Volume 3, Issue 10 October 2008



## COMMERCIAL SIGANAGE ON SECTIONAL TITLE BUILDINGS

#### WHAT IS PADDOCKS PRESS?

A **free** digital newsletter published to educate and update the sectional title community.

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Louis Lenhoff

#### By Jennifer Paddock

The trustees and managing agents of sectional title schemes in metropolitan areas are in-

creasingly being approached by persons and businesses wishing to erect commercial signage on the buildings. Although the financial incentives linked to some of these enquiries may be substantial, the trustees need to bear in mind that the areas on which the signage would be erected (generally the façade or outer walls of the scheme's building) are common property and must therefore be administered according to the provi-

sions of the Sectional Titles Act 95 of 1986 (the Act) and the prescribed rules.

## Signage contracts with outsiders

The trustees and or/managing agent do not have the power to lease a portion of the common property (eg. a defined portion of the building's façade) to an outsider (i.e. a non-owner) for the purpose of ...to page 2

## A DAY IN THE LIFE OF A MANAGING AGENT

8:00 – Wake up from a leisurely 10 hour sleep; have breakfast and a long shower.

10:00 – Arrive at the office to only one telephone message and one email from Mrs. Jones from number 22.

11:00 – Having dealt with Mrs. Jones' query it's time for lunch.

14:00 – Arrive back at the office. Seeing that there's nothing else to do, how about a round of golf?
17:00 – With no meeting scheduled, I guess it's time to go home.
I'm sure that anybody who has ever worked in the property

management industry and espe-

cially that of Sectional Title is asking themselves the question: 'What is this guy talking about? This is most definitely NOT what a typical Managing Agent's day is like...'

What I have illustrated above is the typical perception of a Managing Agent that most owners living in a sectional scheme have. In their minds, a Managing Agent only manages their building and does not have much work to do. I mean, really, how much work could it be to manage one building with 20 units?

In reality, a Portfolio Manager could manage anything from 1000 units upwards. When Mrs. Jones does call and say that she is from Unit 22 she inevitably does not understand the need for the Managing Agent to ask her from which complex she is calling. Each Portfolio Manager could have at least 10 buildings that they manage and in a recent conversation with a fellow Managing Agent I discovered that this figure could be as high as 50 buildings.

Now, let's take this building that Mrs. Jones ...to page 3



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## COMMERCIAL SIGANAGE ON SECTIONAL TITLE BUILDINGS...continued

from page 1 ...signage erection or any other purpose. Section 17 of the Act provides that sectional owners may, by unanimous resolution, direct the body corporate (in practice the trustees) to lease a portion of common property to an outsider. But such a lease must be for a period of at least ten years or must be renewable for periods from time to time which will in all amount to not less than ten years. This is a very long period for a signage lease and therefore may not be suitable to advertise a brand or product.

### Commercial section owners' signage

If a scheme is zoned for commercial purposes only, all owners/occupiers of sections would expect to be able to erect signage relating to their business run from a section in the scheme. After all, commercial signage goes hand in

hand with the use of commercial premises.

But what about owners of commercial sections in mixed schemes (ie. schemes zoned for both residential and commercial use)? The owners of sections zoned for commercial purposes in this context would also expect to be able to erect signs advertising their commercial activities, but the residential section owners and trustees may object to this. The Act is silent on this issue and the prescribed conduct rules deal only with signage in relation to residential sections where owners/occupiers may only erect signage on common property with the prior written consent of the trustees.

There is nothing in the Act or prescribed rules requiring a commercial section owner to obtain the consent of the

trustees before erecting reasonable signage relating to the business run from his/her commercial section. But if signage is to be erected on the common property, most likely on the façade or outer-wall of the building, all other owners should be consulted and given the opportunity to give their opinions regarding the signs potential affect on the harmonious appearance of the building [Prescribed Management Rule 68(iv)] as well as whether the sign would be injurious to the scheme's reputation [Prescribed Management Rule 68(1)(i)].

Another option, and perhaps a more conservative route for a commercial section owner, would be to enter into a short term lease (under 10 years) for an area of common property with the trustees in terms of section 38(i).

