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A warm welcome to Sectional Forum readers!

Sectional Forum, one of a kind national booklet focuses on the legalities and lifestyle of communal schemes and close proximity living. Each edition contains invaluable legal information and advice for trustees, and body corporate members.

The aim of the booklet is to educate, assist and equip the actual trustee who serves in the interests of the body corporate.

In many instances this is generally a mature person who undertakes a task which he/she is often unequipped to perform. The task is as daunting as asking a man off the street to assume the helm of a complex container ship in order to sail it safely to distant shores, the reason being that the trustee operates within a framework of the nearly three hundred page Sectional Title Act that is difficult to understand and interpret.

Sectional Forum provides a simplified version of information contained in the Act plus examples of how to apply the the relevant legal information in practical terms.

Sectional Forum offers the nuts 'n bolts articles about legal aspects of managing a body corporate plus addresses issues that relate directly to complex living – like security, maintenance, harmonious lifestyles, the administrative process, maintenance of common property etc.

We trust the information contained herein will be enlightening and an enjoyable read. Any comments or requests are most welcome!

E-mail us - info@sectionaltitle-guide.co.za



How to Raise Levies

The correct procedure to raise and insure levies in a Sectional Title Scheme

Levies are the life blood of a sectional title scheme because they provide the funding to pay all the body corporate's service charges and property maintenance. Accordingly it is crucial that levies are determined and raised by the body corporate strictly in terms of the Sectional Titles Act and not in a haphazard casual manner.



The Act states that an income and expenditure budget must be prepared by the trustees and managing agent for presentation at the body corporate's Annual General Meeting. The basis on which the levies will be determined for the forthcoming Financial Year starts with the expenditure side of the budget. All anticipated items of expenditure must be scheduled and the estimated cost indicated for each item. Provision must also be made for an adequate maintenance reserve, which is a non-cash item in the budget.

The income side of the budget can then be calculated to ensure the levies to be raised equate with the estimated annual expenditure. Income for exclusive use areas must be included at this stage, which has the effect of marginally lowering the ordinary levies payable by members, which relate to their sections.

The overall budget must be considered and discussed in detail at the A.G.M. which might lead to changes being implemented. The budget must ultimately be in balance and approved by an ordinary members resolution. The actual levies payable will be calculated by apportioning the aggregate income to be raised in accordance with the members' Participation Quotas, after taking into account the income derived from exclusive use areas.

Note the body corporate's levies can only be determined and raised by a Trustees Resolution. Accordingly immediately after the conclusion of the A.G.M., it is usual to call the elected trustees together to choose a Chairman and Vice Chairman. **The recently approved budget is then tabled and the levies determined and raised by a Trustees Resolution for the forthcoming Financial Year.**

Because levies are the life blood of a sectional title scheme, it would be advisable and prudent to insure the cash-flow derived from the levies. A novel and unique insurance policy can be purchased at minimal cost from a niche insurer, which effectively guarantees the body corporate will receive its income in full for the coming 12 months. Any defaulting members' levies claimed from the insurance company would normally be settled within 7 working days.

For further information on raising and insuring a body corporate's levies, trustees should contact their managing agent and insurance advisor respectively without delay.

The logo for ETRICITY features the word "ETRICITY" in a bold, blue, sans-serif font. The letter "E" is stylized with a green and yellow gradient. The background of the entire page is a light blue grid of electrical circuit diagrams with various symbols and lines.

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National
Representation

A graphic at the bottom right of the page features a glowing lightbulb with a blue glow. To its left, there are two overlapping semi-circular shapes: the front one is blue with a green grassy field and a blue sky with white clouds, and the back one is a lighter blue. The bottom of the page is decorated with a wavy blue and green border.

WHO'S WHO IN THE ZOO.

People in a sectional title complex need to be familiar with the different groupings of parties involved in the running of the complex, what they are called and what their powers are. So here goes....



A Body Corporate is formed when transfer from the developer of the first unit to another person, takes place. All further persons who purchase units become part of the Body Corporate. The Body Corporate is responsible to control, administer and manage the common property. It has the functions and powers confirmed upon in terms of Section 37 and Section 38 of the Act. In terms of Section 39 its functions and powers are performed by the Trustees.

The Trustees perform and exercise the functions and powers of the Body Corporate. The number of Trustees are determined by the owners. There should however be at least 2 Trustees. Trustees need not themselves be owners provided that the majority of the Trustees are owners or spouses of owners. The managing agent or an employee of the agent may not be a trustee. Trustees who are owners are not entitled to remuneration save for disbursement of expenses reasonably incurred, unless determined differently by the owners. Trustees are indemnified for any act done by them in the discharge of their duties unless they act mala fide or grossly negligently. The Trustees elect the **Chairman**.

The Managing Agent is appointed in terms of a written contract by the trustees to control, manage and administer common property and the obligations of the Body Corporate. Its powers include the powers to collect levies.

The Owner is an owner of a section in the unit. Various instances in the Act provide for certain decisions only to be taken if a unanimous or special resolution is taken by the owners.

The views in this article are not intended to be and should not be construed as legal advice. If legal advice is required, a suitably qualified attorney should be consulted with.



The Meter Man

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The Meter Man provides prepaid electricity metering solutions to property managers including landlords, developers, managing agents and body corporates. We provide the supply and installation of meters as well as collections using prepaid tokens, monthly management and reporting. The Meter Man's solution is suited for private pre-paid sub metering in outside residential buildings, apartment blocks as well as all types of sectional title developments. *The Meter Man* pre-paid management solution electricity sub meter ensures that electricity consumption is minimized by the occupants as they are now more aware of the usage. Payment for electricity usage is recovered in advance before the electricity is consumed. The Property manager's expense recovery is more efficient ensuring better cash flow. The Meter Man's product is operational all over South Africa and pre paid electricity can be bought from a range of stores, online, as well as from your cellphone, for further information please visit our website or contact us, we will gladly assist you.



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■ Smart Move to Utility Metering

Simply put Smart Meters (AMI) provides the ability to remotely read meters at any interval required. It also means that the data is more reliable and more accurate bills can be produced. While currently in its testing phase, smart metering is the way of the future and is closer than we think since it has been gazetted that all meters will be smart meters by 2013.

This metering system will be used to measure electricity, water and gas usage which will make consumers more aware of how much they are using and therefore provide them with the control over their usage.

Currently, STS Meters are successfully being used in both municipal and sub-metering applications but with one small setback, it only works with the pre-paid billing system via a 20 digit token to load the purchased utility. However, Smart Meters works with both pre-paid and post-paid billing. *"For the first time, true cost-effective, mixed billing in Sectional Title Schemes is made possible by Smart Metering technologies."*, says Sean Wheller, CEO.

PrepaidMeters.co.za is the first company in South Africa to supply Smart Meters to the South African sub-meter market. It's not surprising either since PrepaidMeters.co.za has always had the edge on its competitors with its technologically advanced systems and industry expertise.

PrepaidMeters.co.za has been supplying online utility management via pre-paid sub-metering to Sectional Title Body Corporates, Private Landlords, Private and Corporate Building Owners (commercial and residential), Mines, Farms, Sporting Facilities and Municipalities for over a decade now. *"Sub-metering is one of the more complex metering industries, having to reconcile on a continuous basis with bulk supply bills, readings requires constant innovation and adoption of technologies to make billing more accurate as well as the collection of revenue for payment of the bulk supply."*, says Sean Wheller, CEO.

