



PRESS

IMPORTANCE OF SECTIONAL TITLE TRAINING

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Dina Porteous



Due to the economic crunch currently being experienced in South Africa, unfortunately one of the first expenses that is often axed in a company's budget is staff development and training. This could be a vital mistake, as it is at times such as these when

training is needed most of all to ensure that optimum efficiency and the highest levels of client service are maintained, says Dina Porteous, Margate area principal for Pam Golding Properties on the lower south coast of KwaZulu-Natal.

"Well equipped, trained and efficient staff is one the biggest assets of a business in the service industry. Ultimately, this translates into a cost saving factor for clients as well as their peace of mind. Our Margate office embraces an ethos of development and learning and we

are proud to announce that our sectional title bookkeeper Dorothy Collothy and portfolio manager Craig Pape have just completed a course in Sectional Title Bookkeeping offered by Graham Paddock and the University of Cape Town's Department of Economics and Management presented by Clint Riddin of Cape Town. The course is directly aimed at bookkeepers who work within the sectional title management arena and was developed due to different demands in reporting to trustees, bodies corporate and homeowners associations.

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10 STEPS TO DEALING WITH CONFLICT IN SECTIONAL TITLE SCHEMES

Co-ownership is the mother of all disputes. If you live or own a unit in a sectional title scheme and haven't heard of this phrase – you will probably have experienced it in practice.

Living in close proximity to other people often with different backgrounds and cultural beliefs, as well as co-owning areas of the land and building about which decisions need to be made, creates ample oppor-

tunities for tempers to rage and nostrils to flare. With acknowledgment to the Oregon Dispute Resolution Centre, here are ten steps to help you deal with conflict constructively when it arises in a sectional title scheme:

1. Plan what you want to say: Think about what you would like to say to the person with

whom you have a conflict. Try to construct what you want to say so that the other person will understand your point of view. Concentrate on how you see the problem and the way that it affects you. Try not to point fingers and place the blame for the problem directly on the other person, rather attempt to help the other person understand that a problem exists and invite ...to page 2



Jennifer Paddock

I M P O R T A N C E O F S E C T I O N A L T I T L E T R A I N I N G . . . c o n t i n u e d

from page 1... Apart from bookkeeping skills a further requirement of the Sectional Title Act is that bookkeepers should have a sound knowledge of the Act as this will assist them with the allocation of expenses," says Porteous.

Porteous points out that in terms of the objectives of managing and controlling the common property in a sectional title scheme the provision of funds must be considered. "If you look at the statutory obligations under Section 37(1) of the Sectional Act there is a requirement to ensure that common property is kept in a good state of repair and to provide for future maintenance – in other words provide funds for this purpose. In regard to generating those funds or income, Section 32 of the Act provides for participation quotas and nominated values of units. One could comfortably say that a major part of a managing agent's function is to assist bodies corporate and trustees to manage their financial affairs. So it is understandable

that the function of qualified and skilled bookkeepers is critical. Portfolio managers also need to have the knowledge to ensure that owners of these schemes are provided with the correct advice, credit policies and assistance."

"Due to its nature, the sectional title management sector has not been as severely affected as the residential sales sector. However, the sectional title industry is still under threat through mismanagement of Trust Funds, and in some instances unprotected funds from managing agents who believe that they don't need to register under the Estate Agency Affairs Act. As a result these managing agents don't manage the body corporate money in terms of section 32(1) of the Estate Agencies Affairs Act. Through compliance with this Act managing agents are issued with a Fidelity Fund Certificate and all trust monies are insured by the Estate Agencies Fidelity Insurance. Leaving the money unprotected is very risky as it

leaves it open to mismanagement. This in turn could place the trustees who appointed such managing agents in a vulnerable position in terms of their fiduciary relationship with the body corporate. The National Association of Managing Agents (NAMA), which is a well known representative body within the industry acknowledges and embraces the fact that it is regulated by the Estate Agency Affairs Act. So it stands to reason that trustees should seek proof of a managing agent's Fidelity Fund Certificate. Further corporate compliance would also include registration as debt collectors, compliance with the Health and Safety Act and Workmen's Compensation," says Porteous.