### PADDOCKS 2nd BIRTHDAY CELEBRATION



**Back Row:** Anton Kelly; George Holt; Willem van Zyl; Christina Maxwell; Amy Roseveare; Graham Paddock; Robyn Allan; Judith van der Walt; Sam Paddock

Front Row: Candice Jooste; Mandy Paddock; Jennifer Paddock; Rob Paddock

Paddocks celebrated their 2nd Birthday in September 2008.

It was another exciting and fun-filled year at Paddocks with two new courses being introduced - the UCT Sectional Title Development Course and the UCT Advanced Sectional Title Scheme Management Course Topics 7-12.

Paddocks Press has also grown in readership over the past year and is now distributed to over 20 000 readers throughout South Africa. Paddocks would like to thank all Paddocks Press readers for their support!



## A DAY IN THE LIFE OF A MANAGING AGENT...continued

from page 1...stays in and see what a Managing Agent would have to do for the building: Generate Levy statements; ensure the utilities are read and charged for on time; deliver the levy statements and post the ones that need to be posted. Capture receipts (based on whether or not people actually take the time to pay their levies!); deal with levy account queries; generate reminder letters for the late payers; hand over defaulters for collection; attend to daily complaints and issues; issue general correspondence to owners; attend to emails (immediately!) which is sometimes in excess of 200 per day; settle invoices to council and suppliers but only once you have the signatures of two trustees approving payment and in the meantime the suppliers will call you 10 times a day hunting down payment; co-ordinate all maintenance issues for the complex; handle insurance claims via the appointed broker; attend monthly Trustees meetings; arrange for Special General Meetings where necessary and prepare the complex for year end audit; keep the Trustees up to date with information and correspondence whilst simultaneously dealing with the numerous Municipal account gueries that for some reason are now also the responsibility of the Managing Agent! And also ensuring that the correct procedures are followed for those industrious owners who are bent on changing or extending their sections! etc etc etc.....

So, this is a brief list of what a complex the size of twenty units involves. Take this and multiply it by the 10 or 50 buildings that each Portfolio Manager manages and you can appreciate the fact that when a Portfolio Manager tells you that they sometimes don't have time to breathe, they are serious. Also, developers are not only building schemes of 20 units anymore; schemes can go up to 500 units and in some cases even higher.

Whilst attending the various National Association of Managing Agents (NAMA) seminars and meetings I get to interact with the various role players in the industry as well as with other Managing Agents. It's always refreshing to hear other Portfolio Manager's stories and frustrations as this makes me realise that I'm not alone in this big bad world of Managing Agents. There are other people out there in the industry that share my frustrations and support me.

'Support' might be a strange word to use in the same sentence as talking about your competitors but I've come to realise that the only way to get our Sectional Title industry to where Australia and the other similar successfully industries have been for years now is to work together. Working together to begin to establish a Professional Managing Agents profession.

Similar to the Engineering field where you would need to be registered as a Professional Engineer before you can operate your own practice. Let Bodies Corporate pay the Professional Managing Agent for the professional service that he will be offering. Know that your investment in your property is secure because it's in the good hands of the

Professional Managing Agent that is there to guide your Trustees in their everyday management of the scheme.

The most crucial aspect of the Professional Managing Agent besides transparency and integrity is that of education they should be able to educate the Trustees by way of Trustee Training and the owners by way of newsletters etc. A good Managing Agent shares knowledge and guides Trustees so that the Body Corporate is managed efficiently and runs smoothly. Being a Professional Managing Agent does not mean hogging all the information to yourself and trying to run the Body Corporate as though you own it. A Professional Managing Agent serves and educates and guides their Bodies Corporate in this fast-changing industry of today.

Often following the Law Book may not always be perceived by your sectional title owners as being fair and correct; however upholding the Act and your company name must be the driving force behind doing a difficult and arduous job well and with integrity.