Smart Meters brings a newer more advanced technology to the utilities market. These meters communicate bi-directionally to a data concentrator and servers. In other words, this means that for prepaid customers the 20 digit token is no longer required when entering your purchased utility. Communication between the devices can pick up the purchase of a utility without having to tell the meter to load it.

This makes consumers purchases easier as well. That said a Smart Meter can work both with, or without tokens. AMI technology further enables post-payment as well as pre-payment, immediate tamper alerts, load management, ToU (time of use) tariffs and much more. When all is said and done, Smart Meters is a great advantage in comparison with STS which is an exclusive prepayment technology.

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TENDERING PITFALLS EXPERIENCED BY BODY CORPORATE TRUSTEES:

Often when I meet with trustees they are faced with one of the common pitfalls in the Body Corporate Maintenance Industry: "Obtaining and evaluating prices for major maintenance projects." I like to use the following illustration to demonstrate this dilemma:

"Proactive trustees often realize that the building needs a good lick of paint. They will normally approach the local painters directly, or their managing agent to supply prices for a proposed paint project. The contractors will then visit the scheme and submit their recommendations and prices. At this point it really becomes difficult for the trustees to move to the next step, because:

- Superman Painters has suggested Kryptonite Paint with a 10 year guarantee at a cost of R100,000-00 to completely solve all their building, damp and paint problems.
- Batman Painters has suggested that the Bat-Gadgets system is the route to go. (Instead of normal paint systems) His cost is R80,000-00 with a 15 year guarantee.
- Spiderman Painters has informed the owners that a good old fashion Spider-Web solution is all they need to solve all their problems. His cost is R60,000-00 and comes with a whopping 25 year guarantee"

Obviously Spiderman should get the job!? He is the cheapest and offers the longest guarantee. You will realize that the trustees are trying to compare apples with pears and bananas. There is no clear winner in this scenario, only a potential loser – The Body Corporate. The problem stems from the process followed. The preferred methods of tackling a tender for major maintenance projects are:

- Establish the maintenance needs and requirements.
- Consider the failures and possible causes.
- Prepare solutions and specification options.
- Compile a scope of work and specification document for contractors to price.
- Host an on-site tender meeting and discuss the project with proposed service providers.
- Receive tenders in a close tender format – Sealed envelopes at given tender close date.
- Compile a tender evaluation, comparing all the prices received.
- Prepare a short list and interview the contractors.
- Prepare contract pack and enter into agreement with the winning bidder.

Implement contract management structure and close-out procedure.

I therefore urge trustees to consider their current system of obtaining prices and implement steps to improve the process of obtaining quotes. It won't be easy, but the trustees should at least consider the steps above and consider which steps they would be able to implement to improve the system. Alternatively the trustees could engage the services of an industry specialist to help them implement the various steps.

"Maintenance Cancer - Lack of proper maintenance planning and expenditure slowly but surely costs many Bodies Corporate in South Africa a bundle. In fact, it is one of the indicators why some Bodies Corporate that suffer from maintenance cancer is often also placed under Administration".

Frederik Nel : Specialist Maintenance Consultant – **Curasure**

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Why do the sparks fly over electricity payments?

Electricity payments are only a portion of the levies, so surely it doesn't really make a difference if you don't pay your levies and electricity for a few months - right? Wrong! It's essential to pay your levy and electricity fees in full, on time, every month.

Non-payment of these monthly accounts can seriously affect how your complex runs. Although each unit is charged for their portion of the electricity consumption as part of their levy, the service provider (Eskom/City Power, etc) sends one bill for the electricity cost for the entire complex every month. If some owners don't pay their share, the money needed to pay the bill is taken out of the levies. This can quickly impact on the complex and soon essential items like security, upkeep of the buildings and more will have to be sacrificed. Owners who always pay their bills will soon be affected by the non-payment of a few of their neighbours. Payers sponsor non-payers.

Pre-paid electricity is the answer to the problems created by non-payment. It ensures that each resident pays for their electricity in advance. This allows residents to budget for their monthly electricity and to monitor and control their expenses. The complex is able to collect these funds in advance, ensuring that the electricity supply will never be cut by the provider due to unpaid electricity bills.


Article - **STss Prepaid Electricity**

Why STss Prepaid Electricity?

- ✓ **STss Prepaid Solution is custom designed for Sectional Title complexes and is competitively priced.**
- ✓ **Ensures that each resident is accountable for their own electricity costs and eliminates the issue of non-payment of electricity, which could deplete complex funds.**
- ✓ **Option of no capital outlay - the meters are leased and remain the property of STss.**
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- ✓ **4 Secure and convenient electricity token purchase options including a 24-Hour website which allows clients to purchase electricity tokens immediately using a credit card.**
- ✓ **An individual trust account is opened for the Body Corporate for collection of token funds. (EAAB Registration pending.)**



**For more information contact
0860 78 2273 or visit www.STss.co.za**



Geyser Insurance

As in any other industry, the insurance industry also needs to show profits. Considering overheads, insurers need to pay out claims at a ratio of less than 60%. In the Sectional Title Insurance industry geyser related claims comprise approximately 65% to 70% of all claims and is the major cause of negative claims ratios with most bodies corporate. Not so long ago it was possible to still obtain insurance with an excess of R500 on geysers. Due to the claims experience on geysers, these excesses have excelled to a situation where an excess of R 1 500 or more has become the order of the day.

It is interesting to note that there are four places in the Sectional Title Act where the matter of geysers are dealt with: Prescribed management Rule (PMR) 29 (1) (a) (vi) requires the **body corporate** to insure "bursting of ...water tanks...". Rule 68 (1) (vii) requires an **owner** to "...maintain the hot water installation which serves his section" Section 44 (c) states that an owner shall "...repair and maintain his section in a state of good repair..." Following this, PMR rule 70 states that, where the lack of repair is evident, "...the **body corporate** shall be entitled to remedy the **owner's** failure and to recover the reasonable cost of doing so from such owner"

The implication is therefore, that, should an insurer repudiate a claim because of a lack of maintenance or even the defective installation of a geyser, the body corporate will have the right to replace the geyser and claim the costs from the owner.

Apart from the huge excesses which insurers apply to geysers and related resultant damage, there is a tendency for some insurers to include a clause on their policies which states that a geyser claim will only be met when an owner can submit evidence that the geyser has been duly maintained.

How does one maintain a geyser? Probably the most important component of a geyser is the sacrificial anode, a lubricated rod which lubricates the inside walls of a geyser. Once the lubricant has worn out, the very protection of the geyser is no more and it is not very long before the geyser needs to be replaced. Part of maintaining a geyser involves the regular checking and replacing of this anode.

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IS YOUR GEYSER SAFE?

Most owners & tenants are not aware of the hazards revolving around a geyser that has been installed incorrectly. There is a law protecting the consumers against such installations which all plumbers have to abide by called the 'SANS 10254' installation.

There are 25 description points on the specification guideline that can be viewed on the Kwikot website but it is of our opinion that the most important points are:

1. A drip tray with a 50mm pvc outlet installed to the outside section of the property.
2. A safety valve with a ¾ outlet (metallic) installed to the outside section of the property (this must not be installed & left inside the drip tray)
3. Two vacuum breakers at a minimum height of 300mm above the hot & cold water
4. An earth bonding strap between the hot & cold water
5. A 'pressure relief valve' of which one of the functions would be to protect the 'boiler' from high pressure areas
6. Have an electrician inspect the wiring to the geyser as faulty or incorrect wiring can lead to possible fires.

