January 2009

Paddocks PRESS

WHAT IS PADDOCKS PRESS?

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

Forward the newsletter to anyone you think may be interested. To be added to the mailing list, please...

Visit www.paddocks.co.za **and sign up in 1 easy step.**

INSIDE THIS ISSUE:

Jennifer Paddock

THE PAYMENT OF SECTION 25 CONTRIBUTIONS

By Judith van der Walt

These days many schemes are built with the added financial benefit for the developer that he will be able to build further sections in the scheme after the first batch of sections have been sold, built and transferred to purchasers. The Sectional Titles of 1986 ("the Act") refers to such an occurrence as the "extension of a scheme" and it is dealt with in detail in Section 25 of the Act.

In addition to being able to extend the scheme, provided that he has advised all owners of such intention when he sold the first batch of sections, the developer can also sell off parts or fractions of his right to extend the scheme. The sale of fractions of future development rights has worked well in schemes consisting of a number of free-standing sections, such as a golf estate development or a scheme being built on a very big piece of land where there is space for free-standing sections.

Every person who buys a right from the developer to build a section becomes the holder of a fraction of the *...to page 2*

THE RELATIONSHIP BETWEEN A BODY CORPORATE AND TENANTS IN THE SCHEME

By Jennifer Paddock

Buy-to-let investors often choose to invest in sectional title units as opposed to freehold properties first because unit prices are often lower and also they can offer better value for money due to the shared amenities, like swimming pools and gyms, that would be far more costly to maintain on their own in a freehold property.

Once the formalities of legally transferring the property have been attended to, the next logical step is for the buy-to-let investor to find a tenant to rent the sectional title unit so that he can receive those helpful rental payments to put towards his bond repayments or, if he's lucky, to fund his new porsche.

Finding a seemingly suitable tenant to rent the unit may be difficult... credit checks, phone calls to previous landlords and checking for criminal records may show that the potential tenant is 'clean' but there can never be an absolute guarantee as to how your tenant will behave. Once you are satisfied that you have found the right tenant, as the landlord all you need to do is sign the lease and provided he pays his rent on time you have nothing to worry about right? If your tenant turns out to be an undercover psycho and causes havoc in the scheme, it's not your problem... WRONG! The legislation governing sectional titles in South Africa focuses on the direct relationship *...to page 2*

THE PAYMENT OF SECTION 25 CONTRIBUTIONS...continued

from page 1 ...future development right and a co-developer of the scheme. The fact that one developer was involved in the development of the scheme prior to another developer does not change the fact that all holders of fractions of future development rights are co-developers in respect of the specific rights acquired by them.

When the original developer opens a sectional title register in a scheme, he must submit documentation to the deeds office in the area where the scheme is situated, *inter alia* setting out the contributions which he is going to pay to the body corporate from the date of the establishment of the body corporate to the day when he registers the sectional plans of extension in respect of new sections which he has built. Every co-developer is liable to pay these contributions, or fractions of them, not only the original developer.

These contributions are not levies in the sense that term is usually applied, but contributions due in terms of Section 25 of the Act. Levies are only payable by members of the body corporate, being owners of sections in the scheme. The holder of a future development right does not (yet) own the section(s) in the scheme to which that specific fraction of the future development right applies, and is therefore not a member of the body corporate nor liable to pay levies. But it is possible that at the time of the opening of the register, when the original developer declares the amounts that will be payable by holders of future development rights, such amount can be stated to be equal to or calculated in the same way as the levies which owners of sections will have to pay. Each scheme will be different and the managing agent must ensure that all owners and all holders of future development rights pay the correct contributions to the scheme while the scheme is still being developed. Irrespective of whether the new section has been built or not, every holder of a future development right is obliged to pay the section 25 contributions to the body corporate until such time as the sectional plans of extension have been registered in the deeds office and the holder of the right becomes the owner of a section. ▪

Judith van der Walt is a consultant at Paddocks. Her hourly rate is R1 000 plus VAT.

Judith will be on maternity leave from February until the end of June 2009. Judith will accept new consulting clients thereafter.

THE RELATIONSHIP BETWEEN A BODY CORPORATE AND TENANTS IN THE SCHEME ...continued

from page 1... between bodies corporate and owners in sectional title schemes. But buy-to-let investor landlords should know their liability in relation to their tenant's actions. We deal with the legislation and a few scenarios below.

