

# Paddocks

## PRESS

### - SPECIAL GENERATORS EDITION -

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

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#### DO SCHEMES NEED EMERGENCY POWER GENERATORS?



By Prof. Graham Paddock

The newspapers have been full of reports predicting that the supply of power from Eskom is likely to be irregular over the next few years. **"Crisis summit on blackouts"** is a typical front page headline. It seems that power-shedding programmes will be instituted and that we as

South Africans must accept and address the reality that we cannot depend on a regular and consistent supply of electrical current over the next few years.

Managing agents and the trustees of residential sectional title schemes have been inundated by enquiries by owners and occupiers of sectional title units as to whether they can install power-generating machines, such as small generators driven by petrol or diesel internal combustion engines which will supply sufficient power to keep electrical equipment functioning during power cuts.

In some schemes owners have suggested that the body corporate should purchase and install an industrial-strength generator so as to be able to supply power to the scheme when Eskom power is not available. Owners point out that most security equipment is powered by electricity and that during power cuts electric fences and remotely controlled vehicle and pedestrian gates will not operate, leaving them as well as their property in a vulnerable position.

According to local authority environmental health officers, there are no (to page 2..)

#### UNDERSTANDING THE ACCOUNTING TREATMENT OF THE PURCHASE OF A GENERATOR BY A SECTIONAL TITLE BODY CORPORATE



By Clint Riddin

The financial consideration as to whether or not to install a gen-

erator is not just about whether there are sufficient reserve funds available, or to fund the installation by way of a special levy, but also the running costs of the generator. These generators operate on petrol or diesel,

and arrangements need to be in place to have the fuel delivered and stored, where the generators are of the larger kind, which also adds to the cost of the fuel. There is not a compensatory (to page 5...)

## ... DO SCHEMES NEED EMERGENCY POWER GENERATORS ?

(from page 1..) legislative prohibitions or restrictions on the installation and operation of generators in sections or on the common property within sectional title schemes. But they are receiving a significant number of enquires in this regard and are considering whether it is necessary to frame regulations. So trustees, owners and occupiers of sectional title units only have to deal with any restrictions which may be imposed in terms of their management or conduct rules in this regard.

If the trustees are willing to consider the purchase of a generator to keep the scheme's essential services running during power cuts, this expense might well justify the raising of the special levy. It might be argued that a small generator is a movable item and that its purchase can be authorised by the trustees. But if the generator is sufficiently large so that it cannot easily be moved and/or if it is not designed to be moved but to be permanently placed on the common property, then the purchase will be an "improvement to the common property" that needs to be authorised in terms of prescribed management rule 33, usually by special resolution. The trustees should also consider very carefully where the generator should be placed so as to minimise any disturbance to occupiers arising from the noise and exhaust fumes generated during its operation and where

its fuel will be stored.

But what do the trustees do if an individual owner or occupier tells them that he intends to buy and install his own portable generator, not to service the needs of the scheme but to provide power only within his own section? One of the issues which arise is whether some of the power needs within sections cannot more sensibly be met by the provision of gas-powered cooking and heating installations. One can certainly cook and boil water using relatively cheap gas cylinders and appliances. In any scheme that has hot-water geysers, water remains warm for substantial periods and it should not be necessary to use additional emergency power systems to heat bathing water on a regular basis. But much of the other electrical equipment normally operated in a section cannot be run during a power cut and some occupiers have indicated that they intend to operate private generators within their sections.

But where would the "private" generator be placed? To operate a generator within an enclosed section is clearly not sensible as the exhaust gases from the engine will have to be vented onto the common property if they are not to poison the occupants of the section. In addition an internal unit is likely to make a considerable noise which will

almost certainly disturb neighbours. Local authorities such as the City of Cape Town have already received complaints relating to the noise made by generators in sectional title schemes; which emphasizes the importance of placing generators and fuel supplies in positions that which will cause as little nuisance as possible to other occupiers. Due to the health and safety hazards associated with a private generator, it is our view that no occupier should be allowed to operate an internal combustion engine within a residential section.

In some cases owners have asked for permission to place these private generators outside their sections on the common property, in the same way in which they may ask permission to place the external heat-exchange unit of an air-conditioner outside a section so as to provide cooled or heated air within the section. When trustees are faced with such a request we suggest that they should be careful to ensure that the proposed generator is properly vented and sound-proofed, that it will not negatively affect the appearance of the common property, drip fuel and/or oil on or otherwise damage the common property. And if such permission is given, it should be temporary in nature, subject to conditions and capable of being withdrawn when, in the opinion of the trustees, the need (to page 3..)