The Central Importance of Property Maintenance

Numerous research studies have shown that regular property maintenance significantly reduces long term maintenance costs, together with promoting the lifespan and value of a property. Frequent property inspections focused on identifying proactive maintenance requirements are an important enabler for achieving the necessary frequency and scope of maintenance. Medium to large properties will likely benefit from a building manager or caretaker assuming the responsibility for daily property inspections and promptly reporting maintenance requirements. A panel of approved contractors is a good idea to promote a good understanding of the history and context of a property together with accelerating maintenance delivery whilst also achieving reliable, cost effective and durable workmanship. Sound record keeping of maintenance work and costs at a building is also very important to enforce guarantees, identify broader issues associated with escalating maintenance costs and to track the durability of maintenance work delivered.

There are a number of important health and safety related maintenance focus areas, in particular the annual servicing of fire fighting equipment (major service required every 5 years), monthly servicing of lifts with an Annexure B lift inspection and certification every 2 years, monthly servicing of air conditioners and pest control treatments tailored to the property use, context and condition. Monthly servicing of drains and outflow pipes off waterproofed roof and courtyard areas are very important for reducing water leaks and waterproofing should be serviced every two years or as specified by the installation service provider, to maintain longer term guarantees. A facility management control schedule or timetable is recommended to schedule and track all the various maintenance items required over a calendar year and assists with assigning the necessary responsibility to each maintenance item and confirming completion.

Careful budgeting and financial management is necessary for underpinning the maintenance system recommended above to ensure that cash flow and affordability parameters support maintenance delivery. A thorough building maintenance inspection utilising an appropriate professional where necessary, is suggested to develop a short (3 – 6 months), medium (1-2 years) and long term (5 – 10 years) maintenance plan which can then be linked to the relevant budget items after quotes and other costings have been obtained. Approval of the maintenance plan with the budget then enables the relevant maintenance items to be implemented in a time efficient and affordable manner.

Effective property maintenance will reduce vacancies and optimise rentals in both residential and commercial properties, again emphasising the importance of a proactive and well administered maintenance system. Cognisance should be taken of presenting the property surrounds (e.g. gardens) and reception or foyer in the best possible manner as these features create an important first impression and positioning for a property. Maintenance efforts should therefore also include gardens and other common area fixtures together with prioritising the entrance area.

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Debit order collections



Following up with debtors can be a time-consuming and uncomfortable process. In the current financial environment, the incidence of non-payment is becoming increasingly difficult to manage. Implementing a debit order mechanism allows your revenue to be regularly collected, allowing you to merely focus on the exceptions. Debit order collections can be done via a bank or an independent provider. These providers are governed by the South African Reserve Bank under the National Payments Act of 1978.

They should also be registered with the Payments Association South Africa (PASA).

Why use a provider and not a bank?

Banks require funds to be ceded, usually at 100% of the monthly collection value. Many private companies offering debit order collection services do not require such cession of funds or could request 10%. The advantage of collecting via a bank is that the funds are directly deposited into your account, whereas a provider would wait for a time period for unpaids (or rejections) to be received, prior to payment. The service element of an independent provider is also a major consideration as smaller organisations tend to treat customers better.

How does it work?

The account holder must sign a debit order mandate giving you permission to debit their account.

The banking details are sent to the provider or bank in a file a few days before the debit date. The file is validated and feedback is provided on errors.

Once the file is ready for submission, it is sent to the national clearing house, BankServ Africa, for processing. BankServ debits the account holder and credits the nominated account.

If the funds were credited to your provider, the funds are transferred after an agreed period, allowing sufficient time for unpaids to come through from the banks.

Reporting provided usually includes totals collected on which dates, unpaids, fees deducted and payment totals.

What type of fees are expected?

Many providers charge a set-up fee, a flat fee monthly as well as transaction fees (per debit order) and fees per unpaid. Unpaid fees can be recovered from the account holder the following month. It would be wise to include this in the mandate wording as to avoid any disputes with clients.



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Importance of Screening Tenants

These days, it is becoming increasingly important for owners to ensure that their tenants are being properly screened. My experience in the past two years has been that certain troublesome tenants create chaos in Sectional Title buildings. They have no respect for the rules of the scheme or for the property which they are renting. You may even find that crime syndicates actually move into a building, fronting as run of the mill tenants. In the meantime, they utilise the property as a base for their criminal activities either within the complex, or within the suburb. Illegal goods such as drugs, abalone and stolen items have even been stored in garages and storerooms.



As an owner, you have invested in a property, and have no right to compromise the value of your property by placing just anybody in your unit as a tenant. It is your obligation to take precautions, and to properly screen your tenant. If you are working through a letting agent, double check that they are undertaking the screening process on your behalf.

I would advise that the following steps be taken:

- Credit bureau searches. If the prospective tenant has judgements against his name, or is a slow payer, you can be sure that he will not be diligent about paying the rent.
- Interview the candidate yourself where possible. Your own judgement and intuition cannot be underestimated.
- If you are renting to very young people, ensure that you obtain a surety ie: someone who will pay the rent if they cannot for any reason.
- As over the top as it seems, obtain a police clearance on them. You don't want to expose the other residents in the complex to criminals.
- Make sure that the prospective tenant has a copy of and understands the rules of the scheme, and that those rules are attached to the lease if it is subsequently signed.

Interestingly, many Trustees are understandably worried about the calibre of tenant in their buildings. They do overstep the mark however, when they attempt to become involved in vetting the tenants themselves. I have even seen the rules of a scheme state that Trustees have the final say on whether the tenant is accepted or not. This conduct is not legal, albeit that the clause is in the rules. Only the owner has the right to choose his tenant.

The final word of advice is to insist on at least two month's deposit, as the legal costs to fight for a month's rental will far exceed the actual rental figure.

SECTION, EXCLUSIVE USE AREA OR COMMON PROPERTY, WHICH ONE IS IT?

In my ten and counting years, as a Sectional Title Attorney, most of the Sectional Title Schemes which I have come across consist of the above 3 separate areas. People often confuse the nature of each.

THESE AREAS ARE:

- the **Section itself**;
- **Exclusive Use Areas (EUA's)**;
- the **Common Property**

A "**Section**" is defined in the Sectional Titles Act as a Section shown as such on a Sectional plan. A Section is that part of the scheme which belongs entirely to the owner and is where the owner normally resides, i.e the actual flat or townhouse.

An "**Exclusive Use Area**" is defined as a part of the Common Property for the exclusive use by the owner of a Section, i.e a balcony, patio, garden, storeroom or garage.

"**Common Property**" is defined as land in the scheme and the parts of the building that are not included in Sections, i.e the entrance to the complex, the pool area and clubhouse.

Common Property (dealt with in Section 16 of the Act) is owned by owners of Sections jointly in undivided shares proportionate to the quotas of their respective Sections. The Sectional Title Deed for the Section concerned has to describe in a separate paragraph the undivided share in the common property. The Section and the undivided share together are deemed to be one unit and the Section cannot be disposed of or otherwise dealt with apart from the undivided share in the Common Property. Likewise the Common Property cannot be disposed of or otherwise dealt with apart from the section.

In regards to Exclusive Use Areas (dealt with in Section 27 of the Act) from the time that the Sectional Title Register is opened, a condition must be imposed conferring Exclusive Use of Common Property to certain owners of certain Sections. The developer then cedes the right to the Exclusive Use Areas to owners in the scheme by registering a unilateral notarial deed. An owner may transfer his right to an Exclusive Use Area to any other owner of a Section in the scheme by also registering a notarial deed of cession. Exclusive Use Areas may also be conferred to by way of rules made by the Developer or the Body Corporate in terms of Section 27A of the Act.