For further information contact Pam Golding Properties Margate on 039 3173003 or email margate@pamgolding.co.za. ■

1 0 S T E P S T O D E A L I N G W I T H C O N F L I C T I N S E C T I O N A L T I T L E S C H E M E S . . . c o n t i n u e d

from page 1... them to help you find a solution that suits you both. Be willing to compromise on your side too.

2. Choose a good time: Choose to talk to the other person when there will be time for you to have a thorough discussion. You don't want to catch them leaving their flat when they are already late for work or with a group of their friends. Perhaps when they are at home or arriving home would be a more suit-

able time to chat constructively.

3. Speak directly: Speak directly to the person with whom you have a conflict. 'Skinning' to your other neighbours and sending rude anonymous letters will cause nothing but trouble and ultimately will do nothing constructive to resolve the dispute. Meeting face-to-face is first prize, unless there is a threat of violence. Second prize is speaking over the telephone.

4. Speak respectfully and honestly: Speak to the other person in a respectful and honest way. Have a positive attitude about working together and finding solutions that suit both of you. Raising your voice and getting emotional makes it harder for the other person to listen to you and understand your point of view. It puts them in 'defence mode' and will make it much harder to find constructive solutions. Remain open to hearing their side of the story and seek to understand it

10 STEPS TO DEALING WITH CONFLICT IN SECTIONAL TITLE SCHEMES...continued

from page 2 ...from their side. Then attempt to reach a compromise.

easily, as you will understand what is important to them.

perspective and decide together whether or not it can be implemented.

5. Focus on giving information: Discuss your concern with a focus on how the problem affects you and how it might be resolved. Do not simply deliver a message of 'stop it or else'.

7. Talk it through: Once you have begun the conversation try not to leave out the details that you feel are too difficult to share or the minor details that might not matter so much but still bother you. You need to air all issues so that they can be addressed.

9. Be specific about a solution: Once you have agreed on a solution that you both feel is attainable, spell it out clearly and make sure you are both 'on the same page'.

6. Listen: You've had your say, now hear the other person's side. Try to relax and understand how the other person feels about the situation. Summarise what you think they are saying and ask questions to clarify your understanding of their view of the problem. You do not necessarily have to agree with their view, but understanding it will allow you to come to a compromise more

8. Consider possible options: Try to create an atmosphere in which you and the other person can put your heads together and brainstorm possible solutions or ways to alleviate the problems currently being experienced. When a solution comes up that you both think might work, discuss it from a logistical

10. Follow through: Stick to your side of the bargain. If you said you would do something, organize something or not do something – follow through. Contact the other person if you feel they are not sticking to their side of the bargain and communicate immediately if an unforeseen obstacle occurs which makes it impossible for you to uphold your side of the bargain. Once you have resolved the dispute, congratulate yourselves on achieving a respectful relationship with your co-owner.

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Jennifer is a specialist sectional title consultant at Paddocks. Her hourly rate is R1,000 per hour and she can be contacted at 021 674 7818.

*Jennifer is also the **course convener** for the new **Sectional Title Law of Meetings Course**, which is due to be launched at the beginning of June. Please contact Deborah on 021 674 7818 for more details. ■*

SPOTLIGHT ON SECTIONAL TITLE CERTIFICATIONS



Prof. Paddock explains how the UCT Sectional Title Scheme Management course helps Portfolio Managers and Managing Agents excel at their job.

Students who have successfully completed this course use their learning to properly apply the parts of the Sectional Titles Act and the prescribed management rules that govern the management of schemes. An untrained person will not know what scheme management provisions exist in the Act and its regulations or how to interpret and apply these provisions in practice. The course takes these provisions and unpacks them within a frame of reference that learners can use in their practical management tasks.

