

# Paddocks Press

SECTIONAL TITLE NEWS FOR EVERYONE

## WHAT IS PADDOCKS PRESS?

An ad-hoc 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...

E-mail us:  
editor@paddocks.co.za

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**Karen Bleijs—Director of Thomson Wilks**

## THIRD GENERATION SECTIONAL TITLES & OMBUD LEGISLATION

By Graham Paddock

The 'Third Generation' of Sectional Titles and Ombud legislation refers to three statutes on Parliament's 2007 legislative agenda, two under the Dept. of Housing and one under the Dept. of Land Affairs.

The 'first generation' Sectional Titles Act came into operation in 1973. This statute was replaced with a much more sophisticated statute, our current Sectional Titles Act, in June, 1988. The legislation we are dealing with - described below - will be the third generation of sectional title laws.

Currently the Department of Land Affairs controls both the registration of deeds and the survey of land. Thus the Chief

Registrar of Deeds and the Chief Surveyor-General are government officials within that department. The depart-



**Delegates at the Third Generation Sectional Titles Conference—University of Stellenbosch 2006**

ment is well able to deal with all the technical aspects of sectional titles, particularly the approval of sectional plans and the registration and transfer of rights in sectional property, but it does not have the

facility to add any value to the management of sectional title schemes.

The role of the Department of Land Affairs in the management of sectional title schemes is limited to keeping copies of scheme rules and other governance documentation. And even this role is considered to be outside the Department's core business.

As an increasing percentage of South Africans live in sectional title, cluster, share block and retirement schemes, there is an increasing need for government to provide some form of support to those who live and own property in 'community schemes', particularly in the area of dispute resolution.

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## AN INTERESTING MIXTURE OF ELEMENTS OF SECTIONAL TITLE AND COMPANY LAW!

As a practising sectional title attorney I am constantly amazed at the versatility of Sectional Title Law and its ability to adapt to changing circumstances.

The Act and all its manipulations through interpretation

can certainly not be viewed as a static piece of legislation!

Recently, asked to attend one of a newly established Body Corporate's first Trustee meetings, I was faced with 10 extremely nervous looking faces. These Trustees had undergone

very trying times, mostly arising from the behaviour of an overbearing Developer.

He had recently informed them, somewhat inexplicably, that they were obligated to "convert" the scheme into a Homeowners Association.

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## THE THIRD GENERATION SECTIONAL TITLE LAWS...CONTINUED

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The government some time ago decided that responsibility for the management and governance aspects of sectional title schemes would be transferred from the Department of Land Affairs to the Department of Housing. While sectional title is a form of land title and can therefore be applied to any land use, a very substantial majority of all sectional title units are used for residential purposes. Accordingly the Department of Housing is considered to be the logical government department to exercise oversight.

Since late 2004, with Prof. C. G. van der Merwe, Joseph Maluleke and others, I have been working on a project to produce the 'Third Generation' statutes.. Drafts of these laws have been circulated amongst a range of government departments and now that they have been placed on Parliament's 2007 legislative programme we expect that they will be enacted later in 2007 or early in 2008.

### What is the Sectional Titles Schemes Management Act?

This statute will contain all the management provisions currently integrated into the Sectional Titles Act. The survey and registration aspects will remain in the existing Sectional Titles Act which will continue to be administered

by the Department of Land Affairs. All management aspects will be transferred from the Sectional Titles Act to this new statute which will be administered by the Department of Housing.

In this process no substantial revisions will be made to the management provisions. But in the process these provisions will be more logically set out. People who must know the management aspects of Sectional Titles legislation in order to protect their interests as owners and occupiers of sectional title property will be able to find all of this information in one statute.

### What is the Community Schemes Ombud Service Act?

This statute will create an independent body tasked with facilitating and arranging the efficient and cost effective resolution of disputes which arise in all 'community schemes', being of those with shared management and financial responsibility.

In addition to the primary objective of resolving community scheme disputes the service will also, finances permitting, provide basic education for those who live in and manage community schemes in line with similar initiatives in New South Wales, Australia, Singapore and British Columbia, Canada. It is envisaged that the

service will create and make available primary education material in an attempt to prevent disputes which arise due to a lack of understanding of the fundamental principles which apply in each form of community scheme.

### When will the Service actually be "open for business"?

Our estimate is that the first office of the Ombud Service will start operating in mid to late 2008.

### Where will the first Ombud office be located?

Again, we can only guess, but because of the large number of schemes in Gauteng it may well be in that area.

