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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.

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INSIDE THIS ISSUE:

Rob Paddock

HOW TO SAVE ON INSURANCE PREMIUMS

By Andre De Waal

When you buy into a sectional title complex it's different from buying a standalone house and likewise the insurance for a sectional title complex is ***complex*** to say the least.

The rules and regulations are plentiful and it is important that you become aware of all the idiosyncrasies related to your specific Body Corporate as well as the Sectional Titles Act in general.

First and foremost we highly recommend you buy a copy of Graham Paddocks "Sectional Titles' Survival Manual" as you will over the years refer to this frequently.

Secondly, and we can't stress this enough – look for an insurance broker who knows the requirements of the Sectional Titles' Act with regard to insurance. The Act specifies certain requirements when it comes to insurance, and these requirements are there for your protection. Conventional insurers may extend or 'tailor' a policy but don't have a specialist sectional title policy wording which is essential, particularly if you are a trustee and you may well be faced with a severe problem if the necessary specific cover is not in place.

Levies payable by unit owners includes a multitude of costs, one of them being insurance. Surprising as it may seem, premiums, when divided by the number of sections in the complex, are very low when compared to the insurance premiums paid on a standalone private ... *to page 2*

SECTIONAL PLANS AND BUILDING PLANS; WHAT IS THE DIFFERENCE AND WHAT ARE THE PITFALLS?

The National Building Regulations and Building Standards Act (No. 103 of 1977) states in section 4(1) that:

"No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act".

In practice, adding to or converting an existing building is covered by the prohibition on erecting buildings without local authority approval. So all plans for new buildings as well as those for additions to or conversions of existing buildings must be drawn up by an architect or draftsperson and submitted to the local authority for approval before building can start.

A sectional plan, on the other hand, depicts the *"legal layout"* of a proposed sectional title scheme. Draft sectional plans must be prepared by a land surveyor or architect in accordance with the provisions of the Sectional Titles Act (No. 95 of 1986) and its regulations. A draft sectional plan must be drawn from actual measurements made of the buildings and show the boundaries...*to page 3*

Paddocks

HOW TO SAVE ON INSURANCE PREMIUMS...CONTINUED

from page1... residence (Houseowners) - bearing in mind that the basis of insurance being that the losses of the few are paid by the many.

It stands to reason therefore that premiums may increase or terms may be imposed, depending on the claims history. Believe it or not, Insurers are in the business of paying claims, but when the amount of the claims far exceeds the amount of the premium, especially over a period of time, this becomes a bit of a problem!

With residential sectional title complexes, our experience tells us that the most guilty party is the ***geyser***. No, not you! That cylindrical water closet lurking in the dark waiting to leak.

In any complex, old or new, geysers do, or will eventually, make up the majority of claims submitted. This will affect you directly or indirectly because:

- there will be a period without water (and Murphy's Law will ensure that this occurs at the most inconvenient time)
- in all likelihood the water will leak through your cupboards which are probably constructed of chipboard and will swell hideously
- your paintwork will begin to resemble a piece of modern art
- your electricity may trip (frequently)
- you will have to pay an excess when you least expect it
- and worse still, it's not your geyser, but the geyser upstairs and he's away and no one can get into his apartment without force... or you're both away and return to find your formerly pristine apartment has become a mushroom farm
- And then we tell you at renewal your premiums will increase

What can you do to avoid or minimise these problems?

Firstly, understand that geysers don't usually 'burst'; they malfunction. The term 'burst' means that it has split its seam, and if it does ... get out of the way! A geyser will burst because:

- an incorrect pressure valve has been fitted

- relief valves are blocked (this is really dangerous because the pressure builds up causing the cylinder to explode like a bomb – pray you are not in the building when this happens!)

- the geyser implodes – meaning more water has been drawn from the geyser than water coming in. This nasty problem however can be prevented by having vacuum breakers fitted.