The Sectional Titles Act 95 of 1986 ("the Act") provides that a scheme's rules shall bind the body corporate, owners of sections and any person occupying a section. The prescribed management rules go further by placing a positive obligation on an owner to ensure compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or his occupant.

The Rental Housing Act 50 of 1999 requires a landlord of a sectional title unit who has reduced a lease agreement to writing, to attach a copy of the scheme's rules to the lease agreement. This provision is important in that if a tenant is obliged to obey the scheme's rules in terms of the Act, he should at least know what rules he is bound by. Unfortunately, in practice rules are often not attached to written lease agreements and the fact that every scheme's rules are public documents held at the scheme's local Deeds Registry does not mean that every tenant has seen them. Therefore many tenants are completely unaware of the rules that bind them and the consequences of breaching any of them. We suggest that if you are a buy-to-let landlord of a sectional title unit you make sure your tenant has been given a copy of the scheme's rules and ...*to page 3*

THE RELATIONSHIP BETWEEN A BODY CORPORATE AND TENANTS IN THE SCHEME

. . . continued

from page 2...understands that s/he is bound by them.

The Act and rules effectively avoid any direct relationship between the body corporate and the scheme's tenants. Tenants are not entitled to attend body corporate meetings, unless they have a proxy from the owner, and therefore they are not able to participate in any of the decisions made in relation to the scheme in which they live. Furthermore every owner is directly responsible for his tenant's behaviour and therefore bodies corporate turn to owners when their tenants misbehave.

If an unruly tenant throws raucous parties regularly causing a nuisance to other occupiers in the scheme, the body corporate's remedy is to declare a dispute with the owner. Yes, the trustees and managing agent may write letters to the tenant threatening all sorts of terrible sanctions should the nuisance persist, but ultimately if a tenant breaches the provisions of the Act or the scheme's rules, the body corporate cannot declare a dispute with the tenant because the rules provide that arbitration is a forum for disputes between bodies corporate and owners or between owners and other owners. Therefore ultimately, the owner is the one with his head on the block for his tenant's behaviour.

If a tenant damages common property, for example he crashes his car into the scheme's gate, the body corporate could institute a delictual action against the tenant to reclaim the costs of repairing the gate, but the owner is the one with the capital interest in the scheme and the one who is responsible to ensure his tenant abides by the rules, so the body corporate will most likely claim these costs from the owner. The owner who can prove that his tenant caused the damage will then have a claim against him, but in the meantime the owner's pockets are feeling pretty light.

Another interesting scenario to consider is this one: a tenant has taken responsibility in terms of his lease agreement to pay the owner's levies directly to the body corporate. The tenant defaults in these levy payments. The body corporate now wants to evict him. Can it do so? No! There is no provision in the Act or the common law which authorizes a body corporate to evict a tenant or an owner. So who should the body corporate turn to in this scenario, the tenant or the owner? Again, it turns to the owner. In terms of the Act it is an owner's responsibility to pay levies to the body corporate and although he can contractually shift the payment responsibility onto another person, the body corporate's recourse will always be against him as an owner.

Ultimately, as the persons occupying the scheme, tenants should have a direct relationship with bodies corporate. Some foreign jurisdictions, such as British Columbia in Canada, have acknowledged this notion and have legislation which facilitates owners giving 'long-term tenants' proxies to attend body corporate meetings to speak and vote - because ultimately they are the ones who live in the scheme, whose behaviour affects other occupiers and who are most directly affected by body corporate decisions at ground level. They are also the ones who should be held responsible for their own bad behaviour. Other jurisdictions like England and Wales have leveraged the three-way relationship between a tenant, owner and the body corporate, by providing that if an owner defaults in his levies payments, the body corporate is entitled to intercept the rent payable by the tenant to the owner and use these funds to cover the outstanding levies due by the owner.

With the South African sectional titles legislation concentrating firmly on the relationship between owners and bodies corporate, as a buy-to-let investor you need to be aware of the fact that you may held be responsible for your tenant's bad behavior and therefore you should put provisions in place to protect yourself and that allow you to cut your losses if necessary. Get your lease agreements drafted by an attorney who knows the consumer protections in the Rental Housing Act and specializes in leases. Make sure that you are able to validly and fairly terminate your lease if your tenant becomes a continuous problem. ■

As featured in the January 2009 edition of the **Real Estate Investor Magazine.** Jennifer Paddock contributes regularly to this bi-monthly magazine.

