



PRESS

**INTERNATIONAL COMPARATIVES -
APARTMENT OWNERSHIP IN THE
NETHERLANDS**

In the June Paddocks Press (Volume 4, Issue 6) we published the first international comparative article, looking at apartment ownership in Portugal. Below is Prof Paddock's second article looking at apartment ownership in the Netherlands.



By Prof. Graham Paddock

The Netherlands government tackles insufficient provision for future maintenance costs and ensures scheme information is generally available.

Apartment ownership has been a feature of the Netherlands legal system since 1951. Before that various forms of contractual arrangements, mostly cooperatives, were used to secure tenure to particular apartments. Many of these older arrangements are still in operation. In 1972 the original statute was revised and its provisions incorporated as articles of the country's Civil Code. In 1992 these articles were brought forward into Title 9 (sections 106 to 146)

of Book 5 in the current Civil Code.

A developer creates a new residential scheme by having a notary draw up and register a "splitsingsakte" (division deed) that effectively allows for the separate sale of "appartementenrechten" (apartment rights). The documentation includes provision for the management body and a formula for to page 4...

EXCLUSIVE USE TUTORIAL & QUIZZ

An interactive component to this edition of Paddocks Press, the exclusive use tutorial will test your knowledge of two different types of exclusive use areas. Answers are provided in this edition.

The participation quota allocated to a section in terms of the sectional plan determines the size of the share in the common property allocated to that section.

Sections 27 and 27A of the Sectional Titles Act, 1986 ("the Act") provide for two different types of exclusive use areas.

SECTION 27 – REGISTERED EXCLUSIVE USE RIGHTS

In terms of section 27 of the Act, a developer can arrange for areas of common property to be surveyed and shown as "exclusive use areas" on the

INTRODUCTION

All the owners of sections in a scheme own all the common property in undivided shares.

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BECOME AN EXPERT

The UCT Advanced Sectional Title Scheme Management Course Registrations extended until 2 October.

EXCLUSIVE USE TUTORIAL & QUIZZ ... continued

sectional plan. The developer can then cede the “exclusive use rights” to owners of sections when the plan is registered.

By way of a unanimous resolution the owners in a scheme may create new registered exclusive use rights that can be transferred to owners. The new exclusive use areas to which the rights will apply must be surveyed, shown on a sectional plan of extension and must not encroach upon any existing registered exclusive use area. Then the body corporate can cede the rights to those new exclusive use areas to the relevant owners.

Exclusive use rights in terms of section 27 of the Act can be bonded. The purchaser or holder of this type of exclusive use right can offer those rights as security for a loan with his unit. Both the unit and the exclusive use rights are then described in and made subject to the terms of the mortgage bond.

Rights of exclusive use under section 27 of the Act are “real rights” to immovable property. A person entitled to those rights can enforce and protect them against any other person by instituting legal proceedings.

SECTION 27A – RULE-BASED EXCLUSIVE USE RIGHTS

Section 27A provides for a second type of exclusive use rights. A developer or the body corporate of a scheme can make rules that confer rights of exclu-

sive use on its members.

The areas to which these exclusive use rights apply are shown on a scale layout plan which is included in the rule. The layout plan must clearly indicate the location of the exclusive use areas and allocate a distinctive number to each. The rule must specify the purpose for which each exclusive use area may be used and include a schedule showing the allocation of the use rights to section owners.

Exclusive use rights conferred by rules are “personal rights” only effective against the body corporate of the scheme, all other owners and occupiers of units, i.e. only those people who are bound by the rules in terms of the Act.

Exclusive use rights conferred by rules, being personal rights, cannot be bonded.

“TRANSFER” OF EXCLUSIVE USE RIGHTS

Exclusive use rights under section 27 of the Act are ceded (transferred) by registration of a notarial deed of cession. Normally the rights to an exclusive use area are sold and ceded at the same time the linked unit is transferred.

Where rules confer exclusive use rights on the owner “from time to time” of a specified section, a transfer of the unit automatically has the effect of transferring the exclusive use rights.