Luckily, because of the latest SABS requirements for geyser fitments, most geysers don't actually 'burst' but more often malfunction due to:

- old age (don't we all?)
- fatigue (ditto)
- rusting / corrosion
- leaking gaskets, safety valves or drain cocks
- faulty thermostats or elements
- incorrect temperature settings (the recommended setting is 60°C)

Many of the problems emanating from so-called 'burst' or faulty geysers are compounded by not having been fitted with a drip tray. A drip tray is fitted directly underneath the geyser to catch water leaks and helps to prevent water from leaking through to your cupboards, carpets and the ceiling of the unit below.

How can you prolong the life of your geyser and avoid all these hassles?

A. Have your geyser serviced.

B. Have a drip tray fitted.

It's not only cars that need servicing regularly; geysers do too! By having your geyser serviced every few years you will prolong its lifespan and avoid having to wade through your kitchen wearing water wings and a snorkel.

The main areas to look at are:

1. Setting the correct temperature, i.e. 60°c
2. Replacement of the Anode, which is of paramount importance in prolonging the life of a geyser
3. Unblocking the relief valves
4. Ensuring that vacuum breakers are fitted

Most insurance policies cover 'burst' geysers excluding wear and tear (old age), yet very few will pay for the repair of a geyser – in essence preventing damage from occurring and preventing it from exploding.

At CIA, we go a couple of steps further - we were the first to include maintenance cover (via our 24 hour hot-line) as experience told us that most malfunctioning geysers were as a result of components such as elements, thermostats and valves failing ....*to page 3*

HOW TO SAVE ON INSURANCE PREMIUMS...CONTINUED

from page 2... The introduction of our maintenance cover and 24 hour call centre has benefited policyholders in a number of ways - there is a plumber 'on tap' and the early repair of components minimises damage and costs – with the resultant effect at the end of the day of keeping your claims history down to the bare minimum and your premiums low!

Please remember that the cost of "servicing" of your geyser is not covered by the insurance.

CIA focuses on solutions to problems and making your life a little easier by taking away hassles such as these.

So, to make living in your sectional title apartment easier...

1. *buy a copy of the Sectional Title Survival Manual" - available from Paddocks*
2. *find a specialist insurance broker to give you the correct advice and the correct policy, and*
3. *get your geyser serviced!* ▪

SECTIONAL PLANS AND BUILDING PLANS ...CONTINUED

from page 1... of the land, the proposed boundaries of the sections, the scheme name, areas of common property, areas which will be subject to exclusive use rights and the participation quotas of all the sections in the scheme. Upon approval by the Surveyor-General's office, the sectional plan can be lodged and registered at the Deeds Registry.

Before 1997 local authorities had to approve both building plans and the draft sectional plan before it could be submitted to the Surveyor-General's office for approval. In this process the local authority officials ensured that the provisions of the zoning scheme were reflected in the sectional plan. Due to pressure to speed up the registration of sectional title schemes, the Sectional Titles Amendment Act of 1997 removed the requirement that a draft sectional plan be approved by the local authority. Now section 7 (2) of the Sectional Titles Act requires that when the draft sectional plan is submitted to the Surveyor-General's office it must be accompanied by ***"a certificate issued by an architect or a land surveyor stating that the proposed division into sections and common property is not contrary to any operative town planning scheme, statutory plan or conditions subject to which a development was approved in terms of any law that may affect the development"*** and, if any of the buildings do not comply with such scheme, plan or conditions, s/he must lodge a certificate by the local authority condoning that non-compliance.

A local authority approves building plans after considering many issues, including whether the buildings shown on the plans comply with the restrictions and requirements set out in the relevant zoning scheme. For example, land zoned for "Special Business" use in a central business district may, in terms of the zoning scheme, be subject to a building height restriction of 12 metres and a parking bay ratio of 1 parking bay for every 100 square meters of office space.

Local authorities have recently had to deal with a number of issues arising from discrepancies between the building plans and the sectional plans.

Case Study 1 – Extension of a Scheme by Stealth

A number of years back the City of Cape Town approved the building plans for a development where the usage of a particular area was indicated to be for numerous parking bays. These parking bays were pivotal to the Council's approval of the building plans, as without these bays, the building would not have met the required amount of owners and visitors parking bays. But the sectional plan, approved by the Surveyor-General, showed this area as one large section, and in sectional plans you are not required (although it is considered good practice) to indicate the usage of sections. This section just happened to be owned by the developer.