FREE SECTIONAL TITLE HELP IS NOW A CLICK AWAY...

Increased security, private communities and shared maintenance obligations are just some of the factors that have lead to sectional title properties becoming the preferred title of choice. Some statistics show that over 50% of all homeowners are now living in sectional title property.

As the popularity of this property title grows, it becomes increasingly important for the people who own and live in sectional title schemes to have a basic understanding of this property title and know what resources are available to them when they experience problems.

Paddocks has recently upgraded their popular Sectional Titles Online website (www.sto.co.za). The website is absolutely free to use and is an excellent resource for people involved in sectional title property. Free services on the website include:

Discussion Forum

Users can ask their sectional title- related questions in the discussion forum, which is then answered by one of the active community members or by a consultant at Paddocks. With over 2,300 questions and answers already on the website, many people can find the answer to their question by simply browsing through the discussion forum.

Above: George Holt and Willem van Zyl

Sectional Plans

Over 14,000 sectional plans are available for download.

Library

Users can browse and search through the Sectional Titles Act and a database of useful articles.

Yellow Pages

Users can browse through a comprehensive directory of sectional title schemes, managing agents, sectional title estate agents and other industry players.

Willem van Zyl and George Holt (pictured below) were responsible for the upgrade of the Sectional Titles Online website. Willem explains that "with approximately 7,000 users we received many requests for improvements over the course of the last 2 years. With all the user feedback it was easy for us to identify the areas that needed improvement."

George adds that "we are very happy with the upgrade and hope that many more people benefit from using the website." ▪

(www.sto.co.za)

SECTIONAL TITLE INSURANCE: NEW RULE 29(4) - WHAT NOW?

By Mike Addison

Since receiving the good news that the excess issue is now included in the rules, new Prescribed Management Rule 29(4) to be precise, much has already been said - both positive and negative. The interpretation and legal application of certain aspects is being debated such as whether or not a special resolution allows a body corporate to generally apply excesses one way or the other e.g. whether or not a special resolution can set the stage that the body corporate always pays for, say, excesses pertaining to storm damage to the roof. We look forward to more discussion, debate and eventual consensus so that the professional managing agents can properly advise their body corporate clients here. However, this is the least of my concerns for the moment.

Of concern to me is the lack of priority insurance renewal documentation receives. With the new sub-rule 29(4) inclusion, the impact on insurance advice and the way trustees apply their minds to insurance needs to be taken very seriously. Perhaps most of a managing agent's buildings have standard excesses, however, noticeably over the past 12 months we have seen harsher excesses being implemented even where buildings have low or zero claims. Accidental damage, impact damage more often than not is now 10% of claim, minimum R2,500, lightning R2,000. In higher claim situations we are seeing policies renew with R2,500 to R10,000 excesses being applied. So what?

Well, the insurance environment we find ourselves in is one where, in my opinion, fierce competition between the three specialist players has resulted in very low premium rates, probably a third of where they should be. This has been great for the property owner ultimately but we now find the insurers needing to adjust premium, excess and terms so that premiums meet claims at sustainable levels. Simply put, claims are too high for the insurers at the moment and claims ratios of 80% and above (claims 80% of premiums) cannot persist. Hence we see a trend towards higher excesses and higher rates. Rates can be discounted by voluntarily accepting higher excess. This is where the insurance advisor (insurance broker), managing agent and trustees need to take extra care. The new rule 29(4) is very clear, unless a special resolution is passed to the contrary, insurance excess applicable to storm damage to a pensioner's apartment say R5,000, will be for that owner's account. Most likely, the body corporate would previously have picked up the excess for storm damage. Can you just hear owners squealing about this……..wait until it starts to bite!

How should a managing agent plan to deal with this?

Actually, fairly simply – by getting the insurance broker to be an insurance advisor rather than the insurer's messenger. Make sure that the body corporate is receiving fit and proper advice ongoing, preferably in writing especially on renewal. Gone are the days where a simple letter enclosing an insurer's renewal schedule is acceptable. The trustees need to be presented with, annually, a letter of advice from the broker explaining why the existing policy should be renewed compared to at least one alternative, preferably 2 comparisons. It is at this point that excesses are considered and their impact on the owners given the dynamics of the complex. We feel that over the next year and going forward, harsh excesses applied are going to need to be explained – I don't feel it is going to be fair to blame the rule or the "horrible insurance company" where actually, lack of input from the insurance advisor, lack of care and professional input from the managing agent and ignorance on the part of the trustees are most likely going to be the cause of owners paying unnecessary high excesses and premiums going forward. My prediction is that although PMR 29(4) is a much fairer rule, more is going to be required of the managing agent is dealing with insurance on renewal. However, the managing agent can lift this burden by insisting on certain basics from brokers and putting some routine procedures in place. Get the broker to present the renewal invitation together with 2 alternative quotes and written advice at least a month ahead of renewal. Take a good look at the excesses and see if these can be negotiated and what excess buy-back options are available and at what cost. ▪

See Classifieds for details of sectional title insurance workshops.