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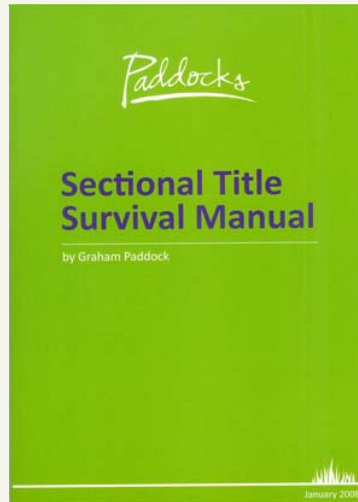
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## ... DO SCHEMES NEED EMERGENCY POWER GENERATORS?

(from page 3...)for the generator no longer exists. The trustees might consider leasing a small area of the common property to owners for this purpose, ensuring that the lease can be terminated if the generator installation causes any nuisance and when the supply of power from the national grid becomes reasonably dependable.

In summary, if trustees consider that a body corporate generator to supply power for scheme services during Eskom power cuts is necessary, they should motivate the spending of body corporate money to acquire the necessary equipment; but they should not agree to owners or occupiers placing their own generators on the common property except in the most unusual and compelling circumstances, and then only under stringent conditions.

Finally, the trustees of residential schemes that have lifts should enquire from their lift maintenance company what effect a power cut will have on a lift which is travelling between floors carrying passengers. Trustees need to know and ensure that the scheme lifts will continue to the next floor and allow passengers to leave the lift safely in the event of a power cut, or that there are other practical measures in place which will ensure that trapped passengers are released within a short period. They also need to check what battery backup systems are fitted to their access control systems and make sure that occupiers know how to access the scheme when there is no mains or battery power available. Trustees need to get practical advice that they can pass on to all owners and occupiers. ■



The January 2008 edition of the Sectional Title Survival Manual is now available in both English and Afrikaans.

The book retails for R265 (incl. P&P) and is available nationally.

To order contact Amy on 021 674 7818 or e-mail at amy@paddocks.co.za

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## AN INSURANCE PERSPECTIVE ON GENERATORS IN THE SECTIONAL TITLE ENVIRONMENT



By Brian Addison

It would be important to establish who owns the generator. A unit owner who privately acquires a portable generator would be expected to insure same on his own policy. Should the Body Corporate purchase a generator for use, then it should be insured by the Body Corporate on its policy.

A large generator (say at a purchase price of R250 000) that may be installed as a more permanent fixture, should be added to the policy and specified for value in the 'buildings combined section'. The generator would be covered against the usual perils as defined (fire, storm, tempest, flood, impact etc.) however excluding theft in circumstances where it may be exposed. Should theft cover be required then it is recommended that 'All Risk' cover be applied.

It stands to reason that a portable version of a generator (say purchase price R10 000) should preferably be covered on an 'all risk' basis as it would be more prone to theft risks, more so whilst not in use.

It could be argued that the larger fixed generators would not be a theft risk (too heavy etc), however be reminded of the ever increasing scourge of scrap metal/wire theft – i.e. theft of part of the equipment by stripping!

In approaching the three specialist insurers underwriting sectional title business, the following advices and points are raised:

1. Installation should be carried out by suitably qualified contractors who should provide the necessary compliance certification.
2. Attention should be given to building safety regulations and municipal by-laws with particular reference to noise and storage of fuel.
3. It would be prudent to invite your broker and insurance company surveyor to assess the risk as applicable to your building. This would allow for the insurer to apply terms as may be required.
4. Suitable disclaimer boards should be

placed around the installation warning of possible dangers. These dangers would depend on the type of generator involved – eg. Loose wires, heat, fumes etc. Failure to comply with safety regulations and general common sense could result in liability claims against the owner of the generator.

Discussions seem to suggest that each installation would be unique in terms of placement, depending on the needs and demands of the building. It is therefore strongly advised that your insurer be notified of the installation, regardless of the insurance requirement, as unique non-standard risks may present themselves. ■

### Does your lift go all the way to the top?



Electricity blackouts have now become a permanent feature of South Africa's landscape for the foreseeable future, leaving owners and tenants facing several potential hazards:

- lifts out of operation, leaving you taking the stairs
- increased risk of security breaches
- increased risk of personal injury

A generator is the obvious solution, but how does a body corporate raise the finance for this capital expense? For more information about how Propell can fund your scheme's special levy requirements give us a call.