All I can say to other Managing Agents is that at times you may want to bail out and slit your wrists, but don't make a hasty decision. The industry needs your blood, sweat and tears if it is going to become a Profession of Professional Managing Agents. Perhaps a support group with a sponsorship from Mr J. Daniels may assist us to keep slogging it out.



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## SUCCESS OF THE UCT SECTIONAL TITLE SCHEME MANAGEMENT CERTIFICATE COURSE

The Sectional Title Scheme Management Certificate Course is presented by Paddocks in conjunction with the University of Cape Town, Faculty of Law. This part-time 6 month course is firmly established as the benchmark course throughout South Africa and has contributed to uplifting the sectional title industry. The course was first introduced in December 2005 and the next course will be the 7th presentation. Over 1000 students have now completed the course. Congratulations to all students!

Dates for the next course:

**REGISTRATIONS CLOSE: 28 November 2008** 

**COURSE STARTS:** 5 December 2008











"Excellent course! Course material is of great value and wonderful support from staff!"



Page 5 Paddocks Press

## SUCCESS OF THE UCT SECTIONAL TITLE SCHEME MANAGEMENT CERTIFICATE COURSE...continued

















## GUIDELINES FOR CHOOSING A SECTIONAL TITLE MANAGING AGENT

### By Les Reynard

Managing Agents are appointed by body corporate trustees in terms of management rule 46(1) under the Sectional Titles Act. The appointment must be by way of a written contract signed by at least two trustees. The appointment should be for an initial year and then be renewed each year.

When it comes to terminating the managing agent's contract, the trustees should give notice to the existing agent, get a new contract signed by the new agent and expect the takeover process to take about two months.

How should trustees choose a new agent? Usually they just phone around getting prices and use these as the main influence on their choice. This method makes no sense when you are choosing a company to take responsibility for your complex that is insured for many millions of rands.

Other factors trustees should consider when making a change include:

1. All managing agents must be registered estate agents. Obtain proof by seeing a copy of their Fidelity Fund Certificate issued by the Estate Agency Affairs Board. It obviously must not be out of date. This gives the body corporate cover by the Fidelity Fund operated by the Estate Agency Affairs board for loss arising from theft by the managing agent.

- 2. Are they members of the National Association of Managing Agents of South Africa? And are they willing, in the contract, to agree to be bound by the NA-MASA Code of Conduct? I expect that in the future banks will not offer bonds on sectional title properties that are not managed by a registered NAMASA agent.
- 3. Does the managing agent have a good pedigree? Has the agency been around a long time? Years of experience means that your problems will have been dealt with before in other schemes. Many new businesses close down within 18 months why take the chance on a new company?
- **4.** Choose a company where at least the principal has the University of Cape Town Certificate in Sectional Titles Scheme Management. This is the "entry level" qualification for anyone working in this industry.
- **5.** If you choose to not go with the giants in the industry choose a company that is personally run by its owner(s). As with a family-run restaurant, you will find the service superior to that in a restaurant run by an employee manager. (I admit to some bias here, as my company is owner/family run and I think this is an important factor.)
- **6.** Choose a company that offers more than just a bookkeeping service. You really need a managing agent that is

familiar with the Sectional Titles Act and its amendments. Have they kept their knowledge up to date? As a test ask them to explain Management Rule 33 to you — this deals with the authorities needed for luxurious and non-luxurious improvements to the common property.

- 7. Choose a company that can supply you with references from at least ten existing and satisfied bodies corporate. Here you want the chairmen's names, phone numbers and the name and address of each complex. Ask for chairmen that have been trustees for at least one year, but the longer the better.
- 8. You need to know that the agent's monthly reporting will be suitable. What is their levy collection policy? Are outstanding levies handed over to collection attorneys promptly? Request copies of their monthly financial reports to make sure they are understandable. What type of report will you get in regard to outstanding levies and ...to page 7



**Above:** Les Reynard with 5 of the 6 editions of Graham Paddocks's Sectional Title Survival Manual.



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## GUIDELINES FOR CHOOSING A SECTIONAL TITLE MANAGING AGENT...continued

from page 6...how will you know what the state of each action against defaulting owners. Think about what additional information you need each month and make sure that it will be available. Ensure that your requirements are clearly stated in the contract of appointment.