BUILDING MAINTENANCE

BY ROB PADDOCK (Rob the Builder)

Waterproofing Concrete Flooring

By Rob Paddock

I live in a sectional title scheme. Recently I had the unfortunate experience of a kitchen sink pipe bursting in the apartment above mine, the resultant water managed to flow out of the kitchen, seep through the concrete floor, and flow directly onto my bed, welcoming me when I came home after a long day at work, looking forward to a good nights sleep. This article is therefore rather close to my heart right now.

It is important to understand that concrete floors on their own are not in any way waterproof, in fact, as far as water is concerned, normal concrete behaves like a dense sponge. One cubic metre of good quality dry concrete will absorb the equivalent of roughly 60 litres of water in just 30 minutes!

Concrete therefore needs a waterproof membrane over it in wet areas of the apartment such as toilets, bathrooms and kitchens to stop water from getting to it in the first place. The usual materials used for internal waterproof membranes include a combination of tiles, waterproof grout, waterproof screeds, epoxy paints and waterproof plastic sheeting.

The most common cause of a ceiling leak is a failure in the waterproof membrane or screed in the floor slab of the upper floor apartment. The failure may be because of natural deterioration of the waterproof membrane, material damage or faulty construction/installation of the membrane. Whatever the cause, the membrane loses its waterproof properties and is no longer able to prevent water from penetrating the porous concrete floor slab and seeping into the lower part of that slab which forms the ceiling of the apartment below.

In order to repair the waterproof membrane, all tiles, fixtures and anything else which could obstruct the repair works must be removed. If the area is a bathroom, the shower base and toilet pan may need to be removed.

Then a layer of waterproof membrane and screed needs to be applied to the entire floor surface and, most importantly, extended up the surrounding walls, around pipes and over the base of any doorway. Only after these materials have been applied in accordance with the manufacturer's specifications should the fixtures and any surfacing be re-installed.

Ensure that your contractor follows the following basic steps:

1 Remove floor tiles, screed, any toilet pan, basin pedestal and shower base as well as outlet pipe fittings and any other fixtures. Areas around pipes should be hacked out slightly deeper (about 25 mm more).

2. Clean the hacked surface, removing all dust and loose particles.

3. Fill the areas around pipes with non-shrink grout.

4. Apply a good quality waterproof membrane onto the hacked surface. The membrane should be upturned (up to 150 mm) against the walls, kerbs and pipes.

5. Allow the membrane to set for between 6 to 12 hours depending on manufacturer's instructions.

6. Reinstall toilet pan and any other fittings.

7. Apply a new layer of waterproof screed, at least 20 mm thick, onto the surface. A gentle gradient should be provided for effective drainage. Screed should be left to harden for at least 12 hours. The use of pre-packed waterproof screed is recommended.

8. Reinstall any floor tiles, pedestals etc.

In Sectional Title living, internal water leaks are not as common as leaks through unenclosed balcony floors. In the next Paddocks Press we will take a look at effectively waterproofing unenclosed balconies. ■

UCT 2009 COURSE CALENDAR

Course	Details	Region	Final Date for Registration
Sectional Title Bookkeeping Course	2-day intensive workshop focusing on the financial, legal and administrative aspects of sectional title bookkeeping	Cape Town Durban Johannesburg NOW ALSO IN DURBAN	20th of February 2009
UCT Residential Property Letting Workshop	1-day interactive workshop covering the legal fundamentals of landlord and tenant relationships	Cape Town Johannesburg	20th of February 2009
UCT Property Tax Workshop	1-day interactive workshop covering the complexities of property tax in the South African environment	Cape Town Johannesburg	27th of February 2009
UCT Business Writing and Legal Documents	10- week part-time online course covering written English in a business context. Ideal for working professionals	*throughout South Africa*	6th of March 2009
UCT Sectional Title Development Course	3-day interactive course focusing on the legal and financial aspects of sectional title property development	Johannesburg	Contact Robyn on 021 674 7818 or robyn@paddocks.co.za 20th of March 2009
UCT Sectional Title Specialist Realtor	10-week part-time course focusing on the legal aspects of the sales of sectional title property	Cape Town Durban Johannesburg	30th of April 2009
UCT Sectional Title Scheme Management	6-month part-time benchmark course in sectional title scheme management	Cape Town Durban Johannesburg	5th of June 2009
UCT Advanced Scheme Management (Topics 1-6)	5-week part-time course covering advanced legal aspects of sectional title scheme management	Cape Town	25th of September 2009