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...THE  
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CHASE OF A  
GENERATOR BY  
A SECTIONAL  
TITLE BODY  
CORPORATE

...from page 1) saving in electricity when the electricity has been switched off.

The decision to use reserves must also be evaluated in terms of ensuring that the reserve fund is replenished to the level before the payment for the generator and so future budgets need to provide for this. Future maintenance costs of the equipment must also be taken into account when preparing future budgets.

The accounting treatment of the purchase should also not look to capitalise the generator as an asset on the balance sheet and then depreciate the asset; in sectional title accounting it is always best to try and get the accumulated position to be as close to the bank position as possible. By capitalising the purchase the reserve fund will still look good, but the bank balance will have been depleted, and it is money in the bank on which any organisation relies, a body corporate included. The stronger reserve position brings false security, so it would be advisable to expense the purchase to the income statement on acquisition, leaving R1 on the balance sheet for fixed asset control purposes. In this way the reserve position more closely mirrors the bank position, leading to a more meaningful document relative to financial decision-making. ■

THAT SCENIC VIEW MAY BE A  
LONG WALK IN THE DARK

By Hermien Stofberg of Propell

Scenic views from the sixth floor flat may have been a huge selling point in years gone by, but the prospect of regular load-shedding and interruption in lift service may reduce the attraction for existing owners, renters and future buyers.

Not only is this of concern to owners and investors, who will see significant value vaporise before their eyes, but spare a thought for those who find the prospect of a multi-storey trek to their apartment a physical impossibility. In some cases, apartments above the third floor will become un-rentable until the power situation is resolved – and there's no short-term solution.

For people living in high-rise buildings, where operating lifts and emergency lighting is an absolute necessity, the obvious answer is the installation of a standby generator but few sectional title schemes have the financial resources needed for this type of immediate cash outlay. Thankfully Propell has created a specialised project-finance product tailored for these situations.

While sectional title living is the fastest-growing form of property ownership in South Africa – there are an estimated 800 000 sectional owners in the country – financial institutions have been hesitant to fund common-area improvements such as generators because of the scheme's multi-owner status and difficulty in obtaining suitable loan security from the body corporate.

Propell specialises in providing tailored financial solutions for sectional title schemes. The company made its mark as the leader in levy financing and collection – one of the common problem areas in sectional title living – and is one of the

few companies ready to finance common-area improvements.

While not all schemes require generators to operate lifts, just about every complex does have a need for lighting and uninterrupted security. One of the unfortunate side-effects from the publication of load-shedding schedules has been the ease with which criminal elements are able to target properties because they know beforehand when security systems and lights will not be operational. A standby generator could eradicate this problem.

Typically most schemes struggle to build sufficient financial reserves for scheduled maintenance such as painting, so the prospect of spending several hundred thousand rand on a generator is often out of the question. With Propell's innovative financing option the opportunity of purchasing a standby generator is available to even the most modest complex. Propell can step in, provide the finance up-front and collect the special levies directly from each owner over an agreed period.

Safety and the protection of value are major considerations. Apartments that previously fetched huge premiums and higher rentals because of their panoramic views could face severe discounting if lifts are unable to operate 24/7. When you consider that for most people, their home is the biggest investment, any loss in value could be devastating.

For more information on how special project financing can assist your sectional title scheme contact Propell on 0860 00 5050 or email

contact@propell.co.za ■

## IS A SCHEME GENERATOR A 'LUXURIOUS' OR 'NON-LUXURIOUS' IMPROVEMENT?

**By Prof. Graham Paddock**

Prescribed management rule 33 sets out the principles which apply when the trustees wish to spend body corporate funds on improving the common property. In summary, if the improvement is "luxurious" a unanimous resolution of owners is required and if the improvement is "non-luxurious" the trustees start a process in which the proposed improvement can be approved either by informed non-action (all owners get the details and none of them asks for a meeting within 30 days) or by special resolution of owners (at a meeting called to consider the issue, three quarters of the owners present or represented at that meeting - calculated in number and value - vote for the improvement).