It is common practice for parking areas in a sectional title scheme to be registered as common property or exclusive use areas on the sectional plan; however, in this case the developer had convinced the land surveyor to create this entire area as one section, indicating to him that this area would remain as parking space.

Subsequent to the opening of the sectional title register, the developer started using this section as a commercial space, and *...to page 4*

Sectional Plans and Building ...continued

from page 3... only made a few bays available for parking. Upon enquiry from the rest of the body corporate, the developer told them it was his section, and could do as he pleased with it. A few years later, and the developer has now made an application to the council for a temporary land-use and parking departure, in order to start running a workshop from his section.

The Council is now aware of the fact that the area approved for numerous parking bays is being used as commercial space. The Council's position on the matter is that this effectively puts the entire building, and therefore the body corporate, in contravention of the relevant zoning scheme as the building no longer meets its parking requirements. Even though this area was classified as a section on the sectional plan, Council's view is that the section effectively has a use restriction imposed on it, as per the Council-approved building plans.

Was the sectional plan incorrectly drawn? With the local authority not involved and the Surveyor-General relying on the land surveyor or architect to compare the building plans with the draft sectional plans, who was responsible to prevent this breach of the zoning scheme regulations? The primary responsibility clearly lies with the developer, but what about the land surveyor who drew the sectional plan and the conveyancer who lodged it for registration?

Between the land surveyor and the conveyancer, there is a joint responsibility to ensure that the parts they play in the opening of the register do not result in an effective avoidance of the zoning scheme regulations. If the land surveyor had shown the area which had to be reserved for parking as part of the common property, the conveyancer would not have had to make any special arrangements. But when the developer required that area be a section, the land surveyor should have informed the conveyancer of this anomaly and the conveyancer should have arranged for title conditions which entrenched the parking use restriction in terms of the conditions of title and ensured that the section remained accessible to visitors and owners.

To rectify this situation the local authority will now have to take action to have these conditions imposed retrospectively.

Case Study 2 – Exclusive Use in Contravention of Title Conditions

The land included in a development was subject to a right of way servitude in favour of the general public. This servitude appeared in the developer's title deed, on the registered diagram for the land, and was marked on the approved building plans and sectional plans.

After opening of the sectional title register, the body corporate made rules under section 27A of the Sectional Titles Act which conferred on various owners the exclusive right to park on the parts of the common property which was subject to that servitude.

Are these exclusive use rights valid in respect of parts of the public servitude area?

The owners cannot, either under section 27 or 27A of the Sectional Titles Act, give an owner the right to exclusive use a part of the common property when the owners, collectively, do not have that right. And the body corporate rules cannot provide for rights that are contrary to a title deed condition. So no scheme rule can validly make such a provision.

When rights are created under section 27A the scale plan does not have to be prepared by a land surveyor, it is not submitted to the Surveyor-General's office at all, and the Deeds Registry officials do not examine the draft rule lodged by the trustees.

So who is responsible for this apparent breach of the title deed conditions applicable to the scheme? The parties involved are the owners who made the rule and the trustees who sign the notification to the Registrar of Deeds giving the text of the rule with its attached scale plan. In this case the blame is clearly due to the negligence of the trustees who should have checked the sectional plan before submitting the rule to the Deeds Registry.

What are the lessons from these case studies?

Developers, the trustees and members of a body corporate play a vital role in the establishment and ongoing management of an effective and harmonious scheme, and there are bound to be many temptations to bend the law to suite the scheme's perceived needs.

It is important to remember that once a sectional title scheme comes into existence, the scheme does not rise above the relevant zoning scheme and municipal restrictions.

You need to be as familiar with your approved building plans as you are with your sectional plan. Council has a duty to be the neighbourhood watchdog, and if you are making any changes to the physical or legal layout of your scheme, you are strongly advised to run it by your local town planner first.