THE RENTAL HOUSING TRIBUNAL DEMYSTIFIED

By Salim Patel, chairman of the Western Cape Rental Housing Tribunal

A Rental Housing Tribunal (RHT) is an independent body appointed by the Provincial Minister of Housing to promote stability in the rental housing sector and to resolve disputes between landlords and tenants of residential dwellings with the least amount of inconvenience and cost to the disputants. It aims to offer a speedy process of justice to resolving disputes that would otherwise remain clogged in the legal system for months, if not years.

Each tribunal office consists of 3 – 5 members that are appointed to serve a term of three years, and if appropriate, can be extended for a further three years. The members include attorneys, advocates, property professionals, and experts in consumer matters related to rental housing elected by the Minister of Housing. The tribunal also has a staff component that includes inspectors, technical advisors and administrative support staff.

A RHT has the authority to arrange mediations or subpoena parties to a hearing. The ruling of the Tribunal is deemed to be a judgment of a Magistrates Court. The RHT can, in addition, impose a fine and/or imprisonment, and has the authority to deal with disputes, complaints or problems that include: non-payment of rentals, refund of security deposit, invasion of tenants' privacy, overcrowding, determination of whether rental are exploitative , unlawful seizure of tenants goods, discrimination by landlord against a prospective tenant, receipts not issued, tenant conducting a nuisance, maintenance and repairs, illegal lockout and disconnection of services.

When a dispute arises between a landlord and tenant, the landlord or tenant may file a complaint by either posting, faxing or emailing a complaint form to the RHT office, or by filling in a complaint form at their closest RHT office. A case manager will then open a case file and enter the names of the complainant and respondent, a summary of the nature of the complaint and a case number into the register. A letter is then sent to the parties regarding the complaint filed. Parties are also informed of the date, time and place that the case will be mediated or heard. At this stage the respondent can also file a counter-claim against the complainant.

In the case of mediation between the parties, the mediator does not have the power to make a ruling, the mediators role is to advise the parties about the law relating to the dispute, and help them find a solution. At the conclusion of a successful mediation, parties can ask for the agreement to be made a ruling of the tribunal. If the mediation is not successful, the case will be referred to the tribunal for a hearing.

In a hearing, the parties (or their authorized representatives) will be given the opportunity to present their case, and to put forward any relevant evidence. Parties have the right to cross examine each other, and tribunal members may ask questions of the parties. An inspection report regarding the state of the dwelling may also be discussed dependent on the type of dispute. The Tribunal will adjourn to examine the evidence, and usually , on the same day, will give its ruling.

Landlords, tenants and letting agents are encouraged to educate themselves on the legal requirements of residential letting to avoid negative consequences down the line and perhaps even a hearing at the RHT.

The University of Cape Town now offers a one – day Residential Property Letting workshop in Cape Town and Johannesburg, which is presented by Mr. Salim Patel and Prof. Graham Paddock.

This workshop is ideal for letting agents, estate agents, attorneys, landlords, home owners and property investors and will equip students with a thorough understanding of the legal aspects pertaining to the letting of residential property. The workshop will empower students in their understanding of the Rental Housing Act and the Prevention of Illegal Eviction Act, and will include all recent amendments.

Please contact Candice at candice@getsmarter.co.za or on 021 683 3633 for more information. Alternatively, please see www.getsmarter.co.za. ▪

Q & A WITH THE PROFESSOR

By Prof.

Graham Paddock

Maximum proxies per person?

Q1. Is there a legal limit to the number of proxies a person/company may bring to a meeting?

This question arises from a situation where a letting agent brings to an AGM sometimes as much as 70 proxies from various owners. He is effectively controlling the meeting and indirectly the entire development. Is this allowed?