Some rules allocate the exclusive use rights to specific named persons and some include provisions for unregistered cessions of those exclusive use rights from one owner to another. Where rules name the person entitled to exclusive use rights but do not cater for transfer of these rights, the only way to reflect a transfer of the rights, either from a seller to a purchaser or from one existing owner to another, is to amend the rules. Notification of the amendment must then be lodged with the Registrar of Deeds before the amendment takes effect.

COSTS ASSOCIATED WITH EXCLUSIVE USE AREAS

Section 37 of the Act provides that every owner who is entitled to exclusive use of an area of common property must be required to pay an additional contribution to the body corporate's administrative fund.

This applies whether the exclusive use rights have been registered in terms of section 27 or conferred under section 27A by way of scheme rules.

The body corporate must collect from each person entitled to exclusive use rights its estimate of the costs of rates and taxes, insurance and maintenance of their exclusive use area, including the provision of electricity and water.

EXCLUSIVE USE TUTORIAL & QUIZZ ... continued**IMPROVEMENTS TO EXCLUSIVE USE AREAS**

Prescribed Management Rule 68(1)(vi) says that an owner "shall not construct or place any structure or building improvement on his or her exclusive use area, without the prior written consent of the trustees, which shall not be unreasonably withheld and that the provisions of section 24 and section 25 or other relevant provisions of the Act or the rules, will not be contravened".

This means that the trustees must approve a reasonable request by an owner to make an improvement to an exclusive use area but may not give permission for any works that are, in reality, an extension of the owner's section or the creation of a new section.

QUIZZ

1. What is the effect of holding rights to an "exclusive use area" (EUA) in a scheme?

- a) A specific part of the common property is set aside for use by just one owner (and those who use his/her section).
- b) The EUA ceases to be part of the common property.
- c) No owner other than the one who holds rights to that EUA can use it.
- d) The owner who holds rights to the area must maintain and repair it.

2. To what uses can an exclusive use area be put?

- a) Parking bays only.
- b) Parking bays, carports, garages, gardens and yards.
- c) Swimming pools.
- d) Any purpose at all, as long as it is legal!

3. Who owns the common property in a sectional titles scheme?

- a) The body corporate.
- b) The trustees.
- c) The owners.
- d) The State.

4. The common property is said to be owned in "undivided shares". What does that mean?

- a) Each owner of a section also owns a particular piece of the common property.
- b) All owners have an interest in all parts of the common property, which interest may be subject to exclusive use rights in favour of another owner.
- c) Any owner can use any part of the common property.

5. What determines the size of an owner's share in the common property?

- a) The price he/she paid for his/her unit.
- b) The size of the unit.
- c) The participation quota allocated to that owner's section.

6. Subject to exclusive use rights, owners can use any part of the common

property. But they also have a corresponding duty not to do anything that would prevent their co-owners from exercising the same rights.

- a) True
- b) False

7. Which of the following statements are correct?

- a) An EUA created in terms of S27 and shown on the sectional plan gives "real rights".
- b) An EUA created in terms of S27 and shown on the sectional plan gives "personal rights".
- c) An EUA created in terms of rules gives "personal rights".
- d) An EUA created in terms of S27A gives "real rights".

8. Which of the following can you bond / mortgage?

- a) A unit.
- b) Rights to a s27 exclusive use area.
- c) Exclusive use rights in terms of the scheme's rules.

9. If you are entitled to exclusive use rights, you are obliged to pay all expenses attributable to the area concerned.

- a) True
- b) False

Answers on page 6.

**I N T E R N A T I O N A L C O M P A R A T I V E S -
A P A R T M E N T O W N E R S H I P I N T H E N E T H E R L A N D S
. . . c o n t i n u e d**

establishing each owner's share of the building management and maintenance costs. The provisions of the division deed can only be changed by a subsequently registered notarial deed.

