is no problem, but if not then this and any other levies must be charged to owners according to the participation quotas of their respective sections or the provisions of any scheme rule which caters for liability on a different basis.

Permission to park on common property

Q5: The new board of trustees sent out a letter advising all owners to obtain permission to park on the common property (quoting prescribed conduct rule 3). Our block consists of 27 units each having their own lock-up garage. There are 17 parking bays on the common property.

1. When permission is requested and granted is it only for the occupant of a unit?
2. Do you have to obtain separate permission to allow a visitor to park on the common property?
3. Is there any municipal bylaw stating that there needs to be a certain amount

of parking bays reserved and made available for visitors and do you need permission for them to park in these bays?

4. As an owner of a unit who allows their family to occupy the unit, do I need permission to park on the common property as a visitor?

5. Can permission to park on the common property be withheld?

6. Must all correspondence received from the trustees or managing agent be signed to be enforced?

A5: Where an area of the common property is marked as a parking bay and is not subject to any exclusive use rights, any owner may park a car in any of those bays. The use of these bays is governed by the principles of co-ownership which require that all owners may use them, but none may use them excessively or abuse their shared use rights.

Yes, all zoning schemes require that a certain amount of visitors' parking be provided; check with your local authority as to the specific requirements applicable to your scheme. A fairly usual requirement for general residential property is one visitor's parking bay for every four units, so your scheme probably has more than enough visitors bays in total, but bear in mind that the visitors bays cannot be made subject to exclusive use rights in favour of owners.

The required number of bays should be marked for use by visitors. In practice visitors' bays are often used by residents, but it would be contrary to the zoning scheme for trustees to run a

system whereby owners apply for and are given permission by the trustees to use the visitors' bays which, by law, have to exist and be available for visitors.

If there is room on the tarmac surface which forms part of the common property, it would make sense for the trustees to mark out more bays so that one can be allocated to each unit.

Permission to park on the common property can only be withheld if the vehicle is to be parked in an area not designed for parking, e.g. the grassed lawn, or where the vehicle would be a nuisance, for example by impeding access by other vehicles. All actions taken by the trustees in the management of the scheme must be reasonable.

The status of the trustees' letter is no more than an indication by the trustees of the way in which they intend to apply prescribed conduct rule 3. It does not have to be signed because it has no official standing, i.e. it is not a document or an 'instrument' of the body corporate.

At any general meeting a majority of owners present or represented can, under section 39(1) of the Act and by simple majority vote, give the trustees specific directions as to how they must apply PCR 3. If you don't like the system the trustees have proposed, get the majority of owners at a meeting to direct them to apply its provisions in a different way. ■

Upcoming Events in the Sectional Titles Industry

Date	June Events
2, 3 June	UCT Scheme Management Course Workshops—Cape Town
4, 5 June	UCT Scheme Management Course Workshops—Durban
6 June	Registrations close for June 2008 UCT Scheme Management Course
6, 7 June	UCT Scheme Management Course Workshops—Johannesburg
7 June	Somerset West Sectional Title Association Seminar
17 June	June 2008 UCT Scheme Management Course starts

Paddocks Press will now feature a comprehensive list of all sectional title events throughout South Africa. Please email all event details to Robyn at robyn@paddocks.co.za.

New!

ABOUT PADDOCKS

Paddocks is a specialist sectional title firm providing a range of products and services through its **Learning, Consulting, Development, Publishing,** and **Software** divisions.

Prof. Graham Paddock is the head of Paddocks, an authority on Sectional Title law and practice and an adjunct Professor at the University of Cape Town. He is the Project Manager and one of the lead consultants to the Department of Housing in the restructuring of the Sectional Titles Act and the establishment of an Ombuds Service.

Learning

Together with the Universities

of Cape Town and Stellenbosch as well as the National Association of Managing Agents and other professional organisations, Paddocks Learning offers several sectional title certificate courses, seminars and conferences.

Consulting

Graham Paddock leads the consulting division and is assisted by Judith van der Walt. Paddocks Consulting deliver consulting, drafting and representation services, primarily to sectional title bodies corporate, but also to developers, owners and others involved in schemes. They consult to various levels of central and local

government and act as mediators and arbitrators of sectional titles disputes. The consulting team also offers conveyancing services.

Development

Paddocks Development leverages the firm's sectional title expertise to complete niche sectional title property developments in the Western Cape.

Publishing

Since 1983, Graham Paddock has written sectional title books, pamphlets and training manuals for trustees and managing agents. Paddocks Publishing sets, prints and publishes a range of electronic

and 'hard copy' sectional title publications by Graham and other authors which make Sectional Title expertise easily accessible to the South African population at large.

Software

Paddocks Software designs and manages the production and distribution of a variety of software tools which provide substantial efficiency gains to those involved in sectional title management and consulting.

Please see

www.paddocks.co.za for more information ■