

Paddocks

PRESS

POWERLESS? A BACKUP BOX MAY BE THE ANSWER FOR UNIT OWNERS

WHAT IS PADDOCKS PRESS?

An ad-hoc **free** digital newsletter published to educate and update the sectional title community.

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By Prof. Graham Paddock

In our special edition of Paddocks Press, published in February, we covered, in some detail, the use of generators in sectional title schemes.

Since that edition we have received numerous e-mails and read media reports on the subject of alternative, cost-effective methods of dealing with South Africa's energy crisis.

We would like to give you details of one of these alternatives to generators in this edition.

The Backup Box

Russell Witthuhn, a qualified electrical engineer, has invented the "Backup Box", a low-cost backup energy device that lasts for over 2 hours and can power computers, TVs, lights, DTSV decoders, modems, sound systems, credit card machines, point of sale computers and other devices that don't use motors or heating elements.

Russell's invention has been featured in The Weekend Argus, The STAR, on SAFM and in other media.

This is not the only such device on the market. We understand that other similar products exist, making use of UPS units and lead-calcium batteries, including the Zoomer, Power Box and others described as UPS / battery devices.

We believe that the safe, noiseless Backup Box is a wonderful solution for people living and working in sectional title units. In fact, we like this product so much that we have invested in the business!

Further information on The Backup Box can be found at www.getbackup.co.za or by calling Matthew on 076 530 8282. ■

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SECTIONAL TITLE RAGE



By Marina Constas

What is it about Sectional Title living that triggers so

much aggression and rage in South Africa today? The answer may well lie in the political influences in the country, together with an increasing feeling of helplessness towards issues such as the high crime rate, economic concerns, the falling rand etc.. Whatever the

answer, my experience as a sectional title attorney is pointing to a worrying situation developing in a number of complexes. Let's be perfectly honest – living side by side in a large complex is bound to lead to problems. There are so many different *to page 4 ...*

**O P E N L E T T E R T O T H E T R U S T E E S O F T H E
S E C T I O N A L T I T L E B O D I E S C O R P O R A T E M A N A G E D
B Y T H E S E C T I O N A L T I T L E A D M I N I S T R A T O R S C C**

BACKGROUND: Sectional Title Administrators CC (STA) was recently put under provisional liquidation on the grounds that the business is insolvent. STA should hold investments of approximately R5 500 000,00 on behalf of its clients but apparently only R32 000.00 remains in its investment bank account. Graham Paddock and Judith van der Walt drafted this letter to assist the trustees of the schemes affected by this liquidation:

Date: 28 February 2008

Attention: The Chairperson

Dear Trustees,

PROVISIONAL LIQUIDATION OF SECTIONAL TITLE ADMINISTRATORS CC

The Sectional Title Administrators CC ("STA"), your managing agent and that of about 75 other schemes, was placed under provisional liquidation by the Cape High Court on 8 February 2008. The trustees of a number of schemes have called us for advice and we have been requested to set out in this letter general guidance on how to manage the situation.

Mrs. Glenda Mes, Mrs. Elaine Lawson's sister and the other member of STA, approached the Cape High Court for STA's provisional liquidation on the grounds that the business is hopelessly insolvent. She has informed the Court that, according to her calculations, STA should hold investments of approximately R5 500 000,00 on behalf of its clients but that Ms Lawson has withdrawn all but R32 000.00 from STA's investment bank account.

STA has been placed under provisional liquidation and any interested parties may inform the Court on 8 April 2008 of any reason why the provisional liquidation order should not be made final. The management of The STA is currently in the hands of the Master of the High Court and the Master has appointed Progressive Administration (Cape) (Pty) Ltd to assist him in all matters regarding the provisional liquidation. If the Cape High Court orders that the provisional liquidation should be made final, Progressive Administration (Cape) (Pty) Ltd will attend to the liquidation of STA on behalf of the Master and will take over all aspects of the running of STA until the liquidation process has been finalized.