### How will these changes affect managing agents and trustees?

The Ombud Service will take over the custody of sectional title scheme rules and apply quality control to the documentation lodged.

The adjudication of disputes is expected to bring "access to justice" within the reach of a much larger number of roleplayers.

Managing agents, who are seen as specialists in community scheme issues, will need to keep themselves informed of these developments which will affect their businesses. We expect that experienced managing agents be well-placed to serve as part-time Service adjudicators.



Graham Paddock and Richard Thatcher at the Third Generation Sectional Titles Conference



Delegates taking a break from the conference proceedings

### How can you learn more about the forthcoming changes?

Get regular updates by visiting  
**Paddocks**  
at [www.paddocks.co.za](http://www.paddocks.co.za)

and  
**Sectional Titles Online**  
at [www.sto.co.za](http://www.sto.co.za)

## AN INTERESTING MIXTURE OF ELEMENTS OF SECTIONAL TITLE AND COMPANY LAW!

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The Managing Agent, who had been appointed by the Developer, rather than enlightening them, had only served to muddy the waters leaving them even more confused.

A Deeds Office search revealed that the complex was definitely a Sectional Title scheme (that was clearly evident from the layout), however the conditions of title applicable to the individual unit owners astonishingly stipulated that every owner of a unit in the scheme would become a member of the homeowners association ("HOA") and be subject to its constitution until he (or she) ceased to be an owner of a unit. Furthermore, no unit could be transferred until a clearance certificate was issued by the HOA. This sounded in many ways similar to section 15B(3) of the Sectional Titles Act, but is an additional restraint.

This situation is in no way unusual since many sectional title schemes are built within cluster developments where the Township establishment

conditions require that the owners of erven must be members a Home Owners Association. This condition, and the restraint against transfer without a HOA clearance is imposed so as to make either the sectional title bodies corporate or the individual owners of units becoming members of the HOA's so established.

In this instance a condition under regulation 30(2) made under the Sectional Titles Act and the Articles of Association of the HOA, a "not for profit" company, stipulated that all Body Corporate levies would be paid to the HOA instead of the body corporate, and that the management and conduct rules contained in annexures 8 & 9 to the regulations made under the Sectional Titles Act would be disregarded in their entirety.

So, whilst it remains a sectional title scheme, the functions and powers of the body corporate had been assigned to the HOA.

The Articles of Association of the HOA, registered at the Companies Office in

Pretoria, contained a corresponding provision requiring that the Directors perform the functions entrusted to the bodies corporate in the overall development. Thus the HOA is empowered and obliged to do all things necessary for the control, management and administration of the common property in each scheme within its jurisdiction.

I spoke at length to the conveyancer who had registered the scheme, as well as to a senior lecturer in conveyancing in Pretoria to make sure that these arrangements were perfectly in order.

This is, I'm sure you will agree, an interesting twist to Sectional Title law and an interesting mixture of the provisions of the Sectional Titles Act and the Companies Act. It can be dangerous if placed in the hands of an inexperienced legal practitioner, yet without doubt the process is pregnant with possibilities in the hands of an innovative and careful one!

*Karen is co-author with Marina Constatas of "Demystifying Sectional Title".*

## SECTIONAL TITLE SCHEME MANAGEMENT INDUSTRY PICKS ITSELF UP

Most people are aware that the Estate Agency Affairs Board (EAAB) plans to introduce compulsory education for real estate agents as soon as possible.

This is a positive step towards increasing levels of professionalism in an industry in which is often plagued with allegations of unprofessional conduct.

While the realtors await the new EAAB education programmes, managing agents have for two years been able to obtain a high-quality university

qualification via Paddocks and NAMA. Over 450 managing agents have obtained UCT certificates attesting to their competence and are thus able to distinguish themselves from their unqualified competitors.

Dr. Gerhard Jooste, chairman of the National Association of Managing Agents (NAMA), says: "The Industry has come a long way both in growth and education. The future looks very bright and positive. The UCT Sectional Title Scheme Management Course

delivered by

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**Presentation to the Gauteng Regional Winner of the Scheme Management Trophy**

## THE RATES ACT AND SECTIONAL TITLE BODIES CORPORATE BUDGETS



Justin Mason

The removal of the rates expense from body corporate finances has led many bodies corporate to amend their budgets in one of three ways.

If the body corporate's annual general meeting is convened prior to July this year, then the budget can be drafted to accommodate the removal of the rates expense accordingly.