With regards to parking bays, different layouts suit different schemes, and if parking bays are to be registered as sections and not as common property or exclusive use areas, it is vital that the usage of that section be shown on the sectional plan, and as a condition of title. This will prevent owners down the line from taking the law into their own hands and placing the entire scheme in jeopardy. ▪

BACK TO BASICS

by Judith van der Walt

Maintenance of and improvements to the common property

Judith van der Walt

The Sectional Titles Act of 1986 ("the Act") distinguishes between maintenance of the common property and improvements to the common property.

The Body Corporate is, in terms of the Act, compelled to maintain the common property and keep it in a state of good and serviceable repair. Examples of the common property are the outside walls of the buildings, foyers, staircases, hallways, lifts and lift shafts, gardens, parking bays and other open areas of the common property. The maintenance of these areas would include painting, cleaning, repairing, servicing of the lift, cutting grass and tending to flower beds and maintaining the surface of the parking areas.

Improvements to the common property go beyond the scope of maintenance. The Sectional Titles Act does not provide examples of improvements to the common property but typical examples are the building of a wall around the scheme, electrifying fences, upgrading tarred driveways to paved driveways, installing swimming pools, improving the landscaping of the gardens and so forth.

The Body Corporate must make provision for maintenance expenditure in its budget every year but in many cases where a substantial expense is going to be incurred at once, for example when the entire scheme has to be repainted, the trustees will often have to raise a special levy in order to have enough money available to attend to such an expense. Expenses like these are usually unbudgeted for and therefore a special levy has to be raised. It is possible that the Body Corporate will have enough reserves available to pay for the painting of the scheme, but in most schemes it will be unlikely and a special levy will have to be raised.

In circumstances where schemes have substantial reserves available and a decision is made by the trustees to make improvements to the common property, many trustees fail to take into account the provision of the Act that all improvements to the common must be sanctioned by either a unanimous or special resolution, depending on the nature of the improvements. The fact that the scheme does have money available for improvements and therefore does not have to raise a special levy to pay for such improvements does not negate this provision of the Act that all improvements, whether luxurious or non-luxurious, have to be authorised by a unanimous or special resolution respectively. The availability of funds to effect improvements to the common property might convince owners more easily to vote in favour of such improvements but no improvements can be effected by the trustees without being duly authorised thereto by the owners, irrespective of whether a special levy will have to be raised to effect the improvements. The only exception to this rule is the installation of service meters, which requires a majority vote by the owners.

The difference between luxurious and non-luxurious improvements is in many instances subjective and even the location of the scheme could have an influence on the nature of the improvements. In general, if an improvement is not necessary at all, it would probably be regarded as a luxurious improvement to the common property, which has to be approved by a unanimous resolution of the members. ▪

Judith van der Walt is an attorney, notary and conveyancer at Paddocks and she specialises in sectional title consulting and conveyancing. Judith is available for consultation from R900 per hour plus VAT.

Congratulations to our UCT Scheme Management Scholarship winners

Paddocks and the University of Cape Town would like to congratulate the following students who have all been awarded a scholarship for the UCT Sectional Title Scheme Management Course, which started in December 2007:

Vuyisa Qabaka; Aubrey Nthaba; Mini Nlambo; Sean Ramautar; Aubrey Franks and Fiona Reddy

Good luck for the course!

Q & A WITH THE PROFESSOR

Prof Graham Paddock

Calculation of levy liability

Q1. Members of a body corporate, some time ago, took a decision that levies were to be calculated using the Participation Quotas on all expenses. The trustees have now received a request from the larger units in the development to calculate the levies for the new financial year as follows :

(a) Rates and Insurance to be allocated as per Participation Quota.

(b) All other expenses such as maintenance, managing agents fees, bank charges and garden expenses to be allocated in equal proportions to the unit owners.

Their argument is that there should be a difference between the larger and smaller units when the general costs such as pool, gate and electrified fence maintenance are allocated.

My view is that this problem could be resolved as follows :

The AGM is taking place in two weeks time and a Unanimous Resolution (75% of owners present or represented by proxy) can carry the decision to change the method of levy calculation.

Am I correct in my view and does this change in calculation method have to be registered at the Deeds Office ?

A1. You are correct. The trustees have no discretion as to the proportions in which they recover levies from owners. They are obliged to recover all common expenses from owners according to the participation quotas allocated to their sections unless a special rule has been made that alters this position.