The course starts with an **introduction to the South African legal system**. This provides learners with a basic knowledge and understanding of the South African legal environment in which sectional title schemes operate. It covers basic legal concepts with a bias towards real property law and the managing agency profession. Learners then deal with basic real property concepts. This part is designed to provide a basic knowledge and understanding of the existence and operation of property rights in South African law.



Then learners move on to **sectional title terms and concepts**. Here they obtain an understanding of the specialised terms and concepts which apply and are used in the law and practice of sectional title scheme management. These are knowledge-based units that go beyond a mere listing of the legal terms; the course defines and explains each of them so as to give the learner the sound theoretical and practical foundation which is necessary to properly understand the wording of the Sectional Titles Act and the various types of scheme rules dealt with later in the course.

Next is a **high-level overview of a sectional title body corporate**, dealing in general terms with the laws and rules that apply, the types of rules, the functions and powers of sectional title bodies corporate, changes to common property, levies, trustees and administrators. This part gives learners a clear understanding of the contexts in which the information and concepts learned in previous modules will be applied and prepares them for the more detailed information to come.

The **managing agency** module gives learners a clear understanding of the context and content of a contract between the trustees of a body corporate and a managing agent or agency as well as a detailed understanding of the 'best practices' applicable in sectional title managing agency practice, as reflected in

the Code of Conduct of the National Association of Managing Agents ('NAMA'). The learner obtains a clear understanding of what a managing agent does, the context in which those services are rendered, the place of the managing agent in the operations of a sectional title body corporate and the legal relationship between the managing agent and the trustees as well as obligations to other roleplayers.

The course then deals, in detail, with **financial, administrative and physical management issues**. Learners focus on each of these critical areas, examining in each context, those parts of the Act and rules that regulate that sphere of administration and governance of a sectional title scheme. The relevant parts of the Act and regulations are presented, with comments, as a coherent body of provisions. These core components prepare learners to understand and observe the statutory requirements in the contexts of financial, administrative and physical management and control of a sectional titles scheme.

Finally the course introduces the learner to the **four principal methodologies applied to the resolution of disputes in the context of sectional titles**. On successful completion of this module the learner will know and have a clear understanding of what dispute resolution techniques are available and which should be considered for ...to page 5

...SPOTLIGHT ON SECTIONAL TITLE CERTIFICATIONS

from page 4...any given dispute arising in the sectional title management context. The compulsory submission to arbitration contained in the prescribed management rules is examined in detail.

The course comprises a series of knowledge-based units of learning that equip the learner for entry into the sectional title scheme management industry. The focus is the clustering and integration of areas of knowledge, skills and application, rather than on a 'checklist' approach. Informal assessment is an integral and vital part of teaching strategy which provides feedback to learners. Teaching includes an on-going process of monitoring learner progress. The formal

assessment methods include multiple choice and written assignments as well as a multiple choice examination.

The University of Cape Town Sectional Title Scheme Management Certificate Course is offered under the auspices of the Faculty of Law. This course was first presented in December 2005 and is presented twice a year/ The 8th presentation of this course is due to begin in June 2009.

Please contact Christina on 021 674 7818 or christina@paddocks.co.za for further information on the course or other sectional title related courses. ■

Quote from Prof. C G van der Merwe* in regard to the University of Cape Town (Law@Work) Sectional Title Scheme Management Certificate Course:

"The importance of this course is to educate persons involved in the management of sectional titles schemes, whether they are managing agents, trustees or sectional owners, in the finer details of sectional title management."

*Research Professor, Department of Private Law and Roman Law, University of Stellenbosch; Emeritus Professor of Civil Law, University of Aberdeen

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B U I L D I N G M A I N T E N A N C E

B Y R O B P A D D O C K (R o b t h e B u i l d e r)

Condensation



By Rob Paddock

Do the words Hylotrupes Bajulus, Oxypleuris Nodieri, Anobium Punctatum, Lyctus Brunneus, Bostrycidae, Phoracantha, Stenocellis Hylostoides, Nicobium Castaniun, Ondontotermes Badius, Macrotermes swaziae, Ernobius Molus or Xylocopidae mean anything to you?