- **9.** Part of the agent's usual duties is to attend trustees and body corporate meetings. Make sure that the agent can speak in public and deal with difficult people. Get the assurance that the agent can manage meetings well, displaying the confidence of experience and knowledge.
- 10. The personality of the agent is important, because you will have to work closely with them. You want to choose someone whose style suits you and who you think you will like and trust. This means that a face-to-face meeting between the agent and the trustees is vital in the selection process. This also gives you an opportunity to assess them in an informal setting.
- **11.** Visit an agent's work premises. You can soon tell if they are disorganised or overworked. Find out who will do your scheme's work when the agent is sick or on holiday.
- **12.** Compare the managing agent's fees with those of other service providers. If you find (as has happened in Port Elizabeth where I run my managing agency) that your grass cutting service charges more for twice-monthly visits than the agent you are about to employ think again.

The cheapest quote will seldom be the best one. For a few rands more per unit per month you can get an agent you and the owners will be happy with and who can give a comprehensive and competent service.

## DEVELOPING THEIR KNOWLEDGE

Paddocks, together with the University of Cape Town, presented the first Sectional Title Property Development course from the 6<sup>th</sup> to the 8<sup>th</sup> of October at the Kelvin Grove Club in Cape Town. Over 60 delegates attended the 3-day course with many people traveling from throughout the country to learn about property development under this popular ownership title.

Prof. Graham Paddock together with Clint Riddin, an expert on sectional title auditing and accounting, covered the legal and financial aspects of property development under sectional title during the 3 days. In addition to the lectures, students engaged in groupwork exercises and had a chance to ask questions and learn from one another's practical experiences. Delegates were also treated to a 3-course dinner as well as a magic show on the first day of the course! Many delegates commented that the course was also a fantastic networking opportunity!

With the resounding success of the first presentation of this course, plans are being made to present the course in Johannesburg in the first half of 2009. Please contact Christina at <a href="mailto:christina@paddocks.co.za">christina@paddocks.co.za</a> if you wish to be notified about this course in the future.



# Home Cheese-Making Course

What? A 2-day cheese-making course presented by internationally recognised Cheese-Maker Miki Ciman (of La Masseria restaurant).

Students learn the art of HEALTHY cheese-making while making 7 of their own cheeses including Mascarpone, Mozzarella, Ricotta, Caciotta with thyme, white mould type Caciotta, Drunken Caciotta, Pecorino. A recipe booklet is also included.

Where? Bree Street, Cape Town
When? Sat 8th and Sun 9th of November 2008

Spaces are limited. Please contact Candice on 021 683 3633 or candice@getsmarter.co.za for more information.



www.getsmarter.co.za



#### BACK T O BASICS

#### BY JUDITH V A NDER WALT

## The allocation of parking bays in a sectional title scheme



Judith van der Walt

It happens quite often that an owner of a section in a sectional title scheme lays claim to the use of a parking bay, averring that he "bought" it from a previous owner and that he has a contract of sale evidencing his claim that he bought the parking bay. Unfortunately for this owner and despite the fact that the right to the use of the parking bay was "included" in the purchase price of his section, it is possible that he is not entitled to the right to the use of that parking bay at all and that his predecessor in title was under a mistaken belief that he was legally entitled to the use of the parking bay.

There is no provision in the Sectional Ti-

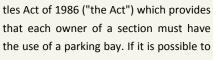
create parking bays at a scheme, the Act provides that the rights to the use of parking bays can be ceded to owners by way of notarial deed of cession, registered in the Deeds Registry, or the developer or the owners, by unanimous or special resolution, can make rules conferring the right to the exclusive use of parking bays to owners of sections from time to time.

These methods of allocating rights to parking bays do not generally cause problems on the resale of sections. The problems arise when no parking rights have been legally allocated and owners have only "customary" rights to use particular parking bays for reason of the bays that were made available to them by the developer or a subsequent owner. The trustees are also entitled to rent parts of the common property to owners for use as parking but, more often than not, no rental agreement is entered into and parking bays are "transferred" from the one owner to the next based on oral agreements and without proper legal foundation.