Section 32(4) of the Act caters for the making of such a rule. It can be made by special resolution (75% in number and value), but in addition all owners negatively affected by the proposed change/rule must agree to it in writing. In practice, this would mean all the owners of smaller sections would have to give their consent, and it is hard to imagine that they would do so.

Given that the AGM is in two weeks time, it is now too late to take a special resolution as this has to be preceded by 30 days notice detailing the proposed special resolution in all normal situations. See the definition of a special resolution in section 1 of the Act.

And yes, assuming that the resolution creating the special rule was properly taken and all the required consents obtained, notification of the rule would have to be lodged at the Deeds Registry before it became effective.

Can the trustees disable the remote control feature of a pedestrian access?

Q2: Our scheme has two central access points; one for vehicles and another for pedestrian traffic. The latter can be controlled from each unit via an intercom system. Following a spate of four burglaries this year, most owners agreed that in all cases access had been gained through the pedestrian entrance by perpetrators posing as repairmen, delivery persons etc. The trustees then decided to disable the mechanisms which previously allowed people within sections to unlock the gate, so that residents now have to meet visitors at the entrance and let them in.

Have the trustees infringed the rights of owners by removing a facility, designed for their convenience and which has always been a feature of the complex? Did they not need the authority of a majority vote of owners? Or do they have the power to make changes they consider to be in the best interest of all residents and owners?

A2: My understanding is that the trustees decided that the 'remote opening feature' of the scheme's common property access control system was a weakness in the scheme's security system.

Although inconvenienced owners and occupiers who enjoyed being able to exercise remote control of access might disagree, I don't see this situation as the removal of a right, but as the suspension of a feature of a common property system. This feature of the access control system is, in the opinion of the trustees, currently being abused and this has resulted in harm to owners and occupiers.

Given the wide powers that trustees have to control and administer the common property, and the clear indication that they consider their action to be in the interests of owners, I think they are acting within their rights.

But at the same time I think their decision should be quickly *...to page 7*

. . .Q & A CONTINUED

from page 6...followed by an owner-consultation process in which they confirm that the majority of owners support their actions and ensure that there are no owners or occupiers for whom this change is a considerable inconvenience. The alternative will be to find another, probably more expensive, way of addressing the trustees' valid concerns for the physical and financial well-being of those they have been elected to serve.

Can the trustees lease a portion of the common property to a cellular telephone service provider?

Q3. Is it legal for the trustees to enter into a ten year lease with a cellphone service provider who would install a base station on the common property?

And would the situation be different if the lease were for less than ten years?

A3. Cellphone masts can be a very contentious issue, particularly if the mast is arguably close enough to any section to affect the occupants, so trustees need to be sensitive to this aspect when discussing the proposed siting of the mast. But the prospect of substantial annual income for the body corporate with no associated overheads is a powerful argument.

The common property is owned by all owners of sections and they all have the right to use and enjoy all of it.

Section 17 of the Act which, read with the definition of 'lease' in section 1 of the Act, requires a unanimous resolution before the body corporate can let part of the common property for ten years or longer.

The Act does also provide that the body corporate may let a part of the common property for a period of less than ten years, but these leases can only be to owners. The powers of the body corporate can be exercised by the trustees.

In my view the trustees may not let any part of the common property to a non-owner at all without the unanimous consent of the body corporate.

Borrowing money to finance scheme maintenance

Q4. We have recently had several complaints from owners in the complex of which I am the chairman, about the state of maintenance of the buildings. The complex was last painted about 8 years ago, and we have budgeted for various ongoing items each year. However this means that we are always playing catch-up, and as refurbishments are done other areas are deteriorating.

The trustees have investigated contracting with one company to address all our current maintenance needs including painting, damp proofing etc, and they can arrange the finance for this as we do not have such funds available.

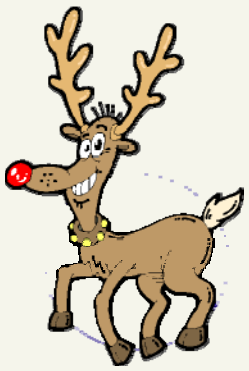
Please could you explain what the process is to go ahead with this, as the contractor seems to think that a special resolution is required.