Me neither.

But they should. These words that at first appear to be swear words in a foreign language, in fact refer to just a handful of the seemingly endless list of insects and fungi that infest your roof trusses, floor boards, joists and all things wooden in your beautiful home. In this article I hope to give you a better idea of the favourable conditions that attract these critters in the first place, and how to deal with it.

Insects (termites, beetles, worms, borers, etc)

There are no guaranteed means of preventing attack from insects. That being said, insects do like dark, damp conditions. Removing these conditions by providing adequate ventilation will go a long

way towards preventing attack. There are several insect species that will attack unpainted or untreated wood and which are generally called borers. The timber is usually damaged by the tunneling activity of the larva which occurs mainly in the sapwood. The telltale sign of borer activities are pinholes in the timber surface.

The insect will go through the cycle of larva, pupa and adult before the fully-grown insect leaves the timber to mate. At this stage, surface sprays containing borates will prevent newly hatched larvae from entering the wood. However, this technique is not effective on wood which has been varnished, waxed or otherwise sealed from attack by moisture. Bear in mind that once infestation has occurred, the timber may be adversely weakened and you will need to replace the affected areas.

Annual inspection of your subfloors and roof trusses is recommended in order to identify infestation early on, and take the appropriate remedial steps in order to prevent the costly exercise of replacement.

Fungus

Fungus rots timber, making it soft and leaches its strength. Decay of wood is caused by fungi, which once again, requires favourable damp and dark conditions in order to grow. By providing proper attention to site drainage and adequate ventilation, you will be able to prevent fungal growth.

Because the decay process is relatively slow, periodic inspections are necessary in order to identify potential problems before serious damage has occurred by unnecessary decay. When other means of decay prevention are not possible, the timber can be treated with a preservative.

Leaky plumbing and drain spouts should always be repaired in addition to treatment. Wet crawl spaces should be vented and plastic sheeting installed. Structural wood members that are no longer sound must be replaced. ■

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G R A H A M ' S M U T T E R I N G S



By Prof. Graham Paddock

ANNUAL GENERAL MEETING

Not every sectional title scheme has a February 28/29 financial year end, but for most of us this time of year is when we make preparations for the Annual General Meeting ('AGM').

So what's all the fuss about, and why should an ordinary owner bother to read all the paperwork sent out with the notice of the AGM or to take time to attend it? There are some very compelling reasons!

Annual Reporting and Planning

The AGM is the only compulsory meeting of owners. Looking back, it is at this meeting that the trustees must give owners a financial accounting and an operational report on the affairs of the body corporate for the previous financial year. Looking forward, the trustees propose a budget and insurance values for the subsequent financial year and the owners elect the new trustees.

Owner Apathy

Why is it that so many owners do not bother to attend the AGM? In many schemes that are well run, owners don't believe that their input is really necessary; if others will do the work they see no need to get involved. But owners who do not bother to support the body corporate

by taking an interest in its affairs and attending the AGM might find that they are seen as 'outsiders' when they ask the trustees or managing agent for help during the year.

Finances

The single most important decision a body corporate makes each year is the adoption of its budget which has a direct influence on the amount of levies paid by each owner. Why would you not spend an hour reading the AGM paperwork and another few hours attending the AGM when this investment is all you need to have some control on who will manage your investment and how much you will pay each month?

Tips for AGMs

If you have a particular issue which you want discussed and decided by owners, give the trustees and managing agent advance notice, asking that it be put on the agenda as special business.

For some owners the AGM is their only opportunity to raise matters they consider important, so let them air their views within reason. But do not agree to make decisions on matters which were not on the agenda.

Make sure that you understand every proposal, there is nothing in the operation of your body corporate which is beyond your understanding. If you do not understand any proposal then it has not been set out or explained clearly enough.

If you think the trustees and managing agent have done a good job, express your appreciation.

