

## **Sectional Title: Real power still lies with the owners**

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The trustees play a critical role in determining the success or failure of any sectional title (ST) scheme, but it is important to note that they are at all times under the control of the body corporate.

So says Berry Everitt, MD of the Chas Everitt International property group, who notes: "The members of the body corporate appoint trustees at their first meeting after the establishment of the ST scheme, and at every subsequent annual general meeting (AGM). These appointments usually last until the next AGM, at which the trustees have to be properly re-nominated and elected if they want to continue in office, or new trustees have to be nominated and elected.

"Anyone who is legally nominated and elected can be a trustee – it can be a registered owner, a relative or spouse of an owner, or a tenant – as long as the majority of the trustees in the scheme are owners or spouses of owners then there is a valid board of trustees."

Writing in the Property Signposts newsletter, he says that these trustees should not, however, be seen as directors of a company, as they have very few executive powers.

"Sections 37 and 38 of the Sectional Titles Act define the functions and powers of the body corporate. Section 39 of the Act passes these to the trustees, but gives the body corporate the right to issue restrictions and directions to the trustees."

So in effect, the power remains in the hands of the members of the body corporate – who are the owners of the units in the scheme. Or, as *Sectional Title Survival Manual* author Prof Graham Paddock notes: "Trustees are the servants of the body corporate, not its masters".

Thus trustees may not make or change the rules of the scheme or carry out improvements to common property without referring to the owners, Everitt says.

"They should, however, have the authority derived from the body corporate to enforce rules, collect levies, repair and maintain common property, appoint a managing agent and generally do whatever is necessary to ensure the smooth running of the body corporate.

"Good trustees will also, of course, foster good communication between all owners and encourage the neighbourliness and co-operation that are the cornerstones of a successful ST scheme."

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