A4. The contractor is sensibly concerned that if only the trustees take the decision to enter into a contract which puts the body corporate into debt and makes it liable for ongoing interest, owners who were not involved may query the transaction, thus delaying payment.

First you need to be very sure that this is all maintenance and does not include any aspect of improvement, which would require the special procedure required in prescribed management rule 33.

Second, I suggest that you carefully compare the proposed borrowing with the alternative of including the total amount which must now be spent on scheme maintenance (i.e. the full accrued maintenance costs) in the budget proposed at the next Annual General Meeting. It could be argued that the scheme has not carried out its statutory obligation to maintain the common property and that the costs of bringing the scheme up to par should be directly recovered from the current owners, many of whom will probably be able to get their share of the funds at a lower real cost than the body corporate would pay to a lender and which they would in turn have to fund in this situation.

Technically the trustees could go ahead and borrow on behalf of the body corporate without consulting owners, unless there is a restraint contained in the scheme rules or prior minutes, but this makes no sense. To take a residential community housing scheme into a long-term debt position is a serious undertaking. I suggest you should workshop the idea very thoroughly with owners to ensure that you have a high level of support before you arrange for the scheme to borrow money to finance maintenance. ▪



SECTIONAL TITLE EDUCATION

Both the UCT Sectional Title Scheme Management Course and UCT Sectional Title Specialist Realtor course have proven to be a great success and have been very well received by the industry.

Over 750 students have enrolled for the Scheme Management course during the past 2 years and we now have 140 students completing the 5th presentation of this course. The Sectional Title Specialist Realtor course is equally as popular and 250 estate agents have now received this certification.

Paddocks congratulates the following students for achieving the highest grade in their region for the April - June 2007 Specialist Realtor Course : **Mandy Da Matta** - Cape Town; **Jacques Pretorius** - Durban; **Lentie Lumley** - Johannesburg

Windeed have sponsored a floating trophy, which was presented to each winner at the previous workshops. Thank you to Windeed for their support!

We would also like to congratulate the following students for achieving the highest grade in their region for the Dec 06 - May 07 Scheme Management Course: **Maryna Botha** - Cape Town; **Ray Leitch** - Durban and **David Tucker** - Johannesburg.

The **Corporate Sure** floating trophy was awarded to the regional winners at each workshop.

Above: Bruce Gibson; Maryna Botha; Dr Gerhard Jooste; Anton Kelly and Prof. Paddock

Above: Specialist Realtor Students who attended the Durban workshop

2008 courses – the dates are as follows:

Sectional Title Specialist Realtor:
Registrations close: 15th February 2008, Start date: 25th February 2008

Sectional Title Scheme Management
Registrations close: 31st May 2008 Start date: 17th June 2008

Advanced Management Course

A new Advanced Sectional Title Scheme Management Certificate Course will be launched in 2008

Watch your in-box and call Robyn for details!

Above: Students enjoying lunch at the Johannesburg workshop

Above: Cape Town Scheme Management students

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Festive Season Greetings to all Paddocks Press Readers

WHAT IS 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 Ombuds 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. Paddocks Consulting deliver consulting, drafting and representation services, primarily to sectional title bodies corporate, but also to developers, owners and others involved in schemes. They consult to various levels of central and local government and act as mediators and arbitrators of sectional titles disputes. The consulting team also offers conveyancing services.

Development

Paddocks Development leverages the firm's sectional title expertise to complete niche sectional title property developments in the Western Cape.

Publishing

Since 1983, Graham Paddock has written sectional title books, pamphlets and training manuals for trustees and managing agents. Paddocks Publishing sets, prints and publishes a range of electronic and 'hard copy' sectional title publications by Graham and other authors which make Sectional Title expertise easily accessible to the South African population at large.

Software

Paddocks Software designs and manages the production and distribution of a variety of software tools which provide substantial efficiency gains to those involved in sectional title management and consulting.

Please see **www.paddocks.co.za** for more information

Paddocks