The Netherlands equivalent of a South African sectional title body corporate is known as an Owners Association (Vereniging van Eigenaars, abbreviated to "VvE"). This controlling body is automatically created when the developer transfers an apartment right to another person and is operated according to its constitution contained in the division deed, including rules that can be extended by "internal" or "house" rules, "huishoudelijk reglement" made by the owners. While the division deed is registered in a public registry, the house rules have historically not been filed at any government office and could only be obtained on request from the VvE's secretary or any managing agent. Buyers of apartment rights are automatically bound by the VvE's constitution and rules.

House rules can deal with the use and enjoyment of the apartments and issues such as the keeping of pets, but any substantial restriction on ownership rights, such as a limitation on the right to rent the apartment, can only be created in the notarial division deed.

A few years ago it became of concern to the Netherlands government that a substantial number of VvE's were not making adequate provision for major maintenance and repair costs. As a result, the government imposed an obligation from 1 May 2008 on all schemes to establish sufficient maintenance funds for all major deferred maintenance and repair costs. The government also made it compulsory for all new VvE's to be registered under the Handelsregisterwet with effect from 1 July 2008, with the final date for registration of all existing VvE's being the end of 2009. Failure to register will be an offence.

The government's view is that VvE's participate in trade. Like companies and other entities, larger VvE's employ per-

sonnel such as caretakers, cleaners and gardeners and engage in major contracts with builders, roofing contractors and painters, so they should be registered. It is expected that proof of registration will be a requirement for activities such as the opening of a bank account.

The Commercial Registry will keep details of each VvE, including a copy of the notarial deed of division, its name, date of establishment, address and the names of all board members. Where the VvE uses the prescribed/model rules, it need not submit these. But if there have been any changes, a full set of rules will have to be submitted. The VvE will have to notify the Trade Registry of any changes to its documentation and pay an annual fee, but at this stage will not have to submit its financial statements. The information in the Registry will be open to the public, making it much easier for banks, contractors, suppliers, agents and prospective purchasers to get the information they need to make informed decisions. ■

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THINKING OF MAKING ALTERATIONS TO YOUR SECTIONS? MAKE SURE YOU COMPLY WITH THE LEGAL REQUIREMENTS



By Jennifer Paddock

As the owner of a unit in a sectional title scheme you are subject to more restrictions than you would be if you were the owner of a freehold property. When you want to make alterations to your section you may well need body corporate approval as well as that local authority consent before you can start. A freehold property owner is not subject to the additional level of governance exercised by sectional title bodies corporate. Sectional owners therefore need to be aware of the correct procedures, so as to ensure that they comply with the applicable legislative requirements before effecting alterations to their sections.

In this article we look at the requirements set out in section 24 of the Sectional Titles Act 95 of 1986 ("the Act") which deals with extensions of sections.

What is an 'extension' of a section?

Any alteration to your section which increases its:

- boundaries, or
- floor area

is considered an extension of the section.

Where are your sections boundaries?

In terms of section 5(4) of the Sectional Titles Act 95 of 1986 ("the Act") a section is owned to the median line or midpoint of its dividing floors, walls and ceilings. The scheme's sectional plan filed at the Deeds Registry indicates the boundaries of each section, shown as solid lines.

So if your section is on the ground floor and you decide to push out your bedroom into the garden area, you are almost certainly going to be extending the boundaries and floor area of your section and will be hit by the provisions of section 24 of the Act.

Extending the floor area of your section

It is possible to extend your section without actually extending the boundaries of your section. For example, if your section has a double volume ceiling and you decide to build a mezzanine loft area within your section, you will be extending the floor area of your section and section 24 of the Act will apply. Even if you just use the loft area for storage space, you will have effectively extended the floor area of your section.

What authorization do you need to get before you can legally extend your section?

Section 24(3) of the Act stipulates that an owner must first obtain a special resolution of the body corporate author-

izing his proposed extension before he is allowed to effect the alterations. This would involve putting a proposal to owners, normally via the trustees, and perhaps asking them for a general meeting where your proposal can be considered and voted upon. Alternatively you could send or take your proposed resolution to each owner individually and get written consents.

How is a special resolution passed?

A special resolution can be passed in one of two ways:

1. at a general meeting of the body corporate; or
2. by the necessary majority of owners agreeing in writing in what is known as a 'round robin' procedure.