When faced with a challenge in a Sectional Title Scheme, involving a part of the property or building, often the first question to be answered is whether the particular part concerned is a Section, Exclusive Use Area or Common Property!

The views in this article are not intended to be and should not be construed as legal advice. If legal advice is required, a suitably qualified attorney should be consulted with.



ALAN LEVY

ATTORNEYS & CONVEYANCERS

SECTIONAL TITLE SPECIALISTS

Tel: (011) 786 2192

www.alattorneys.co.za

enquiries@alattorneys.co.za

The Chambers, 1 The Avenue (Cnr Henrietta Road) Norwood, JHB
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TRUSTEES DUTIES FOR BODY CORPORATE MAINTENANCE:

Much like ripples in a pond, every action, or lack thereof, on maintenance activities has got far reaching effects. Over the last fifteen years it has been surprising for me to experience the lack of foresight exhibited by Bodies Corporate Trustees.

According to section 37(1)(j) of the governing act, the functions of a body corporate shall include "properly to maintain the common property (including elevators) and keep it in a state of good and serviceable repair" The board of Trustees or incumbent Administrators are therefore entrusted with this function. They have a duty or obligation to maintain the common property.

These Functions include:

Repairs and Maintenance - The trustees have an obligation to repair and maintain the common property, common facilities and assets of the Body Corporate. Maintenance is therefore a trustees duty and obligation.

Available Funds - The trustees are required to have funds available to meet the obligations of the Body Corporate. Ideally speaking the maintenance funds should be allocated into: General day to day maintenance, scheduled projects and a Maintenance reserve or Sinking Fund for future maintenance. When faced with a large repair expense, some trustees may oppose or may be reluctant to follow through with the required maintenance. Legally, they must.

Record keeping, minutes and accounting - This includes keeping minutes of all meetings and proceedings, and preparing accurate records of all maintenance activities and expenditure. Each Body Corporate should have a dedicated maintenance file for major maintenance projects. This file should be part of the hand-over process after each AGM.


Act in good faith - The Sectional Title Act requires the trustees to perform their duties in "good faith". This means that they undertake their duties with an honest and sincere intention to fulfil their obligations to the other owners.

Dealing with large projects and spending "hard earned" rands and cents on maintenance is a daunting task for any trustee. Add to this the fact that most trustees lack experience in the technical nature of maintenance, and you have a recipe for disaster!

One of the most significant changes in general maintenance management thinking in recent years has been the realization that collaborative efforts are required to maximize the desired outcome of preventative maintenance. The focus is now on utilizing skills and professions from all aspects of Sectional Title Management to positively impact on the buildings' maintenance needs.

Trustees should therefore not fear: They have authority and can utilize professionals in the industry to assist them in their duties.

"A duty dodged is like a debt unpaid; it is only deferred, and we must come back and settle the account at last. - Joseph F. Newton"



preventative maintenance
requires a paradigm shift

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Trustees at Risk!

The majority of Body Corporate trustees take the issue of short term insurance far too lightly... not only in terms of gambling with their fellow owners' life investment, but especially with their own personal bliss and well-being.

It is often found that when it comes to insuring a sectional title complex, the apparently cheap and easy route is taken by guessing the replacement value of the buildings and common property or consulting non-professional or ill-informed persons, instead of obtaining a qualified assessment from a registered professional valuer.

This is especially puzzling, considering that the Trustees of a Body Corporate stand to be held accountable in the event of loss or damage with inadequate insurance coverage. Why is this so, one may be tempted to ask?

The most common answer to this question is the presumed "high" cost attached to a professional valuation. Certainly, many Bodies Corporate might be running on a tight budget, but a sectional scheme's insurance is the one expense which should be taken most seriously, as an incorrect assessment of the replacement cost will surely lead to costs far higher than the actual savings made on the valuation fee: either will over insurance lead to an unnecessarily high insurance premium, far outweighing the cost of a professional valuation, or - far worse - will under insurance result in an unsatisfactory insurance payout in the event of a claim.

Naturally, neither of these is in anybody's interest, least of all the Trustees', as they may run the risk of being taken to task by the victims of under insurance.

That aside, a professional valuation need not be costly and also need not be done every year. Provided that no additions or improvements have been made to the property since the initial valuation, a follow-up valuation will only be required perhaps every three or four years. Between valuations, the replacement value will merely be adjusted annually for the next insurance period. This undoubtedly drastically reduces the perceived annual expenditure for this very important item.

Also, selected providers of valuations offer follow-up assessments at reduced rates and some insurers even are prepared to pay or refund the fee for a professional valuation, not so much to win over a client's mandate, but moreover to minimize or eliminate time-consuming and costly disputes when an insurance claim arises.

mirfin

countrywide property valuations



At Mirfin we not only understand what buildings are made of, we also understand short term insurance and as a veteran affiliate member of NAMA, we understand Sectional Title residential, commercial and industrial.

A Mirfin replacement cost assessment not only takes the responsibility off the trustees' shoulders but also allows them to obtain as many quotations on insurance premiums and rates as they like - all based on the same verifiable sum insured.

AND

A Mirfin replacement cost valuation need not cost the insured anything, as some insurers are known to bear this cost! Please consult your broker for this option.

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A STORM AHEAD OF THE REST

Value of maintenance critical

The property industry, one of the hardest hit in the global economic meltdown, is at last showing signs of flattening out with the prospect of an upward trend likely, should conditions continue as they are. Those properties that were able to continue with their maintenance plans during the downfall will, in all likelihood, be the ones that will be able to offer significant returns on investment. According to contractors, Indawo Painting and Waterproofing, ignoring maintenance during tough times is forced upon homeowners, but can adversely affect resale value and even compound problems, leading to increased maintenance costs.

Damages that are prominent and that need constant attention include waterproofing, painting and repairs in areas where the climate has a harsh affect on the external structures of buildings. Geoffrey Jäck, director at Indawo, says, "Effective waterproofing and good quality paint products provide significant protection against severe weather conditions. It is critical that homeowners and bodies corporate pay attention to painting and waterproofing all year round to ensure the protection of fixed assets."

Further damage that may result from ineffective waterproofing and painting includes spalling, structural damage and deterioration of outer walls that protect tenants and the interior of buildings. Poor quality waterproofing allows for the ingress of water into the structure, which can have devastating consequences. It is crucial that homeowners and bodies corporate regularly check the external structures and seek the advice and assistance of professional waterproofers and contractors to safeguard buildings and owners or tenants.

Jäck continues, "Maintenance plans are vital for the longevity of buildings. Regular upkeep and repairs are important to ensure that slight damage does not compound any problems. Identifying weak areas predisposed to attacks by the climate and a maintenance plan that involves the continuous assessment of these areas reduces these risks significantly."

Using the services of a reputable contractor to identify specific areas of risk in a complex can provide significant insight into potential dangers. A detailed assessment of waterproofing, painting and structural repairs can provide bodies corporate with reliable information to address potential problems. As we move into the summer months in the Western Cape, it is an ideal time to take care of external maintenance.



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Message to Trustees and Managing Agents

Incorporate a Levy Protection Policy with an “Accelerated Levy”

Did you know that a Body Corporate can be placed in a position to claim levies annually in advance with a correctly worded Trustees Resolution?

The Trustees Resolution to create an “Accelerated Levy” payment can only be put in place and ratified at the first Trustees Meeting of a specific Financial Year. The Trustees Meeting is normally held immediately after the Annual General Meeting and the resolution taken must be correctly and appropriately worded.