A1. Some strata/condominium systems put a limit on the number of proxies any person can hold. But there is no such limitation in the Act or the prescribed management rules.

PMR 67 (3) excludes the managing agent from holding proxies, but does not deal with letting agents. So on the face of it the situation you describe is legal.

Limit on trustee expenses

Q2. I would appreciate if you could give guidance with regard to the extent to which trustee expenses could be regarded as expenses actually and "reasonably" incurred by the trustees in carrying out their duties. I know such expenses might include sundry purchases on behalf the body corporate, telephone calls, travelling etc.

Currently we do not have a policy in this regard. More than half of the trustees are resident in other provinces and are claiming, among other expenses, flight tickets for attending at least 4 trustee meetings a year at the scheme which consists of holiday flats. Return flight tickets are at least R2 000 per trustee per meeting. On top of that there is car hire etc. According to the trustees, they cannot attend to the body corporate's duties via conference calls or electronic media. From the above, it is quite obvious that the trustee expenses do make a huge dent in the body corporate's income.

Very few of the owners live at the scheme. The "managing agents" are not actually "managing agents" as it is an accounting and auditing firm which only attend to certain services. Everything outside the regular levy collecting and disbursement of expenses is charged separately. We do have a full time caretaker at the flats who has 3 assistants to help him with the upkeep.

A2. Whether these air ticket and car hire claims are 'reasonable' in the circumstances will depend on a number of factors, probably including answers to the following questions:

1. Were the issues dealt with at the trustee meetings such that owners generally agree could not have been dealt with without incurring the traveling expenses? Do owners agree that the caretaker and accountants could not have given the trustees all the information they needed to deal with the issues remotely?

2. Historically, has the body corporate paid these types of expenses, or is this the first time the owners have been asked to pay them?

3. Did the trustees ask owners in advance if they could spend this money?

4. Were these expenses budgeted for at the last AGM?

5. Did the trustees come to their holiday homes just for the meeting, or did they spend a bit of time enjoying their coastal homes before or after the meeting?

6. Did any of the trustees bring family or friends with them?

If there was a genuine need or a clear understanding that the body corporate would cover these costs, they are probably reasonable. If there was no need for the expense or the trustees derived a personal benefit from the expenses, they are unreasonable and therefore not recoverable.

In any event, I suggest that this issue be put on the next AGM agenda for discussion and decision by all owners. And if owners decide to pay these expenses, they need to budget for them specifically.

Owners may consider giving trustees a specific direction under section 39(1) of the Act or making a conduct rule that will regulate the position and bind future trustees.

to page 10...

Q & A WITH THE PROFESSOR ...continued

*from page 9...***Challenging votes for/against a special resolution**

Q3. In a situation where a proposed special resolution fails to achieve the 75% majority, but it is clear that some negative votes are mischievous or for bad faith reasons, is there any way to have those votes set aside and the majority changed by the Court or by an arbitrator?

A3. No. You may be thinking of the situation where an owner unreasonably refuses to give consent to another who wishes to change the use of a section. Here section 44 (2) of the Act provides that the frustrated owner can approach the court for relief.

Or you may have in mind the provision in section 1 of the Act (effectively a qualification to the definition of a unanimous resolution) that specifically allows a body corporate to approach the court for relief when it it not able to achieve a unanimous resolution.

I think it unlikely that a court or arbitrator would interfere with an owner's right to decide how to cast their vote for or against a proposed special resolution.

Too few residential parking bays

Q4. The developer of our complex, which consists of commercial and residential units, allocated 11 parking bays out of 19 to the purchaser of the commercial units, leaving very few for the predominantly residential component. These are exclusive use areas. No rates, levies or maintenance costs have been allocated to the commercial owner for these bays.

Can the trustees levy the commercial owner for these bays in terms of the PQ?.

A4. The trustees cannot take such a decision. Liability for contributions to the scheme's administrative fund normally arise:

(a) as the result of ownership of a section; or

(b) by operation of a special scheme rule that makes provision for contributions; or

(c) by operation of the proviso to §37(1)(b) of the Act - this 'anti cross-subsidisation' provision requires that the body corporate recover from an owner entitled to exclusive use rights the cost associated with maintenance and repair of the area of common property to which those rights relate.

The only way the commercial owner can be made liable to pay 'levies' in regard to the exclusive use parking bays (over and above any amounts payable as described in (2) and (3) above) is to make a new rule in this regard. And remember that all rules must be reasonable.