For example, if the annual general meeting will be held in June, then the body corporate must include a provision for rates for June only.

### Two more options

If the body corporate annual general meeting will only be

held after July this year, then one of two options are available.

The Trustees can either call a special general meeting and propose an amendment to the budget, and hence the levies, for the interim period until the next annual general meeting, or they can maintain the levies at the current levels.

No amendment to the budget means that the owners will pay their full levies (including the old rates component) as well as their new individual rates account for the interim period until the next annual general meeting is held.

This overpayment of levies will increase the body corporate reserves. The Trustees should however consult with the owners to assess their attitudes and financial affordability before taking this

decision.

This option effectively results in the unit owners increasing their monthly expenditure by 15% to 20% overnight.

### Timeous invoicing

A question which is often asked, is what if the municipality does not implement their rates invoicing timeously? This situation does not affect the body corporate because their obligation for the payments of the rates account is removed with the implementation of the Rates Act.

This will be the case whether or not the municipality has been successful in the implementation of the invoicing to the individual owners. The implication to the individual owners is that their first invoice may contain several months billing.

### A final note

If your rates contribution has increased, then essentially the cost of owning your property has increased.

Any new purchaser of your property has to ensure that they can afford the increased expenditure.

This can be equated to an increase in the interest rates or a levy increase, both of which have a negative effect on property affordability which negatively affects demand for property and hence property values.

Just another reason to take this Act seriously.

## SECTIONAL TITLE SCHEME MANAGEMENT INDUSTRY PICKS ITSELF UP

*From page 3...* Paddocks has given our drive towards professionalism new momentum. Everyone involved will benefit"

Paddocks, with the University of Cape Town Law Faculty, NAMA, introduced the UCT Sectional Title Scheme Management Course in December 2005. This is now considered to be the industry's

benchmark course. This six month course is delivered by distance learning and interactive lectures. The UCT certification is also accredited by the EAAB as a specialist programme in sectional title scheme management. Graduates will not have to repeat their specialist sectional title education when the board introduces its new training programme.

"With 450 students having graduated from this comprehensive course in 18 months, there is no doubt that the sectional title scheme management industry is becoming more professional" says Graham Paddock, the author of the course.

Consumers throughout South Africa now have the power to choose a professional managing agent to look after their

most important investment. Graham says "Trustees of sectional title schemes should insist on establishing the credentials of their prospective portfolio managers."

For those interested in the next course beginning in June 2007, please contact Robyn Allan on 021 674 7818 or [robyn@paddocks.co.za](mailto:robyn@paddocks.co.za) for further information.

## Q &amp; A WITH GRAHAM PADDOCK



Graham Paddock

### Erecting a wendy house on an 'exclusive use area'

**Question:** I have a tenant that must have a sleep-in domestic worker as his wife was in an accident and can't lift anything heavier than a magazine. He asked if he could install a loose-standing wendy house in the exclusive use back yard area. The trustees said they will approve the wendy house but not if it was going to be used as living area.

1. When we apply for approval for the wendy house must we specify its use?
2. May the trustees deny approval because of the use.
3. Must we get approval for a sleep-in domestic worker even if she sleeps in the unit?

The local authority has advised that there is no objection to a person living in a wendy house if:

- A. The wendy house is water/rain proof;
- B. It has a door and at least one window; and

- C. The person living in the wendy house has access to running water and a flushing toilet.

**Answer:** If the carer/domestic servant sleeps in the section there should be no difficulty.

Yes, the trustees can deny approval because of the use. The trustees can only approve the placement of a structure such as a wendy house in a back yard exclusive use area if they are sure that all local authority regulations are complied with and if the wendy house will not effectively be an extension of the living area of the section or be a new section.

Yes, you must disclose the use to which the wendy house will be put when applying to the trustees for permission to erect it. The trustees need this information to ensure that any permission they give is not in contravention of the Act and the rules of the scheme and, where appropriate, that they impose appropriate conditions.

### Office use of a residential section

**Question:** In a scheme where the rules specifically state that sections will be used for residential purposes only, an owner has made the following request:

"I am considering using my unit as my offices and request that you enquire if there would be any objections from the Body Corporate."

Do the Trustees remind the owner of the registered rule, or are they obliged to request permission from all owners?

**Answer:** In these circumstances the trustees have no option but to tell the owner that the rules prohibit the use of the section for business purposes.

The owner is free to seek permission from all owners, but the trustees are under no obligation to do this for the owner concerned.