A special resolution at a meeting requires the following:

- notice of the meeting, specifying the proposed resolution, must be sent to all persons entitled to attend general meetings and at least thirty days notice must be given unless the trustees have decided that shorter notice is appropriate;
- At the meeting a quorum of persons entitled to vote must be present or represented; and
- Of those present or represented and entitled to vote, seventy-five percent in number (by show of hands) and in value (seventy-five percent of the participation quotas

THINKING OF MAKING ALTERATIONS TO YOUR SECTIONS? MAKE SURE YOU COMPLY WITH THE LEGAL REQUIREMENTS...continued

present or represented at the meeting) must vote in favour of the resolution.

A special resolution by round robin procedure requires the following:

- Seventy-five percent in number and value of all owners must agree to the resolution in writing.

Once the special resolution has been passed, what else needs to be done from a sectional title perspective?

The special resolution might only be approved if it contains conditions that apply to your building operations, such as an obligation to pay a deposit to cover the body corporate against any damages it may suffer in the process. It may also approve the extension on the condition that you pay the body corporate a capital amount as compensation to other owners for the loss of the use of the common property that your extension will cover. The trustees should not sign any building plans for submission to the local authority until the required special resolution is obtained.

Your next step is to get the buildings completed to the point they can be measured. During this process you will need to liaise with the local authority and ensure that all their requirements are met. You will need to instruct a land surveyor or architect to draw up a draft sectional plan of extension and submit this plan to the Surveyor-General for approval. Once the Surveyor-

General has approved this plan application must be made to the Registrar of Deeds to register the plan.

If according to the plan your extension causes a deviation of more than ten percent in the participation quota of any section in the scheme, then you will also need to get the consent of the mortgagee of every unit in the scheme. You may be able to simplify this process by requesting general consents from the major banks which hold mortgage bonds over the units in the scheme.

Answers for the Exclusive Use Tutorial from page 3

1. A and C
2. D
3. C
4. B
5. C
6. A
7. A and C
8. A and B
9. A

BANANA BREAD BAKE-OFF

There has been much debate around the Paddocks and Getsmarter workplace as to who can make the best banana bread, so what better way to settle this but with a bake-off! Although there was rumour of dubious scheming, a big congratulations to Amy, Mandy and Jen for coming in first place. Special note needs to be made of the IT boys who came in at a very close second place.



BUILDING MAINTENANCE

BY ROB PADDOCK (Rob the Builder)

Keeping a lid on it—roof maintenance



By Rob Paddock

Generally, people don't think about roof maintenance until a massive leak appears while they are away on holiday in Barbados escaping the rainy season back home. While the unit owner is sipping pina colodas on the beach, water is pouring onto their recently cleaned carpets. This permanently infuses their carpets with a lingering musky smell that helps remind the unit owners that they should be taking roof maintenance more seriously.

Like other parts of your scheme, the roof requires ongoing maintenance to prevent leaks, to identify minor problems before they become major costly problems and to maximize the amount of time before you need to replace your roof. In my next two articles for Paddocks Press, I will be providing you with practical information on how roofs function and how they should be maintained.

Types of roofs

Together with walls and windows, roofs are a primary component of a building that keeps out the rain and protects the inside of the building and its contents.

There are two main types of roof systems: low-slope and steep-slope roofs.

Many sectional title blocks have some form of low-slope roofing, while townhouse developments and semi-detached houses generally use steep-slope roofing. Both roof types are used in some buildings. Low-slope roofs have a waterproof membrane and a series of drains throughout the roof area to remove water from the roof surface. Since they are low-slope, these roofs must be water-tight in order to function properly. The roofing membrane is either applied as a liquid that cures to form a waterproof surface, or fabricated from pre-manufactured sheets joined together to create a surface that is impermeable to water. These membranes all work the same way in that they seal all openings and penetrations through the roof to prevent water leaks from occurring.