However, it is crucial for the Body Corporate to have concluded a levy guarantee insurance policy, which can be purchased from a niche insurer prior to approving the “Accelerated Levy”, to make it workable in practise. In normal circumstances if an owner defaults on a single levy payment, it can be safely assumed the defaulter could not pay the levies due for the remainder of the Financial Year.

With the insurance policy in place, if an owner defaults on a levy payment, the Body Corporate is able to claim the balance of the levies which then fall due for the remainder of the Financial Year. Yes, if the Body Corporate is insured as recommended, it can claim and undoubtedly collect all its unpaid levies to the end of the Financial Year!

When the Body Corporate implements a Trustees Resolution for an “Accelerated Levy” its insurance policy will be endorsed accordingly. The endorsement will include the condition that the policy cannot be cancelled before its anniversary date. A claims administration fee which is charged to the defaulting members will be payable equivalent to 10% of the claim, but not exceeding R1400. These charges replace the normal claims administration fee of R350 per claim payable to the insurer.

So managing agents don't delay, act today! As managing agents it is vital that you protect a Body Corporate's most important asset, its monthly cash flow derived from members' levy payments. Discuss this matter with your Body Corporate's insurance broker should you need further information.

REDECORATING NEED NOT BE A NIGHTMARE

Before the work starts

- When/how often to redecorate: this depends on many factors such as structural and maintenance issues, state of the building and coatings.
- Decide and itemise the work to be done.
- How will the project be funded: cash reserves, special levy, payment plans?
- Define work to be done, agree on a written specification, quality of finish required, timing and deadlines.
- Enlist the advice of specialists if required, e.g. structural engineers if there is subsidence etc.
- Ensure that all remedial work, repairs and preparation is itemised and included in the quote.
- Take advice on the products and available finishes best suited to the job.
- Speak to paint manufacturers and where necessary, request a colour impression (if you are changing the colour of the complex/building).
- Source contractors and check references – HSE compliance, insurance and guarantees, tax clearance, Federated Employers Mutual Assurance (FEM) in place.
- Put the job to tender/or invite a select number of reputable contractors to quote.
- Compare quotes carefully and ensure that you compare apples with apples.

When appointing a contractor

- Sign a legally binding contract outlining the work to be done, cost, payment schedule, timeline/programme.

Preparing for the arrival of the contractors

- Communicate with tenants/occupants regarding work programme, security precautions.
- Discuss work areas/location of portable toilets + containers/staff access, storing and erecting of scaffold.
- Take precautionary measures to protect gardens or other ornamental features.
- Walk about, organise, clear so that work is not impeded.

While work is in progress

- Have daily meetings with the foreman on site to deal with operational and quality issues/weekly meetings with contracts/project managers to discuss progress.
- Be clear when issuing site instructions over and above the original scope of works: have a procedure in place to deal with quotes, approvals and the scheduling of additional work. Ensure that everything is in writing.

At the end of the project

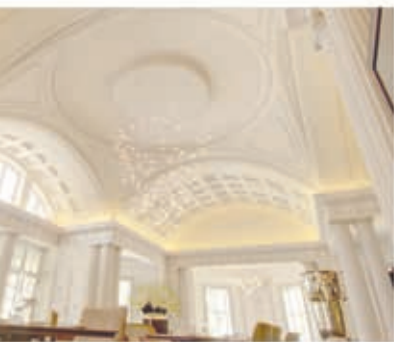
- Ensure all items on the quote have been dealt with.
- Do a thorough walk about with the contracts manager to sign off on the project.
- Finalise outstanding snags and payments.
- Give referrals for a job well done!

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Maintenance Matters

Whether it is our bodies, our cars, our possessions or our property assets, regular maintenance and repair is simply a reality of life. It is an absolute necessity if we are to enjoy the benefits of these assets on a long term and ongoing basis and the way we approach it usually depends on our knowledge and expertise and the time and funds available to us.

Maintenance is either done: a) after damage or breakdown has occurred, ie as a repair or: b) preventatively, aiming, as the word implies, to prevent the breakdown and failure from happening in the first place. The main focus with either approach should be on getting to and tackling the root cause of the problem so that it does not reoccur.

Property damage and failures usually occur as a result of:

- Exposure to the elements
- Abuse or inappropriate use
- Settling and Structural Shift
- Cost cutting by developers and contractors
- Normal wear and tear
- Lack of preventative maintenance

Not doing it right

Many bodies corporate find themselves in the difficult situation where, without the correct person or parties handling the maintenance and repair, the building or complex begins to deteriorate and look poor and unsightly. This results in reduced property values, and lower rentals or sale prices being achieved. It also often leads to insufficient levy collection, which translates into little or no funds available to attend to the necessary repairs and maintenance causing further deterioration and thereby perpetuating the cycle.

Typically, most Trustees and Managing Agents do not have the time, nor the knowledge and expertise to address their maintenance and repairs in the right way. They do not assess problems correctly and rely on potentially unscrupulous contractors, who are often left totally unsupervised, to fix things. Finding reputable contractors is also an issue and in some cases they appoint a 'cousin, a brother or someone living in the complex' who can do the job cheaply, which more often than not results in the repair taking longer than it should and being more costly in the long run.

Involve professionals to assess and supervise

When it comes to preventative maintenance, it is important to know what to look out for and to inspect on a regular basis. For example; keeping gutters clear to prevent roof leaks, fixing cracked tiles or leaking waste pipes as soon as they are noticed, stopping rust and re-varnishing wood, etc.

In terms of budgets and plans, ideally, a body corporate should have 3 months worth of levies or 5 - 10% of their annual levies held in a 'kitty' designated for maintenance and repair. A medium sized complex of between 50 and 80 units typically spends R50 000 - R100 000 per year on maintenance and repair (excluding major projects like painting and damp proofing) and this falls into a variety of categories, the main ones being plumbing, electrical and access control.

Specialist service providers can help to ensure that maintenance is done timeously and correctly. With technical advice and guidance, root cause analysis, direct and ongoing supervision of contractors, comprehensive maintenance plans and quality assurance on larger projects, propercare or your complex means that owner's money is well spent and that your asset is looked after, by professionals.





FREE Maintenance Report for your complex



- Is your complex well maintained?
- Do trustees have the time, knowledge, and expertise to supervise contractors?
- Are you doing preventative maintenance, and budgeting for major expenses?

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Security Matters

When you live in, or own a Sectional title unit, security is not that vague and rather annoying activity that takes place at the gate, every now and again. It would appear to be just that, in many instances, but when you realise, how detrimental bad security is for your investment and complex, perhaps you will realise the vital role that it plays.

- Criminals are exceeding quick to pick on poor security, this leads to vehicle theft, break-in's and washing theft.
- Prostitution and drugs,
- Over population, a form of theft in it's self, but with the added burden placed on drains and water usage.
- Refuse removal - cost burden
- Tenants want to move, and become difficult to replace.
- Most Security Firms charge a fortune and it is not long before a lax attitude sets in. Guess what?, they are stealing from YOU.

Managing Agents need all the help they can get, to enforce the rules that your elected Trustees, saw fit to impose. There is absolutely no malice involved, they are only trying to uphold a standard that will ultimately benefit you and protect your investment.

I am constantly under pressure as a Managing Agent, to bend the rules to please all, like some fairy god-mother. I'm sure that you will have noticed in the legal section of the news paper, that not one fairy god-mother has ever gone into liquidation, they leave that for people who refuse to look after their investments.

Good Management Ensures Success

The importance of good management in a particular sectional title scheme cannot be more strongly emphasised than by the witnessing of the resulting appreciation in the value of each owner's investment in that scheme.