QUESTIONABLE TRUSTEE ACTIONS

What should a managing agent do when trustees make decisions, which their managing agent believes negatively impact owners and are not in accordance with the Act? Is the managing agent obliged to sign letters addressed to owners informing owners of these decisions? Should the format of the letter be changed to make it clear that the content is coming from the trustees directly and not from the managing agent?

A managing agent is contracted by the trustees to assist them in their statutory management duties. Part of this assistance is giving paralegal advice as to what they can do and what they cannot do. If you believe that the trustees are acting contrary to the provisions of the Sectional Titles Act, despite your advice, you should not be associated with that illegal action. But is simply changing the salutation on the letter enough to make owners realise that you are disassociating yourself from the action you think illegal? The letters are still being prepared in and sent from your office.

I suggest as a professional being paid to assist the trustees you need to make sure your concerns are put in writing to the trustees and you also need to make sure you are not associated with anything you think is illegal or incorrect in terms of the Act. Apart from the question of legal liability for professional negligence, if you are seen to have assisted the current trustees to do something wrong, or even to have done nothing while you knew they were doing something wrong, what are the chances of you retaining your mandate?

...to page 9

GRAHAM'S MUTTERINGS

from page 8...Prof. C G van der Merwe rejects the view that a managing agent is a simple employee of the trustees who must do what they tell him/her to do in all circumstances. He points out that the trustees may delegate to the managing agent duties that require the exercise of discretion and that parts of the prescribed rules impose duties on the managing agent in favour of the body corporate.

I feel that in doing certain simple tasks in accordance with the trustees' specific instructions the managing agent may sometimes be acting like an employee (and thus only exposing himself to the level of liability associated with employees) but that in most activities the managing agent is an agent in the proper sense of that word, i.e. an independent professional who is carrying out tasks based on his expert knowledge of the applicable law and a wide variety of specialist practices. In these cases the managing agent is subject to the same degree of potential liability as an engineer, lawyer or accountant employed by the trustees would be.

Prof van der Merwe's conclusion is that the managing agent stands in a fiduciary relationship to the body corporate and owes it a duty of trust as well as of care and skill. So what does all this mean in these circumstances?

As a managing agent you should not do anything that you think could mislead owners. So if sending out a message to owners on your letterhead (or in any other normal format) is likely to lead them to believe you have approved the information, do not send them information you believe is misleading in this format. If distancing yourself from a trustee action you believe to be incorrect loses you their

management contract, it may be a good investment in the future of your business.

(Thanks to Michael Whistance for his question in this regard on Sectional Titles Online <http://www.sto.co.za>)

MORATORIUM ON IMPROVEMENT & ALTERATIONS

When an owner does unauthorised building work does this mean that the trustees should impose a moratorium on other owners' proposals for alterations put forward for consideration in the proper manner, or can they take decisions on these proper applications on their own merit?

It is only sensible for trustees, faced with an owner application, to make thorough enquiries and get all the legal, architectural and engineering advice they need to deal properly with the matter.

The concept of a moratorium, i.e. a temporary suspension of trustee consideration of any owner application, is not catered for in the Act or rules. A moratorium would, in the given circumstances, be a decision by the trustees that they will not accept or process any further applications until the non-compliance is sorted out. That would probably not be a valid decision. But the trustees could validly decide that any applications made will not be dealt with until the investigations they have put in hand are completed.

Whenever the trustees are not sure of what they should do, they have a duty to find out before they proceed. Owners are entitled to make applications. But they are not entitled to demand that the trustees or owners make decisions in a shorter period than is reasonable in all the circumstances - and the circumstances may require further investigations.

(Thanks to Jennifer Baker for her question in this regard on Sectional Titles Online <http://www.sto.co.za>)

IS A LEVY INCREASE OF 20% ALLOWED?

With the annual general meeting coming up soon, an owner realises that the trustees have proposed an increase of 20% in the levies. But is there not a limitation of the increase to 10%?