As a STA client your body corporate could oppose the application for STA's liquidation. But we have recommended to our clients that it is in their interests to consent to the liquidation and to the appointment of Progressive Administration (Cape) (Pty) Ltd as the liquidators for the following reasons:

1. the Court papers suggest that STA is hopelessly insolvent and does not have the funds to repay to its clients their investment funds;
2. Progressive Administration (Cape) (Pty) Ltd has a good reputation and, once appointed, the liquidator, Mr CF Bester, will be in a position to examine all the books and records of STA to confirm that and establish why STA is insolvent and whether there are reasonable prospects of recovering the money that is due and owing to each body corporate, and
3. if STA is placed under final liquidation, each body corporate client will have reasonable grounds to approach the Court for an order to sequester the personal estate of any person who has apparently misappropriated its funds. A liquidator in the estate of such a person will have access to the personal records and accounts which would need to be investigated in order to trace money misappropriated.

In addition to consenting to the liquidation of STA, if STA held your investment funds you should submit a claim against the Estate Agents Fidelity Fund, established in terms of Section 12 of the Estate Agency Affairs Act No. 112 of 1976 ("the EAAA").

In terms of the EAAA, every managing agent who collects or receives levies should be registered with the Estate Agency Affairs Board ("the EAAB") as an estate agent and be in possession of a valid Fidelity Fund Certificate. Unfortunately *to page 3 ...*

. . . O P E N L E T T E R C O N T I N U E D

...from page 2 there are still a significant number of managing agents who are not registered with the Board and the EAAB has confirmed to us that STA, Mrs. Mes and Mrs. Lawson are not registered estate agents and do not have Fidelity Fund Certificates.

Despite STAs apparent failure to comply with the requirements of the EAAA, we believe that there is a very real possibility that the Fidelity Fund will entertain and pay your claims. It is likely that the Fund will, in line with normal insurance practice, require that you exhaust all avenues of recovery and the liquidation of STA and the sequestration of the personal estate of any apparent thief will be part of this process.

All claims against the Estate Agents Fidelity Fund must be submitted within three months of the claimant becoming aware of the theft. Failure to submit the claim within this time period may result in the claim being rejected. Therefore, even though recovery is not guaranteed, we strongly suggest that you submit your claim without delay.

From a body corporate governance perspective, we have a few practical suggestions:

1. The consent to liquidation and claim against the Fidelity Fund must be made in the name of the creditor body corporate, not any individual owners, and signed by two duly authorised trustees.
2. The trustees should appoint two of them to sign all documentation relative to the liquidation and the submission of the claim to the Fidelity Fund. Include resolutions to this effect in the minutes of the next trustee meeting to provide proof of this authority.
3. There is a very good chance that you will recover the money lost, but this will probably take a considerable amount of time, it could be three years or more. The body corporate is going to have to manage without access to those funds in the meantime.
4. Make sure that your accountant and auditor keeps your claim against STA / the Fidelity Fund on your balance sheet as an asset. Some of the units are going to be sold or otherwise change hands between now and when your money is recovered and the best way to get a prospective purchaser to take account of this body corporate asset is to show it clearly in the audited financial statements.
5. If the loss of your investment funds is going to cause the body corporate cash-flow problems, plan now for whatever special levies or borrowings may be required to enable the body corporate to meet its financial obligations. Because levies duly raised are not repayable to owners, you may want to consider borrowing the money from some or all of the current owners on normal commercial terms.
6. Get expert advice before putting off any planned maintenance, as the effect of a delay in, for example, painting the building could give rise to very costly maintenance and repair expenses.

Finally we make the point that all the schemes which were managed by STA have very similar needs and it may make sense for you to work together with trustees from other schemes in the same situation.

Particularly if you need to employ professionals to assist you deal with the liquidation and pursuing your claims against the Fidelity Fund, it would make sense for all of you to use just one or a few experts.

Whilst we continue to give our clients sectional title advice, we do not handle insolvency, debt recoveries or insurance claims.