Having said this, what is needed for good management is for the trustees to ensure that they are equipped to carry out their tasks and be made aware of the responsibilities with which they have been entrusted by the body corporate, usually when voted in at an AGM.

Firstly Trustees need to have access to a copy of the S.T. Act, including a copy of the Prescribed Management (PMRs) and Conduct rules (PCRs) also a copy of the schemes rules, as well as a good understanding of and knowledge of the practical application of these rules. The problem with this scenario is that that it is not always the best or most qualified members of the body corporate who make themselves available for election, due mainly to the reluctance of owners to serve as trustees. Another factor to muddy the waters is that Sectional Title Act and the PMRs are constantly changing. The latest being the changes to the date for the calculation of the annual budget which must now be concluded before the end of the financial year, also the impending change to proxies at meetings and the appointment of an S.T. ombudsman for the settlement of disputes.

The facts are that trustees face a lot of challenges in the administration of the scheme, as well as dealing with complaints and residents not adhering to the rules, mainly regarding pets which are a headache in itself.

Rental Agents and Managing Agents

There are many rental agents and managing agents in the market place that do not meet the following requirements and it is in the interest of you as an owner to ensure that you are in legal hands to avoid any loss of income.

Agents as referred to in Conduct Rule – Section 12. Owners must ensure that agents they employ meet the requirements as stated in Section 12. It makes sense that proper qualified people will be more likely to protect your valuable asset.

I have included below the extract from the (EAA) Act, which is the current law in this regard:

The Estate Agencies Affairs Board (see web site: www.eaab.org.za – under regulations) is clear that anyone that earns commission (money) or lets/hire out immovable property is to be registered with the Estate Agents Affairs Board and to hold a current Fidelity Fund Certificate. To compound matters any person that collects overdue debts (rent), and charges for this service, must also be registered as a debt collector under the Debt Collectors Act of 1988 as they are subject to the requirements. The Debt Council draws a distinction between an estate agent who receives rentals or levies (monies due) on a regular basis and that of collecting arrear rentals or levies (monies overdue).

So an agent simply collecting rentals or levies when they fall due on behalf of a landlord or body-corporate is not a debt collector in terms of the DCA and is acting under the EAA Act. In essence, the dividing line is where an estate agent collects arrear rentals and levies which are "debts". From that point onward the agent is performing work reserved for attorneys and debt collectors (taken the extracts from the SAPTG Blog) Notwithstanding the media coverage, high levels of ignorance about the DCA remain. Some estate agents are oblivious to the existence of the Act. Others who know it exists do not consider the activity of collecting rent as falling under the ambit of that legislation. The DCA is very specific that anyone who for reward collects debt should be registered under this act. The reward does not apply to the normal commission payment the landlord pays the estate agent (or agency) in terms of the lease agreement. It does however apply however, to an estate agent who charges penalties and /or collection fees for outstanding rent (overdue monies). Such an agent will certainly need to register under the act.

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Security Technologies continue to evolve in South Africa

Technological innovation has become more advanced over the past few years in the security industry. Security equipment and systems are becoming more sophisticated increasing the convenience of usage. Due to competitive fee structures more individuals and commercial businesses are employing some form of security within their establishments.

Security remains a significant concern in South Africa and locking doors and securing windows is no longer the only solution to combat incidents. Incidents are also no longer only occurring at night; we have noticed a significant increase in the number of security breaches during the day. New technologies such as state of the art alarm systems, CCTV Cameras, motion sensors are available on the market to increase safety and act as deterrents.

21st Century security- more compact and convenient

Home security equipment is much more compact and affordable than before. Advancements in technology afford clients with the ability to set timers for lighting, motion detectors etc. when they are not at home. Developments in wireless technology has come a long way and equipment is now easier to install and more discrete than ever before.

Electronic security solutions continue to evolve and improve. More families in all types of residences are employing security solutions to protect themselves from the many threats that pose a risk to their home and family's safety.



Extensions to buildings

The Sectional Titles Act 95 of 1986 allows individuals or companies to obtain registered title deeds for each separate building erected on one property or even separate parts of those buildings.

Conversions of residential or industrial complexes to Sectional Title or any amendments made to existing Sectional Title Plans, may only be done by Professional Land Surveyors appropriately registered with PLATO. All sectional title plans must be approved by the Surveyor General (SG) before transfer and registration of any section in a complex can take place.

Professional Land Surveyors are highly educated on the Sectional Act and the regulations promulgated there under and should be the first point of contact for any sectional title queries.

Article - CDJ Landmeters - Land Surveyors

Underinsurance

New research shows that many South African property owners are chronically underinsured. It remains a mystery as to why they would put their biggest financial investment at risk by not establishing adequate values. Having Average applied after a claim compounds an already traumatic experience and results in a very unhappy client.

Very often clients will guess the value of their property by comparing it with current market values or municipal valuations, which can differ quite dramatically from the replacement cost and variables such as professional fees, demolition costs, common property, VAT etc. are forgotten. In tough economic times such as these, it is even more important to ensure sums insured are sufficient thereby avoiding a serious financial shortfall when it can be least afforded.

Insurance is often viewed as a grudge purchase and to pay more when times are tough makes for an even more resentful client. In the event of a large loss occurring if the value is inadequate it may not be possible to fully repair or rebuild damaged property without substantial financial contribution from the property owner.

The cost of comprehensive building insurance is relatively affordable and by not increasing sums insured to save premium is false economy.

Willie Van Wyk - **Bestsure**



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Unauthorised Installations and Damage to Common Property

Frequently the managing agent and trustees are in the firing line from owners and residents due to us requesting that their air-conditioning unit, satellite dish, TV aerial and such be removed at their own expense. Frequently these items are installed on common property and is in contravention of the registered conduct rules.



Most Bodies Corporate Rules state that:

"an owner or occupier of a section shall not mark, paint, drive nails or screws or the like into, or otherwise damage, or alter any part of the common property without first obtaining the written consent of the trustees."

- "an owner (or person authorised by him) shall not affect any alterations or additions of whatsoever to the common property, without the prior consent of the trustees, who may attach reasonable conditions to their consent. Once the trustees' consent in respect of a specific alteration or addition has been given, such norm shall be followed in respect of similar items (alterations or additions) to be effected in respect of other units in the scheme."
- " A resident of a section may not, without written permission from the trustees, erect or install anything on the common property, including balconies, "stoeps" and gardens, which in the opinion of the trustees, is aesthetically displeasing or undesirable when viewed from outside of the section."

If an owner or person authorised by him, fails to obtain the consent or approval of the trustees in terms of these rules, or fails to comply with the conditions imposed by the trustees, the trustees may request the owner to remove the alteration or addition at his own expense. The trustees are authorised, after 7 days written notice having been given to the relevant owner, to remove or cause the removal and/ or restitution of the alteration or addition at the risk and expense of the owner concerned, who shall have no recourse against the body corporate or its trustees, employees or contractors for any damage resulting there from.

From the above it is clear that such installations may be permitted subject to the approval of the trustees who may indicate certain criteria regarding type, size and position to be considered for such installation and any installation without permission must be removed. Trustees will always apply the point of "reasonable-ness" and no request will unreasonably be refused. However, they ask that you request permission prior to embarking on any installation in order to avoid a situation where you are instructed to remove the installation or it is done on your behalf and the cost is added to your levy account. Any such cost is legally payable and a Clearance Certificate will be withheld if the monies are not paid as at date of transfer.

We trust that the above clarifies the position with regard to such installations.