No, The trustees can suggest any level of increase and owners, by majority vote at the AGM, can adopt a budget that means an increase of more than 10%. There is no limitation here, except that the approved budget must, in the estimation of owners, be a reasonable reflection of forthcoming costs and a reasonable provision for future maintenance costs.

The 10% limitation applies to the interim general levy increases trustees can implement after the end of a financial year and pending the approval of the budget referred to above.

(Thanks to Anne Dickens for her question in this regard on Sectional Titles Online <http://www.sto.co.za>) ■

WELCOME TO THE PADDOCKS AND GETSMARTER TEAM

Since 2006, Paddocks has grown from 4 staff members to 16 staff members. In that time, the company has launched 5 sectional title focused training courses, released an updated English and Afrikaans version of the Sectional Title Survival Manual, launched a completely free online self-help website called Sectional Titles Online (www.sto.co.za) as well as launch a new training business called Getsmarter (www.getsmarter.co.za).

In 2009, and in line with this growth, the firm has employed 5 new people. Welcome to the Team:



Jason Lea
IT Developer



Natasha Petro
Director of First Impressions



Deborah van Veyeren
Marketing Executive



Hannes Brink
IT Manager



Bradley Scannel
IT Developer



2009 SECTIONAL TITLE COURSE CALENDAR

Course Name	Registrations Close	Course Starts
UCT Sectional Title Scheme Management Course	5th of June 2009	15th of June 2009
Sectional Title Law of Meetings Course	17th of July 2009	27th of July 2009
UCT Certificate in Business Writing and Legal Documents Course	14th of August 2009	24th of August 2009
Sectional Title Bookkeeping Course	2nd of October 2009	14/15 October 2009 22/23 October 2009
UCT Advanced Sectional Title Scheme Management Course	25th of September 2009	5th of October 2009
UCT Sectional Title Scheme Management Course	20th of November 2009	4th of December 2009

Q & A WITH JENNIFER



By Jennifer Paddock

where an owner uses the exclusive use area for a 2nd lounge?

A2. There are two separate issues in your question:

1. Charging levies for EUAs; and
2. Potential extension of a section

Issue 1:

Section 37(1)(b) of the Sectional Titles Act ("the Act") does not allow the body corporate to charge a 'levy' for EUAs. The body corporate is only entitled to charge the owner with exclusive use rights an amount *'as is necessary to defray the costs of rates and taxes, insurance and maintenance including electricity and water'* in respect of that area *'unless in terms of the rules the owner concerned is responsible for such costs'*.

So strictly speaking the body corporate is entitled to recover from the owner with exclusive use rights only the money it spends on his/her EUA (and not a flat-rate levy) unless there is a rule applicable to the scheme that requires the holder of the exclusive use right to bear all costs relating to his/her EUA. However, I am aware that in practice a flat-rate levy is often charged for EUAs regardless of the amounts actually spent on them.

Issue 2:

You say that an EUA is being used as a second lounge. It is not clear from your question whether this was a courtyard that has been enclosed to form a 2nd lounge or exactly how this 2nd lounge

came about. Please note that if the floor area or the boundaries of the section have been extended to include this EUA 2nd lounge into the section then the provisions of section 24 of the Act must be followed.

Managing Agent and Owner?

Q3. Can a managing agent also be an owner of flats within the block of flats that s/he manages?

Can I as an owner independently ask the managing agent for the financials at any time especially if the trustees refuse to let me see a copy. Since I am the owner of my flat what are my rights to these financials especially if I assume that there is some weird stuff going on but require proof to safeguard myself as an owner?

A3. Yes a managing agent can be an owner in a scheme that s/he manages. Currently PMR 5(b) even allows a managing agent to be a trustee in a scheme that s/he manages provided s/he is an owner in that scheme. In my opinion this provision is suspect because it lends itself to a lack of impartiality but nonetheless it is in force.