Yours faithfully,



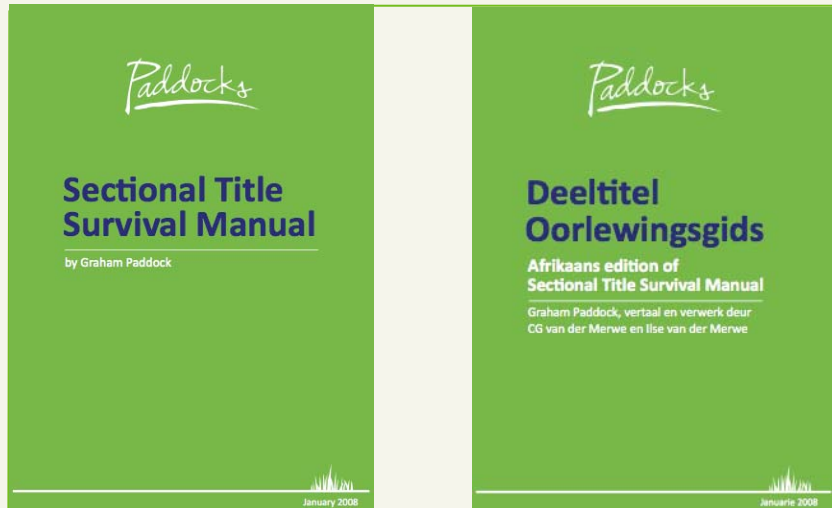
Graham Paddock and Judith van der Walt

. . . SECTIONAL TITLE RAGE — Marina Constas

...from page 1 personalities, views, backgrounds etc. However, the manner in which people are seeking to redress their problems is cause for consternation. Just to name a few instances; I have acted in complexes where vehicles have been scratched and even set alight; a young man was shot dead in an altercation with a neighbour; pets have been poisoned and gunshots fired. In addition, assault is on the increase – many elderly people who raise concerns about the running of the complex are both emotionally and physically abused by certain owners. A more subtle form of harassment is also common at the moment – that is, if your neighbour annoys you, stomp up the stairs as loudly as you can and move as much furniture around, if you are on the upper level. Also, just to show the irritating neighbour who's boss, invite as many of your unruly friends as possible, and host a private party until all hours of the night.

In the last two weeks, my offices have been requested to assist in obtaining more interdicts (binding over of the peace orders) than in the last year. The situation is getting out of hand, and owners responsible for unacceptable behaviour in a complex should be brought to book. There should be properly filed Conduct Rules in place for each complex, which clearly set out the expectations of the Body Corporate relating to a home owner's conduct. Once this is in place, arbitration proceedings in terms of Regulation 71 of the Sectional Titles Act 95 of 1986, can commence.

In my experience, the best way to deal with conflict situations in a Body Corporate is to follow the below mentioned procedure:



The January 2008 edition of the Sectional Title Survival Manual is now available in both English and Afrikaans.

The book retails for R265 (incl. P&P) and is available nationally.

To order contact Amy on 021 674 7818 or e-mail at amy@paddocks.co.za

1. Approach the individual creating the problem and engage him in a discussion on the merits of your argument. This must obviously be done in a civil and meaningful manner. Record the details of the meeting, eg date, place, time, response etc.
2. If you receive no joy from this encounter, address a letter to the Trustees, requesting that they approach the individual. At this point it may be valuable to bring in a mediator to attempt to resolve the problems between the partners.
3. The next step, should there still be no resolution, must be arbitration in terms of Regulation 71 of the Sectional Titles Act 95 of 1986.

In this way, a procedure and paper trail is created which will assist an arbitrator to get to the bottom of the matter.

Let's not forget that many people buy into Sectional Title for security reasons. Nobody wants to be faced with security threats from one's own neighbours. If the proper procedures are in place, it is easier to adopt a more mature and constructive approach to conflict resolution. This, in my opinion, definitely needs to happen in the Sectional Title industry today. ■

B A C K T O B A S I C S

B Y J U D I T H V A N D E R W A L T

Insurance in Respect of the Buildings in a Sectional Title Scheme**Judith van der Walt**

The Sectional Titles Act of 1986 compels the Body Corporate of every scheme to insure the buildings and all improvements to the common property comprising the scheme for the full replacement value thereof.

The replacement value will usually be less than the market value of the unit but in the event of a unit being damaged, the insured amount, if accurately calculated, should be enough to cover all costs necessary to restore the unit to its pre-damage condition. This specific form of insurance differs from insurance in respect of the content of your section and each owner of a section is entitled to obtain his own insurance to insure his personal belongings.

When the Body Corporate insures the buildings and improvements to the common property, the name of the insured on the insurance policy documents will be that of the Body Corporate of the scheme and not individual owners of units.

The Body Corporate, as the insured, is liable to pay the insurance premiums to the insurer, which premiums are collected from the individual owners as part of their levy contributions.

It is common practice in most schemes for the trustees to submit claims to the insurer in respect of damage to sections and improvements to the common property as the trustees represent the members of the Body Corporate. This will ensure that the trustees are aware of all claims being submitted on behalf of the Body Corporate.

