



SECTIONAL TITLE- SOME BRIEF EXPLANATIONS

1 What is Sectional Title?

A Sectional Title Development Scheme (usually referred to as a "Scheme") provides for separate ownership of property by an individual. These schemes fall under the control of the Sectional Titles Act, No 95 of 1986, which came into force on 1 June 1988. This act replaced an earlier Act (No. 66 of 1971).

2 What does an Owner Own?

In buying into a scheme, you acquire a section (or sections) and an undivided share of the common property. These are collectively known as a unit. In practical terms, a section is usually a flat or a townhouse, and may also include a garage or a storeroom.

3 What is Common property?

The common property is that part of a scheme which does not form any part of any section. Driveways and gardens are good examples of common property. Some parts of the common property can be designated as exclusive use areas.

4 What is an exclusive Use Area?

Often this will be a parking bay attached to a section in which case the owner will not own the parking bay, but will have exclusive use of this area.

5 Who Controls the Common Property?

The common property is controlled by the Body Corporate. There are no exceptions to this rule. The practical implication of this is that even though parts of the common property maybe are exclusive use areas, these areas are still controlled by the Body Corporate and are therefore subject to the Rules of the scheme.

These Rules might control the type of fence or wall erected around a garden, or prevent the installation of a plunge pool or spa bath without the consent of the Trustees and the other members of the Body Corporate.

6 What is the Body Corporate?

The Body Corporate is the collective name given to all the owners of units in a scheme. It comes into existence as soon as the developer of the scheme transfers a unit to a new owner. All registered owners of units in a scheme are members of the Body Corporate. The Body Corporate controls and runs the scheme.

Day-to-day administration of the scheme is vested in trustees who are appointed by the Body Corporate. Major decisions regarding the scheme are made at the annual general meeting (AGM), or at a special general meeting. At these meetings matters, which affect the scheme, are discussed.

Budgets are approved, Rules can be changed, and Trustees are appointed, often accompanied by lively discussion!

Every member of the Body Corporate is entitled to vote at these meetings, providing that the member is not in arrears with levy payments or in serious breach of the Rules. Members in default can only vote in certain circumstances.

However, the sanction is subject to two expressed provisos namely that a defaulting owner's right to vote on special or unanimous resolutions is left intact and that any mortgagee shall be entitled to vote as the defaulting owner's proxy at any general meeting.

7 Who are the trustees?

The Trustees are usually owners in a scheme who have been entrusted with the task of looking after the scheme on a day-to-day basis. Trustees are appointed by the Body Corporate at an AGM. The minimum number of Trustees for a scheme is two. The Act does not specify a maximum number.

Ideally, a Trustee should possess skills or qualities, which will be of benefit to the scheme. Accounting or legal knowledge, organisational abilities, knowledge of electrical or mechanical matters, the ability to type and bookkeeping skills are much in demand, and can save the Body Corporate a lot of time, trouble and money.

It is permissible to appoint a Trustee who does not own a unit in the scheme, although this is not common practice. At all times, the majority of trustees must be owners of units in the scheme. Employees of the Body Corporate may not hold the position of a Trustee.

Trustees work on a voluntary, unpaid basis, although in special circumstances the Body Corporate may, by special resolution, agree to remunerate a Trustee. A Trustee who is not an owner may be paid for acting as a trustee. All Trustees are entitled to be reimbursed for all legitimate costs incurred by them in execution of their duties.

At the first meeting after being appointed as Trustees, they elect a chairman who usually holds office until the next AGM.

While it is important to remember that the Trustees are appointed to serve the Body Corporate and to carry out the wishes of the owners, the duties of the Trustees are time consuming and members of the Body Corporate should play their part in assisting the Trustees in any way possible.

8 Who makes the Rules?

At the inception of a scheme, management and conduct rules are established. These rules form Annexure 8 and 9 to section 35 of the 1986 Sectional Title Act. As their names imply, the Management rules control the running or management of the scheme, while the Conduct Rules lay down guidelines for the conduct of owners and occupiers and their guests or tenants.

9. Can the Rules be changed?

Yes. The Body Corporate can change or amend the Rules, provided that these changes are not against the intentions or spirit of the Sectional Title Act, the Home Owners Association rules or the

Environmental Management Plan. The procedure, which must be followed before Rules can be changed, is clearly defined in the Act.

Proposed changes must be put to members of the Body Corporate at a General Meeting, at which members will be able to discuss the proposed changes before being asked to vote for or against the changes. Changes to Management Rules require a unanimous resolution, while Conduct Rules can be changed by a special resolution. As an alternative to convening a general meeting, both types of resolutions can be obtained by a door-to-door poll of all owners.

Proposed changes must be submitted to the Registrar in prescribed form and will not come into effect until registered at the Deeds Office.

10 What is the Levy?

The costs incurred in running a scheme have to be paid by the Body Corporate. These costs include:

- Rates and taxes
- Insurance premiums
- Repairs and maintenance of the common property
- Wages and salaries of all staff
- Water and Electricity used on the common property

These costs are paid by individual owners in the form of a monthly levy, calculated in accordance with the participation quota for their unit.

Costs incurred in the upkeep of exclusive use areas must be recovered from the user of the area. In addition to the above, the Body Corporate is obliged to establish an owner's fund for future maintenance and unexpected expenses.

The size of the fund is not specified in the Act, but a wise Body Corporate will make sure that the fund is adequate for the size of the scheme and the present condition of the property. If the fund becomes excessively large, the Act does not allow any part of the excess to be refunded. However, the excess could be used to subsidize future levies or to improve the common property.

11 How is the Levy calculated?

Before every AGM, the Trustees have to prepare a budget for the following year. The proposed budget is sent to all members of the Body Corporate for their consideration before the AGM, at which the members can either accept the budget or can ask for changes to be made.

Once the budget has been accepted by the Body Corporate, the total annual cost is divided into a monthly amount and each owner is then "levied" a monthly amount, as mentioned above.

12 Can the Levy be changed at other times?

Yes. In an emergency, the Trustees can impose a special levy to cover expenses of an unforeseen nature.

13 Non-payments of Levies

If an owner fails to pay arrear levies or other arrear amounts due by him, he is liable for and must pay all legal costs, including costs between attorney and client, collection commission expenses and charges incurred by the Body Corporate in recovering these amounts.

A further method in the Act to compel Sectional Title owners to comply with their financial obligation, is the provision in the Act that no transfer of a unit may be registered unless a conveyancer's certificate is produced to the Registrar certifying inter-alia that all monies due to the Body Corporate have been paid.

The practical effect of this is that a preferent claim is created in favour of the Body Corporate against the proceeds of the sale of a defaulting owner's unit.

14 What are Managing Agents?

Managing and administering a scheme, particularly a large scheme, is complicated and time consuming. Occasionally, the Body Corporate and Trustees undertake the entire task. Unless the Body Corporate is unusually well endowed with specialized knowledge and talents, this is seldom successful.

Most Bodies Corporate decide to appoint a managing agent, usually a company or close corporation which specializes in this aspect of Sectional Title administration.

The Managing Agent collects the monthly levies and all other money due by owners to the Body Corporate.

They keep the books, recover unpaid debts, prepare the annual budgets, arrange for quotes for repairs and maintenance, send out notices and generally assist the Trustees with the numerous time-consuming tasks that arise in administering a scheme. A good managing agent can save the Body Corporate a lot of time, trouble and expense. Unlimited Townhouses C.C. is the appointed managing agents of the scheme.