It sounds as if the real challenge here is to find more places to park the vehicles belonging to residential owners and thus address the shortage caused by the developer.

Consider going to the local authority and looking at the fine print of the building plan approval. You may well find that the local authority required the provision of a particular number of off-street parking places for the use of residential owners, as well as some visitors' parking. And if the developer has in effect allocated exclusive use rights contrary to the terms of the building plan approval, you may be able to address the root cause of the problem.

Individual maintenance of EUAs

Q. We are only 6 houses in a complex and to save money we don't use managing agents or have a caretaker. At our AGM 5 out of the 6 houses voted that we should each maintain our own exclusive use areas and pay for the maintenance ourselves rather than hiring someone to do the work and then keeping track of who repairs what, since this would save us time and money.

However one owner still wants everything to be maintained by the body corporate regardless. How can the other 5 owners make this an enforceable rule?

A. There are two principles applicable here:

1. The body corporate is obliged to maintain all the common property, including those parts that are subject to exclusive use rights; and

2. The body corporate is obliged (in terms of the proviso to §37(1)(b)) to recover from any owner entitled to exclusive use of a part of the common property the expenses *...to page 11*

Q & A WITH THE PROFESSOR ...continued

*from page 10...*incurred by it in that maintenance.

Normally one wants the body corporate to carry out the work so as to ensure that it is all carried out at the same time and to the same standard. But in your case it seems that the owners have a strong desire to 'go it alone' and to make maintenance and repairs to exclusive use areas the individual responsibility of each owner.

To achieve your objective I suggest that the body corporate should make a conduct rule providing that the body corporate is deemed to have delegated its obligation to maintain the exclusive use areas to the owners who hold the rights to those areas; the owners must themselves carry out and pay for the maintenance of the common property areas to which they hold exclusive use rights.

In addition I suggest that the rule should cater for the possibility that an owner fails to carry out necessary maintenance, despite the rule, and allow the body corporate to do so and recover the reasonable costs from the owner con-

Sectional Title Classifieds

Trident Managing Agent Software

Data and Debtors Modules

Visit our website: www.tridentsoftware.co.za

Contact: Ken Ward:
Cell: 083 235 54 95
Email: kenw@tridentsoftware.co.za

Landlords - We Do Rentals

Call us now to manage your property. No finders fee, no admin fee, no advertising costs. Managing fee only at agreed rate. Free rental valuation. We are exclusive specialists in the residential letting market. In business for decades.

Tel: 021 975 1770
Fax: 021 975 1440
Email: pboyd@landlords.sa.com

EY Stuart Attorneys

We specialise in Property-and Sectional Title Law. Our services include Commercial Law, Family Law, High Court litigation, Magistrate's Court litigation, collections, evictions, conveyancing, sequestrations and liquidations.

Tel: 012 320 1079/322 2401/ 322 5930
Fax: 012 322 7337/320 4434
Email: eys@eystuartinc.co.za

Addsure

During the first quarter of 2009, Addsure will be holding various workshops some specifically for clients and others generally for managing agents in Cape Town, Durban and Johannesburg focusing on this important area. Keep an eye on **www.addsure.co.za, www.pima.co.za/workshops** and **www.addsure.blogspot.com** for more news and workshops near

Windeed

WinDeed is SA's most popular and indispensable search software. We provide access to the Deeds Office, CIPRO, TransUnion, and more! Valuable owner and property information on sectional schemes is available at your fingertips! Check out our newest features at www.windeed.co.za.

Tel: 0860 WINDEED
Fax: 021 658 9701
Email: support@windeed.co.za

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 and will also be featured on the Sectional Titles Online Website (www.sto.co.za) free of charge.

Advertise in Paddocks Press

Compeg Services

A Leading Sectional Title and HOA company in Gauteng. Managing Property Properly. Call us on 011 481 3400 for a free introduction and quotation.

Providing service for 30 years.

Tel: 011 481 3400
Email: info@compeg.co.za

SECTIONAL TITLE SCHEME MANAGEMENT SUCCESS

Congratulations to the UCT Sectional Title Scheme Management students, Class of November 2008!

This course was first introduced in December 2005 and over 1000 students have now successfully completed the course. The 8th presentation of this popular course will start in June 2009.

Above: Durban students; **Below:** Cape Town students

Below: Johannesburg students

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 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 ▪