As for the financial statements - as an owner you are perfectly entitled to request and receive a copy of the latest statements from the. In terms of PMR35(2):

"On the application of any owner, registered mortgagee or of the managing agent the trustees shall make all or any of the books of ...to page 11

Fining for letter writing

Q1. A recent newsletter in our complex stated that the Body Corporate will fine an owner if *they* have to write a letter to you regarding a complaint by another owner (for instance dogs)? Is that legal?

A1. For a fining rule to be enforceable, it has to adhere to the principles of natural justice, one being audi alteram partem – let both sides be heard.

The trustees are not entitled simply to fine an owner without the apparent transgressor having an opportunity to state his case. Therefore the trustees are required first to summons the apparent transgressor to a hearing at which both sides must be given a chance to relay their side of the story, after which the trustees may decide whether a fine is justifiable in light of all the information.

Please note there are conflicting views on fining provisions and this is one opinion.

Levy Charges

Q2. Can the Trustees levy the same rate for a section and an exclusive use area,

Q & A WITH JENNIFER...continued

from page 10...account and records available for inspection by such owner, mortgagee or managing agent."

Section vs Common Property (1)

Q4. I am aware that all external surfaces must be maintained by the body corporate (roof, wall cracks & painting etc). In the situation where balconies (which are part of the section) have brick built braai's on them where the plaster falls off is it still the body corporate's responsibility?

A4. If the balcony is part of your section you are responsible to repair and maintain it (including the built-in braai) in terms of section 44(1)(c) of the Act. You are correct that the body corporate has to maintain the common property in the scheme, but as the balcony is part of your section it is not the body corporate's responsibility to maintain, but yours.

Section vs Common Property (2)

Q5. We recently painted our complex but the door bell covers are rusting and it mars the effect of the paint job. I wrote a letter to the Trustees and asked them to budget for new door bell covers in the next financial year but they advised the door bell covers are the responsibility of the owner.

Please would someone clarify this for me? I understood that as the door bell covers are on the outside of the wall they should be maintained by the Body Corporate. Am I mistaken? Please point me to the section of the Act where such

items are covered.

A5. Section 37(1)(j) obliges the body corporate to repair and maintain the common property.

If the door bell covers are indeed unregulated common property as you suggest, then the body corporate will be both operationally and financially responsible for their maintenance and repair.

Damp and Leakage

Q6. Our apartment has been affected by damp from leakage from the balcony upstairs. The balcony is the owner upstairs responsibility.

We have approached him more than 2 months ago and he has still done nothing. He claims to have financial difficulties and there is nothing he can do.

What steps can we take to handle this matter? Is there a section in the Act that we can use to force him to do the repairs? Should I seek legal recourse?

A6. An owner has an obligation in terms of section 44(1)(c) of the Act to repair and maintain his section in a state of good repair. If s/he fails to do so the trustees or the managing agent may use the provisions of prescribed management rule 70 to send the owner written notice to repair or maintain the damage within 30 days, failing which the body corporate is entitled to remedy the owner's failure and recover the reasonable costs of doing so from such owner.

So you could approach the trustees or managing agent and ask them to send the owner written notice of his/her obligation to repair the balcony and if s/he fails to do so the body corporate may remedy the failure and recover the costs from the owner concerned.

Otherwise you could take the matter into your own hands and instruct an attorney to write a letter of demand to the owner above you, and if/he still fails to repair the balcony you could institute litigation procedures against him/her in an attempt to enforce the balcony repair and recover your costs spent on fixing the damp to your section that has been directly caused by this owner's leaking balcony.

I suggest to try the PMR 70 route first though as litigation is expensive and suing your neighbour will definitely destroy all neighbourly relations.

Sectional Title Disputes

Q7. I've heard the small claims court is the best place to have a dispute with the trustees clarified. Is this true?

A7. The Small Claims Court is not the most appropriate forum in which to resolve disputes with trustees. Prescribed management rule 71 sets out that any dispute between owners inter se or between an owner/s and the body corporate/trustees or vice versa, in relation to the Act or the rules, shall be referred to arbitration. ■

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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 pub-

lishes 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.

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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.

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