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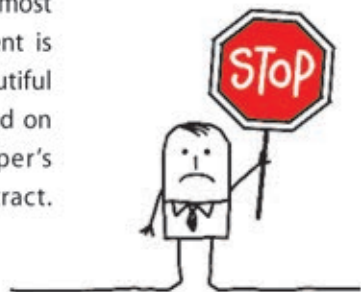
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You are in the market for a new property...

You find a beautiful brochure of newly developed properties in your area. The price is right and you subsequently make the decision to purchase a property of your dreams. So often have we seen this dream change into the worst nightmare.

There are many dodgy developers who would print the most beautiful marketing brochures. Once the development is completed there would then be no sign of the beautiful gardens, clubhouse and those fancy roof tiles featured on the brochure. Make sure to include the developer's responsibility in this regard when you sign the contract.





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is an established brokerage based in Gauteng for over 40 years

Our team of Sectional Title experts has a successful working relationship with leading short-term insurer Santam and can assist you with your sectional title requirements.

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One of the benefits of this scheme is **Santam's 24/7 SOS emergency and claims helpline**.

When things go wrong and you need to claim, the last thing you want is hassle and added stress.

For a claims process that is simple, efficient and stress free, you can call **Santam's 24/7 SOS emergency and claims line on 0860 505 911**. Santam will immediately handle your entire incident from report to claim, anytime of the day.

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- Trustees Liability
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In case of Emergency...

It is that time of year – your Managing Agent has closed for the Holiday season – you cannot get hold of anyone, your geyser bursts, your ceiling has collapsed, your electricity keeps on tripping, no hot water, everyone is complaining in your ear, what to do!

Go to your fridge – on the outside you will see a **bright yellow and blue card with the magic telephone number - 0860 505 911**, dial this number and help is on its way. Emergency sorted, claim registered and you can proceed to step 2 – open the fridge, remove some ice, add to a tumbler with your favourite drink and propose a toast to **insurance good and proper!**



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We are registered members of the **Estate Agency Affairs Board** and **National Association of Managing Agents**.

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Just A1 Property Management

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Once upon a time in the days of King Arthur, a small community lived happily in a village high on the sides of a steep mountain. They called their home Happytown.

The villagers were proud of their village and felt safe in the knowledge that they were surrounded by a strong wall made of heavy rock and that their entrance was guarded by brave soldiers who could keep the enemy at bay.

They had everything they needed to keep their families happy and healthy – pure running water to drink, bathe in and prepare their food; plenty of wood from the forest to keep warm during the long winter nights and to cook the food that they brought to their tables.

There were beautiful gardens where the children could play safely in Happytown and in the cool evenings, parents liked to take a stroll after a hard day's work. The roads were kept clean by the street sweepers and everyone in the community had a role to play to ensure that the villagers' lives were good.

Prince Goodheart ruled the village and he was fair and kind. He could be relied on to make a sound decision if an argument broke out and he used the taxes he collected to make the lives of the villagers a little bit better every month.

After a while, outsiders came to see Happytown and everyone wanted to live in a community just like this! Villages started to spring up all around and over a period of time, the area was bustling with people. Happytown was soon surrounded by small communities, each living safely within the walls of their village. And so it was that community living began.

Just like in times long past, many people still choose to live in a community. Some changes have evolved over time to deal with the frantic pace of life, rules and laws of the government and the age of technology, but the basic principle of living together in harmony still remains.

Laws have been implemented to ensure that the processes for managing communal living are in place. In South Africa, most gated communities fall either into the category of **Sectional Title Schemes** or **Homeowners' Associations**. Sectional Title complexes are governed according to the **Sectional Titles Act**. The Act covers all aspects of Sectional Title living; from how the complex is run and managed, to what is and is not allowed within the complex.

Should you, a fellow Trustee or an owner in your complex need to refer to the **Sectional Titles Act** for clarity on an issue regarding your complex, a copy may be viewed on: <http://www.info.gov.za/view/DownloadFileAction?id=147401>. If the affairs of your complex are managed by a Managing Agent, you may refer your question to them as they should be well acquainted with the Act and be able to give you guidance and support on any issue you may have.

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The Importance of Maintenance

Banks are reluctant to give bonds, where complexes are poorly maintained. Another reason would be if a complex were in debt (outstanding local municipal authority accounts). In order to be bank friendly a complex needs to have a good capital reserve and an effective means of debt recovery i.e. levy arrears collections. More and more the banks are requesting copies of body corporate accounts and financial records. An active and healthy property market requires an adequate number of willing buyers, willing sellers and ample supplies of bond finance. Buyers and sellers are affected by the state of the economy and confidence in the future – the banks control the bonds. If they feel that there is a particular risk in a sector of the market, they will restrict the amount of money available to buyers in that sector. Being aware of the problems, the body corporate must ensure that their debts are paid, and that all monies owed to the body corporate is actively collected and the property looks and feels on track. In other words, be bank friendly, it goes a long way.

With this in mind Trustees must ensure that the common property, (in most cases – what you see from the outside) is maintained. This is also what potential buyers and agents see. Renovations normally take place after the rain season. Remembering that it is bound to result in noise complaints from tenants. With this in mind contractors should be restricted (where possible) to reasonable hours in an attempt to minimise the disturbance.

Article - **Lilian Waldeck**

Extentions

So you have bought this stunning townhouse with so much potential to extend!

Not so fast.....

The Sectional Title Act 95 of 1986 in Section 24 states that "If an owner of a section proposes to extend the boundaries or floor area of his or her section, he or she shall with the approval of the body corporate, authorized by a special resolution of its members, cause the land surveyor or architect concerned to submit a draft sectional plan of the extension to the Surveyor-General for approval."

So.....

Make a sketch on scale of how you envisage to extend your Section. Bear in mind that the extension should not harm the harmonious appearance of the complex.

Appoint a good architect or land surveyor to draft the sectional plan.

Obtain a special resolution of the members of the Body Corporate. Should the enlargement be more than 10% of the total floor area in the complex, all bondholders over units in the complex will have to approve the extension.

Then the Land surveyor/architect amends the Sectional Title Plans and a new schedule of Participation Quotas is registered at the Surveyor-General and at the Deeds Office and the changes added to the Title Deed. All authorities are informed of the changes, including the Local Authority.

After the Trustees have received the amended registered plans, they are distributed together with the new insured replacement values and levies to all owners and the building can be done.

Bob's your uncle!

(Remember – the views expressed herein are not legal advice. A competent Conveyancer versed in Sectional Title Law should always be consulted with)

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Sectional Title Living PETS



Having weathered the storms of 12 years in estate management, I would like to share some insight with you through a series of articles on the Pros and Cons of Sectional Title Living. While these estates offer many benefits, most owners and residents are not aware of some of the restrictions placed on them in terms of the Sectional Titles Act and more importantly the Conduct Rules of their respective complex.

My first topic "Pets" is probably the most sensitive and has evoked mixed emotions amongst residents over the years.

Pets must be pre-approved before bringing them into the complex, sterilization and inoculation certificates may be required. Large breeds of dogs are not suited to complex living due to the confined space of gardens. Continuous barking as well as the safety aspect is also of concern.

Cats present numerous problems with in-house breeding if not sterilized, entering apartments and spraying, damaging furniture etc. Cats cannot be controlled like dogs and present their own unique set of problems.

Pet owners need to be aware that the Conduct Rules make provision for fines to be issued as well as the eventual removal of any pet which continues to present problems to other residents.

Remember there are no bad pets just irresponsible pet owners!

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- Preserving and maximizing the total investment.
- Positive collaboration with Managing Agents and Service Providers.

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SECTIONAL TITLE

THE FASTEST GROWING FORM OF PROPERTY OWNERSHIP IN SOUTH AFRICA!