Steep-slope roofs have overlapping roofing materials to create a surface that, together with gravity, sheds water effectively into a drainage system such as gutters. Steep-slope roofing materials include slate tiles, thatch, concrete or clay tiles, or sheet metal panels.

Why must the roof be maintained?

Regular inspection and maintenance of your roof is needed to reduce the likelihood of premature leaks and aging. On a daily basis, roofs are exposed to sunlight, rain, hail, wind and temperature changes that gradually break down

the roofing materials. Eventually, the replacement of the roof will be necessary. However, with proper maintenance and care, the service life of the roof can be maximized.

Given proper maintenance, roofing systems generally have what is referred to as an anticipated "leak-free life". Provided that the roof has been properly designed, constructed and maintained, the roof should not leak over this time span. After this time, the roof system may continue to provide many years of service, but leaks should be expected, increasing in frequency and severity, until such time as the roof requires replacement.

Unscheduled maintenance and repairs may be needed to fix damage to a roof that may have occurred during a severe encounter with the South-Easter down in the Cape of Storms, or other extreme weather event.

Carrying out proper maintenance and identifying potential problems prior to experiencing an actual roof failure will reduce the likelihood of costly premature damage. If a leak occurs through a portion of the roof and goes undetected for a period of time, you may experience damage to the building structure and interior finishes.

How often do roofs need to be inspected and maintained?

Roofs should be inspected once a year at

Keeping a lid on it—roof maintenance... continued

the end of the dry season to address any damage that may have occurred and prepare for the upcoming wet season.

Your roof should also be inspected after any storm with high winds (checking for loose, broken or missing tiles, for example), extreme rain or hail, or if construction has taken place on the roof area. The inspection should also include the underside of roof structure or decks, and the outside of the building as these areas may indicate potential problems with your roof.

Skylights and other roof penetrations may require specialised attention and specific knowledge of how these fixtures interact with the roof assembly. Roofing contractors are generally equipped with the tools and skills to perform the required maintenance to the roof. The contractor will be able to replace dam-

aged materials, perform the cleaning and upkeep of drains and gutters, and can re-secure metal flashings and re-apply any sealant that has failed.

What maintenance must be performed?

All roofs require regular inspection and maintenance. This should be done by a professional roofing contractor as it involves specialised knowledge, equipment, training and safety requirements. This work would typically be coordinated by your managing agent.

Residents may visually identify some maintenance concerns such as a possible roof problems causing damage to the ceilings or walls inside their homes. Owners should notify their managing agent if they believe there is a problem with the roof. However, all inspections and maintenance should be performed

by a qualified professional who:

- is familiar with the roofing system used on the building
- knows how to identify potential problems, and
- knows how to take the necessary safety precautions while carrying out an inspection or maintenance.

Specific items for inspection and maintenance will depend on the type of roof(s) on your building. In my next article I will provide a checklist of common roof maintenance items. ■

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Q & A WITH JENNIFER PADDOCK



By Jennifer Paddock

casting vote should not be used to change the existing situation. The fact that the trustees, including the chairperson are equally divided on this issue indicates that there is, without the casting vote, not enough support for the proposition that the existing situation should be changed.

employees or an employee of the body corporate. However even if one or both of these people was the scheme's managing agent or his/her employee or an employee of the body corporate, s/he would be able to act as a trustee if s/he was also the owner of a unit in the scheme.

Trustees voting deadlock

Q1: I live in a complex with only 6 units, all the owners are trustees. We recently decided to repaint the buildings but we cannot come to an agreement on which colour to use for the gutters and garage doors. Let's say for example that 3 trustees are in agreement for green and the other 3 trustees are in agreement for blue. How do we resolve this issue? I have suggested that seeing as we cannot agree the current color must be used again.

Your expert advice will be appreciated.

A1: The situation you describe is a deadlock in the voting of the trustees. In terms of prescribed management rule 18 the chairperson has a casting vote when there is a deadlock in the voting of trustees. So in this situation once every trustee has voted, including the chairperson, and there are three votes for painting the gutters and garage doors green and three votes for painting the gutters and garage doors blue – the chairperson is able to vote again thereby breaking the deadlock.