Students enjoying themselves at the Johannesburg workshops for the UCT Sectional Title Scheme Management Certificate Course

## CAPE TOWN: HOW TO DEAL WITH INDIVIDUAL RATING OF UNITS

The payment of monthly rates by Bodies Corporate in the Cape Town area will discontinue from July 07 when owners will individually pay the rates for their units. The body corporate, through the Trustees, will have to address the current levies paid by owners by adjusting levies accordingly. Here are my thoughts on the process that should be followed:

**Preamble:**

- The process will have to apply to any body corporate where the current budget extends beyond the 1 July 2007 being the implementation date
- Current rates are paid in arrears and therefore any adjustment will have to be made with effect from 1 August 2007
- The Sectional Titles Act does not address the reduction of a levy under such circumstances, and Prescribed Management Rule 45 refers only to levy refunds and distribution of "profits". I believe a little common sense will have to prevail under the circumstances
- Rates are recovered through the general levy and exclusive use levy (e.g. garage, parking bay, storeroom)
- Owners levy liabilities are on the basis of their participation quotas (or any rule scheme rule) which must apply throughout the process regardless of which option is taken

**Option 1:**

1. The monthly general levy is reduced by the total monthly rates paid (general levy R50000 – rates R20000

= R30000 being 60% reduction)

2. The reduction to the levy as a percentage is applied to each owners levy accordingly (reduced by 60%) with effect from 1 August 2007

3. The exclusive use levies are retained at the same amount with no adjustment being made ( the justification for this is that the amounts are small and it is in most cases impossible to establish the rates component of the EUA levy at the time it was originally implemented)

**Option 2:**

1. The monthly general levy and EUA levy is reduced by the total monthly rates

2. The monthly rates are R20000 and the total levy is reduced accordingly arriving at the % reduction which is then applied to each levy income stream

		Reduction, %	
General levy	R50000	R30390.00	60.78
EUA garages	R500	R303.90	60.78
EUA parking bays	R300	R182.34	60.78
EUA storerooms	R200	R121.56	60.78
Total	R51,000	R30997.80	60.78

3. The reduction to the general levy and eua levy is applied to each owners levy accordingly

**Processing levy adjustments**

The following factors must be considered in your discussion with trustees:

A. Should the trustees agree to implement either of the two options above I feel they need not necessarily call a meeting of owners as they are merely adjusting the levies with no benefit to either the BC or the individual owners, however a general owners meeting may be advis-

able

B. The trustees should not see this as an opportunity to improve the financial position of the BC by either resolving not to reduce levies when rates fall away, or by reducing levies only marginally when the BC rates liability falls away. If the trustees consider either of these options I suggest that a Special General Meeting of owners be called to pass a resolution giving effect to their proposal. We as managing agents must not be seen to condone any such decision without following the correct channels, although we may be excited at improving the cash flow

C. Where levies are paid through a levy finance arrangement it will be necessary to follow the above procedure, as it is not the responsibility of the financiers. You will have to call on the financier to supply the levy roll to start the



**Chris Farley – Trafalgar Property Branch Manager**

## THANKS TO THE CONTRIBUTORS

### Graham Paddock

Paddocks

021 674 7818—[www.paddocks.co.za](http://www.paddocks.co.za)

### Karen Bleijs

Thomson & Wilks

011 880 8023—[www.thomsonwilks.co.za](http://www.thomsonwilks.co.za)

### Justin Mason

Voyager Property Management

011 476 9319—[www.voyprop.co.za](http://www.voyprop.co.za)

### Robyn Allan

Paddocks

021 674 7818—[www.paddocks.co.za](http://www.paddocks.co.za)

### Chris Farley

Trafalgar Property Management

021 683 6820—[www.trafalgar.co.za](http://www.trafalgar.co.za)

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## WHAT IS PADDOCKS?

Paddocks is a specialist sectional title firm providing a range of products and services through its **Learning**, **Consulting**, **Publishing**, and **Software** divisions.

Graham Paddock is the head of Paddocks and is an authority on Sectional Title law and practice. He is an alternate member of the Sectional Title Regulation Board and is also the lead consultant to the government in the restructuring of the Sectional Titles Act and the establishment of an Ombuds Service.

### Learning

Graham Paddock and his Associates have lectured on sectional titles to under-

graduate, postgraduate, professional and lay audiences. 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 his Associates, Terry Boxall and Judith van der Walt. 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 offer conveyancing services.

### 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](http://www.paddocks.co.za) for more information or contact one of the Paddocks' Team on 021 674 7818.