If there is uncertainty as to owners' entitlement to the rights to the exclusive use of parking bays the trustees should attempt, on behalf of the body corporate, to formalize the use of the parking rights, taking into account existing rules and practices at the scheme. If an owner can successfully prove that he in entitled to the use of a parking bay, whether the rights to the bay were ceded to him and whether or not there are valid rules allocating the rights to the use of the parking bay to him, such rights cannot now in practice be taken away from the owner. If, however, it transpires that a previous owner was not entitled to rights which he "sold" to his successor in title, this new owner's claim for losses suffered by him will be against the previous owner and not against the body corporate.

Judith van der Walt is a consultant at Paddocks. She works together with Prof. Graham Paddock and Jennifer Paddock. Her hourly rate is R1 000 plus VAT.

Judith also writes on a regular basis for the Weekend Argus, Property section.



## **UCT Sectional Title Scheme Management Certificate Course**

**Registrations close:** Course starts:

28 November 2008 5 December 2008

Please contact Christina on 021 674 7818 or christina@paddocks.co.za.





## Q & A WITH THE PROFESSOR



By Prof. Graham Paddock

### **VAT Registration and Exemption**

**Q1.** I manage a body corporate that purchases a lot of equipment, some quite expensive. The trustees say it would be to owners' advantage if the body corporate registered for Value Added Tax.

My understanding is that one has to be registered as a company to register for VAT. Does a body corporate qualify?

A1. Yes, a body corporate can register as a VAT vendor, but as I understand it this only makes sense for a non-residential scheme. Interestingly, Mr. Clint Riddin mentioned at our recent sectional title developer's workshop that it is also possible to register only a part of a scheme for VAT. So in a mixed scheme one can create two separate administrations and cost centres and let the non-residential owners enjoy the benefits of VAT registration while the others enjoy the benefits of non-registration.

## Lobbying against a proposal before it is submitted

**Q2.** Can you tell me where an owner stands, or what recourse they have, when there has been lobbying to all other owners and unreasonable objection to renovations to their unit when

plans, proposals or anything in writing have not been submitted to anyone in the complex yet for approval?

**A2.** A sectional title community operates on democratic principles, which means that people can lobby support for or against any proposal or any expected proposal.

Owners are entitled to be treated reasonably, so I suggest that you submit your properly motivated application. And at the same time, do whatever lobbying you can to make owners understand that the outcome will be desirable. Then insist that you are given a fair hearing.

But bear in mind that owners are entitled to differ from you. And when you are asking for permission to change the look of the building or encroach on the common property, for example with an extension of a building, they are entitled to refuse you consent simply because they don't want the changes you envisage.

If you think they are being unreasonable, you are entitled to start arbitration proceedings, but don't rush down that avenue, it can cost a lot of money. Politics is cheaper than law!

### Wanting to become a managing agent

**Q3.** I want to become a managing agent, But I do not have any experience and also I do not know where to start. What are the rules and what do I need to do to get started?

A3. I suggest that the first step is to register as an estate agent with the Estate Agency Affairs Board and get a Fidelity Fund Certificate. You need this to be legally entitled to collect (chase) and receipt (deposit) levies, and that is usually the most important thing a managing agent does, although in a well run scheme it should not take a lot of time and it is certainly only one of many usual duties.

Also contact the National Association of M a n a g i n g A g e n t s (namasa@mweb.co.za) and join that organisation. Their standard managing agency contract sets out in detail (in an annex to the main contract) the usual duties of a managing agent.

### A Tale of Two Balconies

**Q4.** I own a section with two balconies. The one is registered as part of my section the other one is registered as common property. There is no exclusive use right over the second balcony, but it can only be accessed via my section. Both balconies are leaking. I am currently busy fixing the balcony that is part of my section but the body corporate says that I also have to take exclusive use rights to the second balcony under section 27 and fix it as well. Can they force me to take exclusive use rights, and if so, it seems more fair to make a rule that will have the same effect and be cheaper?