Unless there is a valid conduct rule which makes specific provision, the excess payable in respect of insurance claims is an expense payable by the Body Corporate and thus is recovered from each owner in accordance with his participation quota.

Approved claims in respect of damage to the scheme's buildings are paid to the Body Corporate by the insurer and then applied to make good the damage or reinstate the building to its pre-damage condition.

The owner of a damaged section which is the subject matter of the insurance claim is not entitled to receive the proceeds of the claim directly from the insurer.

In circumstances where the Body Corporate has submitted a claim for damage to the common property, the Body Corporate will similarly be compelled to effect the proceeds of the claim towards reinstating the common property. ■

I M P O R T A N T T R A I N I N G D A T E S

UCT Sectional Title Scheme Management Course

Course start date: 17th June 2008

Registrations Close: 6th June 2008

Registrations for this course are now open

**NEWSFLASH:**

**We have over 50 students attending the
1st UCT Advanced Sectional Title Scheme Management Course**

Q & A WITH THE PROFESSOR

By Prof. Graham Paddock

1 Levy clearance during uncompleted extension of a section

Q: We manage a scheme in which an owner has extended his section by enclosing a common property stoep. He has since obtained permission by special resolution, but now wants to sell without the extension having been registered at the Deeds Registry. Should we issue the levy clearance certificate or withhold it?

A: I would not issue that levy clearance certificate until either the plan of extension as been registered at the Deeds Registry or the purchaser has agreed in writing to:

1. complete that process as quickly as possible at his own cost, and
2. pay levies as if the section were extended from the date of transfer.

The body corporate needs to know that the new owner will not delay the registration process which must be completed before the body corporate is entitled to charge additional levies. And if the extension is more than 10% of the area, bondholders' consents will be required, and that process could further delay the process which will result in the body corporate getting additional levies.

The extended area is being used as part of the section, so it is fair that the purchaser pay levies as if the extension were already legally part of the section.

2 Interest on overdue levies

Q: I am the chairman of a body corpo-

rate. Can the trustees implement interest on overdue levies or must this decision be taken at an annual general meeting? And are we limited by the National Credit Act as to what rate of interest we can decide to charge?

A: Prescribed Management Rule 31 (6) states that the decision to charge interest on arrear levies is one which trustees can make at any time. It should be made at a meeting of trustees or by 'round robin' and evidence of that decision should be in the trustees' minute book.

The trustees are entitled to decide what rate of interest will be payable on arrear levies. In my view levy debts due by owners to a body corporate are not the result of any initial granting or extension of credit facilities. The body corporate does not lend money or provide credit; it collects contributions to common expenses, so in my view the National Credit Act is not applicable. Find out what your local authority charges rate-payers on overdue rates. That will give you a good idea of a reasonable rate of interest charged in similar circumstances.

3 Can trustees overrule owners who oppose improvements?

Q: I am one of three trustees who keep on top of things; nobody else shows any interest in going on to the board. We need to upgrade our security access for the complex by installing a new remote system for the gate. If we go this route every occupant will need to buy new remotes for operating the gate, but they don't want to and every time we suggest this a lot of the old people vote against it.

Is it possible for us, the trustees, to overrule them and go ahead with the planned upgrade for the benefit of all occupants in the complex? Surely improving security to the complex is beneficial to all living there? It would be unfair to the people who want the extra security to be denied it because a few people only think about themselves.

A: The prescribed management rules make it very clear that trustees do not have the power to spend body corporate money on improvements to the common property unless they first consult owners. In summary, unanimous resolutions are required for luxurious improvements and special resolutions for non-luxurious ones.

The difficulty is that people are entitled to hold different views as to what is most beneficial, for themselves and for the owners as a community. You see the dissenters as being selfish. They may see less value than you do in the proposed security system and see you as being too ready to spend the body corporate's / their money.

The common law rule in regard to improvements on co-owned land is that no improvements at all can be undertaken at common cost unless every co-owner agrees. This rule has been varied by the prescribed rules to allow non-luxurious improvements by special resolution.

I suggest that you start a campaign to convince the number of owners necessary to get a special resolution that the security system you envisage is vital for their personal safety, will enhance the value of their properties and will be financed in a way that will not cause them financial embarrassment. ■

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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 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.

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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.

Please see

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