

Conference - Third Generation Sectional Title Laws

The Third Generation Sectional Titles Conference was held at the University of Stellenbosch on the 11th and 12th September 2006 and received a tremendous response and much positive feedback from more than 80 delegates who attended the event.

The Conference focused on the proposed revisions to the Sectional Titles Act and the proposed Sectional Titles Scheme Management law and Community Scheme Ombud Service law.

The Conference was hosted by the three Lead Consultants who appointed by the Department of Land Affairs. They are Professor C.G. (Cornie) van der Merwe - a Senior Research Professor at the University of Stellenbosch and an Emeritus Professor of Civil Law at the University of Aberdeen, Scotland, Graham Paddock (the project leader) - a specialist sectional titles lawyer of Graham Paddock & Associates, Claremont and Joseph Maluleke – an attorney, notary & conveyancer of Rooth & Wessels, Pretoria.

Graham Paddock and Associates was appointed by the Department of Land Affairs in 2005 to:

- Investigate, consult on and recommend an appropriate dispute resolution system for sectional titles;
- Draft and assist the Department of Land Affairs in the passing of appropriate dispute resolution legislation and the promulgation of appropriate regulations; and
- Draft legislation to remove consumer related aspects from the Sectional Titles Act.

The Third Generation Sectional Titles Conference introduced the concept of 'community schemes', informed the delegates of the project history and outcomes to date and allowed delegates to share their views on the Lead Consultants' proposals. In addition the delegates had the opportunity to discuss the changes they believe should be made to the existing sectional title legislation and prescribed rules so as to make scheme administration more efficient.

The Conference was held with the permission of the Department of Land Affairs. At the Conference the Department was represented by Dr. Makgalemele, Mr. Hennie Geldenhuys, Mr. George Tsotetsi, Mr. Alan West, Mrs. Antoinette Reynolds, and Mr. Sunday Orgunronbi. Mr. Richard Thatcher and Mr. Etienne Raath represented the Department of Housing. Dr. Makgalemele and Mr. Richard Thatcher opened the Conference with keynote addresses.

The Conference title, "Third Generation Sectional Titles Laws", refers to the bundle of forthcoming changes to the Sectional Titles and related legislation. The 'first generation' Sectional Titles Act came into operation in 1973. This initial legislation was very considerably revised in terms of the 'second generation' law, the current Sectional Titles Act, 1986 which came into operation in June 1988. The legislation we are now dealing with - described below - will be the third generation of sectional title laws.

The background to the project reported on at the Conference is that 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 officials within that Department. The Department 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 being the custodian of the governance documentation, including the management and conduct rules of schemes. But, as an increasing percentage of homes in South Africa are held under sectional title, there is an increasing need for government to provide some form of support to persons who own sectional title units, particularly in the area of dispute resolution.

Some considerable time ago there was a decision taken by government 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.

The mandate of Graham Paddock & Associates, represented by the Lead Consultants and various others, was not to deal with the reform of sectional titles legislation generally. This mandate was given to another project team as part of an overall consideration of South African land laws. In this regard the Lead Consultants' role was to work with the other team in their revision of Sectional Titles legislation.

One of the first tasks undertaken was to invite and analyse public comment on the issues. One of the most important issues highlighted by the 2005 consultation process was that a dispute resolution system which operated only for sectional title schemes did not make sense. Graham Paddock & Associates' brief was then extended to cover a dispute resolution system which would operate not only for sectional title schemes but also for share block schemes, retirement developments and homeowners associations ('community schemes').

The Sectional Titles Schemes Management Act

This proposed 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 the 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 of these provisions will be more logically set out and renumbered. People who must know the management aspects of Sectional Titles legislation either in order to protect their interests as owners and occupiers of sectional title property, to provide management services or for any other purpose will be able to find all of this information in one statute which exists only for that purpose.

The Community Schemes Ombud Service Act

This proposed 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 those with shared management and financial responsibility.

In addition to its primary objective of arranging for the resolution of community scheme disputes the service will also hold all sectional titles scheme governance documentation. Finances permitting, the Service will provide basic education for those who live in and manage community schemes. In line with similar initiatives in New South Wales and other Australian states and in

British Columbia, Canada, it is envisaged that the Service will create and make available primary educational material so as to prevent disputes which arise due to a lack of understanding of the fundamental principles which apply in each form of community scheme.

The Third Generation Sectional Titles Conference allowed the Lead Consultants to report on their investigation and inform the delegates of the proposed changes to the legislation.

Should you be interested in obtaining further information, the Third Generation Sectional Titles Conference Report is available for purchase.

See <http://www.paddocks.co.za/download/report.pdf> for more information and an order form or contact Robyn on 021 674 7818 or email robyn@grahampaddock.com.