However, the chairperson has a duty to remain neutral and therefore his/her

Therefore the chairperson's casting vote should be used to maintain the exiting position. This is in line with your suggestion that the current paint colour should be used again.

Two too many trustees?

Q2: Hi Jennifer. I would like to know if two persons living in the same unit are allowed to act as trustees of the body corporate.

A2: In terms of prescribed management rule 5 a trustee is not required to be an owner of a unit in the scheme provided that the majority of trustees are owners or spouses of owners and that the managing agent or any of his/her employees or an employee of the body corporate may not be a trustee unless s/he is also an owner.

In light of the above there is no restriction disallowing two persons living in the same section from acting as trustees of the body corporate provided that the majority of trustees are owners or spouses of owners and that either of these two people are not the scheme's managing agent or one of his/her em-

First AGM

Q3: For a new development, how soon after registration does the first AGM need to be held?

A3: We refer to the first meeting of the body corporate as the 'inaugural' general meeting of the body corporate. In terms of prescribed management rule 50 the inaugural general meeting of the body corporate must be held within sixty days of the establishment of the body corporate. In terms of section 36(1) of the Sectional Titles Act 95 of 1986, the body corporate is established on the date that any person other than the developer becomes an owner of a unit in a scheme. Therefore the inaugural meeting must be held within sixty days of a person other than the developer becoming an owner in the scheme. ■

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Sectional Title Bookkeeping Course; UCT Sectional Title Scheme Management Certificate Course; Law of Sectional Title Meetings Course. **Paul Samuels:** UCT Advanced Sectional Title Scheme Management Certificate Course; Sectional Title Bookkeeping Course; UCT Sectional Title Development Course; UCT Sectional Title Scheme Management Certificate Course. **Michael Schaefer:** UCT Advanced Sectional Title Scheme Management Certificate Course; UCT Sectional Title Scheme Management Certificate Course; UCT Advanced Sectional Title Scheme Management Certificate Course. **Joelle Searle:** UCT Advanced Sectional Title Scheme Management Certificate Course; UCT Sectional Title Scheme Management Certificate Course; UCT Advanced Sectional Title Scheme Management Certificate Course. **Didi Steen-Stenersen:** UCT Sectional Title Scheme Management Certificate Course; UCT Advanced Sectional Title Scheme Management Certificate Course; Law of Sectional Title Meetings Course. **Ronel Swanepoel:** Trustee Certificate; 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Classifieds

Trident Managing Agent Software	EY Stuart	Sectional Title Auditors	Index to the S.T. Act— Now Available
<p>Trident will merge your letters/ notices with the owners database to produce printed or emailed documents. The resultant PDF files are filed for further reference. Replaceable tokens are used to personalise the correspondence. Trident helps you to keep your desk tidy.</p> <p>Tel: 083 235 5495 Email & Website: kenw@tridentsoftware.co.za www.tridentsoftware.co.za</p>	<p>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.</p> <p>Tel: 012 320 1079 / 322 2401/ 322 5930 Fax: 012 322 7337/320 4434</p>	<p>Kruger Stoltz Inc registered accountants and auditors: Body Corporate and Home Owners Association audits completed within 2 weeks.</p> <p>For further details, contact us.</p> <p>Tel: 011 792 1010 Email: office@beanies.co.za Website: www.beanies.co.za</p>	<p>Alphabetical, detailed, cross-referenced, with page numbers providing quick & easy access. Saves time and money!</p> <p>Tel: 011 883 3253 Email: sballie@worldonline.co.za Website: www.sectionaltitlesact.co.za</p>

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Paddocks is a specialist sectional title firm that offers a range of sectional title training products.

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 Human Habitation in the restructuring of the Sectional Titles Act and the establishment of an Ombud Service.

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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.

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Since 1983, Prof. Graham Paddock has written sectional title books, pamphlets and training manuals for trustees and managing agents. The Sectional Title Survival Manual is a popular guide to the management of sectional title schemes. It is available for order from our offices at a cost of R265 (including postage and packaging).

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