Finally, will I have to pay a levy for the second balcony area if it is an exclusive use area? ...to page 10



# Q & A WITH THE PROFESSOR ...continued

from page 9...

**A4.** It seems to me that the second balcony area should logically be subject to exclusive use rights in your favour, as you are the only one who can in practice use it and it is in fact useful to you.

But you are correct, you don't need go to all the expense of having sectional plans of extension approved and registered and notarial deeds registered, paying transfer duty et cetera to achieve the effect the trustees are demanding. The body corporate can make rules under section 27A that have the same effect. And in these circumstances I believe that you could not successfully oppose such a rule.

Exclusive use areas, whether created under S27 or S27A, do not have participation quotas allocated to them. If no special arrangement is made, section 37(1) requires that the trustees recover the costs associated with the area from the person enjoying the rights. That is the default. But the rule may make another provision, for example that the owner enjoying the right will pay an additional contibution at 30% of the rate payable in respect of sections from time to time, and in this way impose an obligation to make a regular contribution in respect of that balcony area.

### Non-owner chairperson

**Q5.** Can a non-owner be elected chairperson after being elected as a trustee. As a non-owner there are various issues where I cannot vote, so in those cases can I still be the chairperson? **A5.** Your question shows a confusion between the role of owners in general meeting and the trustees.

From a theoretical perspective, a body corporate has the same division between "ownership" and "control" one finds in companies. Just as a director of a company does not have to be a shareholder, so a trustee does not have to be an owner of a unit.

And any trustee, whether or not an owner, can be elected as chairman of the trustees. For efficiency's sake, that same person serves as chairman of general meetings (assuming they are available and the owners don't decide to elect someone else to do the job), but again this administrative role does not require ownership of a unit or membership of the body corporate.

So, as a non-owner chairperson of the trustees, you can be the chairperson of a general meeting of owners at which you cannot vote at all. In trustee meetings you exercise your vote in your capacity as a trustee, not as an owner.

### Scheme in serious financial trouble

**Q6.** Our complex is currently sitting in the situation where it has no money for general maintenance and at least seventy percent of the owners are behind in their levies.

The problems started when just a few owners failed to pay their levies. The worst defaulter was handed over and after two years and a balance of approx R25 000 outstanding, a court order was given to sell the unit by auction. The owner paid in R10 000 and promised to pay the balance over the next six months. This never happened and the owner has been handed over again.

Unfortunately other owners have seen this worst offender seem to "get away with not paying" so now we have 14 units in arrears, including some trustees who interfere with the collections. In the meantime, there is no money. Where does that leave us who are paying?

I'm worried that if we don't have the money to pay expenses, our units will get sold from underneath us and even the few who are paying their levies will lose.

**A6.** The situation you describe is very serious.

An owner's recourse here is to apply to the High Court for the appointment of an administrator to take over the powers and duties of the body corporate. Once this appointment is made, defaulting owners are no longer in a position to block the actions that are required to rehabilitate the scheme.

Section 46 of the Act deals with this process, but I suggest that you and the other owners who are not in default should approach an attorney as soon as possible.



# Classifieds

Paddocks will now allow readers to advertise sectional title related products and services in the Paddocks Press Classifieds section.

Paddocks will limit the number of advertisers per issue. Adverts will be limited to 40 words. Adverts will be charged at R390 each.

Please contact Robyn on 021 674 7818 or robyn@paddocks.co.za for advertising queries. Advertise:

- Sectional title job opportunities
- Sectional title management contracts
- Sectional title products
- Sectional title services
- Sectional title properties for sale
- Sectional title properties to let

This is an example of an advert in the Paddocks Press classifieds. The advert is required to be a maximum of 40 words. This will include a telephone number 021 674 7818 and an email address and contact name.

Advertise in Paddocks
Press

Please note: All adverts will also be featured on the

Sectional Titles Online Website (www.sto.co.za) free of charge.



...coming soon

## **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 Ombud 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 and Jennifer Paddock. 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 vari-

ous 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