Of course, PMR 33 may not apply at all! Section 38 (c) of the Act gives all sectional title bodies corporate the power to purchase, hire or otherwise acquire movable property for the use of owners for their enjoyment or protection, or in connection with the enjoyment or protection of the common property. So if the body corporate has the funds and the trustees decide to buy a portable generator and do not affix it permanently to the existing common property, that generator will be a "movable" and not become part of the scheme's common property. On the other hand, if the generator is attached to the common property permanently, or with the intention that it remain indefinitely, it will be considered to have become part of the common property and PMR 33 will apply.

But in most cases where a body corporate considers buying a generator it will be a large piece of equipment which will be installed so as to be permanent, and PMR 33 will apply. So when is the purchase of a non-portable permanently installed generator a "luxurious" improvement to the common and when would it be considered "non-luxurious", and why is this distinction so important?

If a proposed improvement to the common property is of a luxurious nature, any owner who does not want the trustees to proceed can argue that because a unanimous resolution is required he is able to effectively veto the procurement process by exercising a contrary vote. On the other hand, if the proposed improvement, in this case the generator, is properly classified as "non luxurious" then even if there are owners who are against the purchase, the majority can approve it - as long as they can get the positive votes required to take a special resolution at the meeting called to consider the trustees' proposal.

The proposal is to spend the body corporate's money - collected from all owners - and the importance of the distinction boils down to a question of financial control. Can one owner or a few owners veto the exercise or can the majority force it through even though one or more owners - but not enough to stop a special resolution - don't want the body corporate to buy and install the generator?

Something that is considered a luxurious improvement to the common prop-

erty must, in my opinion, not be considered necessary for the normal use and enjoyment of the sections and common property in the scheme. It must be a "nice to have" rather than a "need to have" item.

If a sensible person or family living in a particular sectional title scheme (a person or group of normal, average tastes and habits within that scheme) considers that they can get on perfectly well without a scheme generator despite the reasonable certainty of power cuts i.e. they believe that candles and gas equipment, solar power or wind energy are practical alternatives and allow them to maintain reasonable standards of living, then in that scheme a generator may be considered to be luxurious and any owner could veto the proposal.

But in another scheme "Mr Average" and his family may feel that a generator is a real necessity, perhaps because they cannot make sensible alternative arrangements to keep access control systems, security fences and lifts running for the periods during which power cuts are expected to endure. If in this scheme the absence of a generator is expected to have a serious negative impact on the quality of life of residents, the acquisition of a scheme generator is a non-luxurious improvement to the common property.

What should trustees do if they feel that a generator would be a sensible scheme investment but are unsure of whether PMR 33(1) or 33(2) applies in their particular scheme?

Get quotations, look at *(to page 7 ...*

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(from page 6...) alternatives, give owners the results of your investigations and ask for their input.

And if the answer is still not clear? Then trustees should convene a general meeting - on short notice under PMR 54(7) if they think the matter is very urgent - and allow owners to give them a specific direction by majority vote in terms of section 39(1) of the Act, e.g. directing them that they are to consider the acquisition of a scheme generator to be a non-luxurious improvement to the common property and that they are to proceed under PMR 33(2) on that basis. ■

### HEADLINE NEWS

**“Electricity crisis now hits fuel, gas supplies” -**

Headline, Cape Times,

## EXTRACT FROM PRESCRIBED RULES

### Rule 33 —

### Improvements

#### Luxurious

(1) The trustees may, if the owners by unanimous resolution so decide, effect improvements of a luxurious nature on the common property.

#### Non-luxurious

(2) (a) Should the trustees wish to effect any improvements to the common property, other than luxurious improvements referred to in subrule (1), they shall first give written notice of such intention to all owners such notice shall-

- (i) indicate the intention of the trustees to proceed with the improvement upon the expiry of a period of not less than thirty days reckoned from the date of posting such notice; and

- (ii) provide details of the improvements as to-

- (aa) the costs thereof; and

- (bb) the manner in which it is to be financed and the effect upon levies paid by owners; and

- (cc) the need, desirability and effect thereof.

(b) The trustees shall at the written request of any owner convene a special general meeting in order to discuss and to deliberate upon the proposals contained in the notice referred to in paragraph (a), at which meeting the owners may approve, with or without amendments, such proposals by way of special resolution.

(c) In the event of such a special general meeting being called, the trustees shall not proceed with their proposals until the holding of such meeting, whereupon they shall be bound by any special resolution ensuing therefrom.