A quick look at newspaper property advertisements shows that a large number of new developments are being offered for sale as Sectional Title schemes. It is not difficult to understand the reason for Sectional Title being so popular. This form of home ownership offers increased security, shared responsibility for maintenance, access to special facilities and the opportunity to live in better areas.

Prospective purchasers of Sectional Title property should ask the following questions before signing an Offer to Purchase:

- Is the property in a good state of repair?
- What is the financial status of the scheme? Inspect the latest audited financial statements and check for a healthy reserve maintenance fund.
- Are there arrear rates or other outstanding accounts?
- Do the rules allow for happy living or are they too restrictive for you? Are the rules registered at the Deeds office? Unregistered rules are not enforceable.
- Is the insurance on your unit adequate?
- What will your participation quota be and what will your share of the levy be?
- Is there any form of litigation pending against the Body Corporate?
- Is the scheme right for you i.e. is it mostly young people with children or mainly retired couples?

Having said that, there remains a general lack of knowledge about the workings of Sectional Title and the responsibilities that go with living in close proximity to your neighbours.

An example is the 'us and them' syndrome which is pervasive in Sectional Title communities. According to this, there exists a somewhat evil entity, vaguely referred to as the body corporate, which extracts money, makes ridiculous rules, and does nothing. At the same time, each owner wants to be king of his castle and do whatever he wants with the home which he has, after all, paid for. He is however quick to complain if the trustees have not performed their duties to his personal satisfaction.

What is not yet properly understood by owners is that they are the body Corporate and are in a position to hire and fire trustees, even to issue instructions to the trustees, and that ultimately they are responsible if things go wrong.

To be a Sectional Title owner requires that certain responsibilities be shouldered. One of them is to be prepared to assume the thankless task to serve as a trustee, but also, as an ordinary owner, to accept the fact that without positive participation, knowing the rules, taking cognizance of and an interest in aspects such as the budget and insurance, and attending general meetings, a body corporate is not likely to function well if at all have no representation at all.

The management of schemes under the Sectional Titles Act, 1986 is an increasingly complex task, requiring detailed knowledge of the Act and its regulations and an overall understanding of the South African legal system, as well as an understanding of scheme management practices. The law applicable to scheme management is under constant review. A failure to know and apply the legal requirements for scheme management may involve serious consequences, particularly for trustees and managing agents.

It must be remembered that the ultimate responsibility for the efficient running of a scheme rests with the trustees, who are mostly volunteers with little or no training or experience in the administration or financial management of Sectional Title complexes. This opens the way for serious problems which can and do occur with unfortunate regularity, with an obvious affect on the value of the investment of owners in the scheme.

Sectional Title in South Africa is regulated and governed by the Sectional Title Act of 1986. This Act is under constant review and changes are regularly taking place. These changes are being made by the Sectional Title Regulation Board, an organization on which the following bodies are represented:

Registrar of Deeds, Surveyor General, Conveyancers, Architects, Banks and Land Affairs, as well as two persons with specialized knowledge of Sectional Title Development. Sectional Title owners, who are most affected by any changes which may be made, have no representation at all.

LEVY PAYMENTS



It is essential that anyone who is interested in buying into a sectional title scheme is aware that levies are payable in order to be able to plan for them and to make sure that it is affordable over and above any bond repayment. It must be emphasised that paying of levies is not optional, and failure to do so can result in judgements being taken and the defaulting owners' properties being sold in execution.

What are levies? A levy is the amount an owner pays monthly into a body corporate account to cover the complex's expenses in connection with repairs, upkeep, control and administration of the common property, including provision for future maintenance and repairs, payment of taxes and any other municipal service charges to the building/s and land, security costs, gardening, cleaning, wages and salaries and the insurance premiums for the scheme as a whole.

The trustees estimate the body corporate's expenditure for the following financial year and the budget is considered at the Annual General Meeting. Once approved the trustees distribute the estimated expenditure among the owners in accordance with the Participation Quota (PQ). The PQ is a fraction worked out by dividing the floor area of each owner's section by the total of all the floor areas of sections in the scheme i.e. owners of bigger units pay more than the owner of smaller units.

Levies are the "lifeblood" of the body corporate and without it the body corporate cannot meet its monthly expenditure. It is essential that all owners pay their levies timeously in order for the body corporate to meet their monthly financial commitments and for the building to be properly maintained and provided for.

MAINTENANCE

There are authorities who are engaged in offering Sectional Title Training of the Act, that often state – “A Self Managed Scheme can be a dangerous thing”. One agrees that larger complexes will always require the participation of a Managing Agent, but experience has shown that many smaller Sectional Title Schemes run very efficiently on their own. There are a number of fundamental points that a Managing Agent can be appointed to take responsibility for. Some of the requirements could be:

Provide the Trustees with the knowledge of the Act.

Inspect the property on a regular basis and obtain quotes on the repair and the maintenance of Common Property, such as plumbers, electricians, water proofing specialists and landscaping maintenance authorities.

Assist in preparing Budgets and Insurance schedules.

The PRESCRIBED MANAGEMENT RULE 36 (2) States -: The Estimate of expenses referred to in sub-rule (1) shall include a reasonable provision for contingencies and the maintenance of the common property. As a rule, between 10 to 15% of the budget should be allocated to contingencies. Hard experience has shown that if a body of Trustees or a Managing Agents finds itself in a position where Special Levies is called for, the repercussions often make a Middle East conflict look like a playground, once the owners of units of a Scheme are approached for additional funds to finance a maintenance requirement. Trustees must establish if an improvement to a Complex is an essential improvement or a non-essential improvement.

Let one assume that the improvement is essential and there is sufficient funds set aside in the Budget for the repairs of the common property. The first step to be initiated, is to clearly define what repairs are to be carried out. Here a Statement of Work (SOW) is a valuable reference, as it clearly defines what the problem is. This SOW is used to furnish each service provider with a statement containing all necessary information. For example – A roof over a balcony is leaking, repairs are to be carried out to solve the problem and what measures are to be taken by the service provider, to complete the task, eg. painting etc. The SOW must also state the various conditions that a Contractor must adhere to during the repair of the roof – Security Clearance, hours of work, removal of waste material and health and safety precautions.

A condition of appointment to exercise any Maintenance requirements is that there is an acceptance by the service provider, to honour a period of warranty. In order that this becomes effective, a certain percentage of the approved contract price should be retained. It is normal that the warranty period is three months and the retained sum to cover this warranty is 12.5%.

The Trustees / Managing Agent must always compare value of the task against competency of the service provider. As the good South African adage goes – “Goedkoop is duurkoop”.

A lighthearted look at the day to day trials of a trustee

In an effort to assist future novice Trustees and to shed some light and experience into the often shrouded mystery surrounding the affairs of the average Trustee in a Sectional Title scheme, who having been appointed to such an exalted position, realises that being a member of a Body Corporate prior to their appointment does not in any way prepare them for the "slings and arrows" that will undoubtedly assail them during their term of Office. I offer my humble contribution.



Being the star of a football team must be similar. Flavour of the month when all is going well. Bad press when things go pear shaped,

And so it began, but where exactly to start.....

Who am I, you may well ask? My name is Rita Rediforital. Married for 8 years. Previous work experience as an Office Administrator. Husband working as an Accountant "somewhere in the City" very upwardly mobile but making adequate time to ensure that my days will be blessed and fulfilled looking after our three young children between the ages of 6 months and 5 years.

Where do I live? Upancumin Mews, a Sectional Title scheme consisting of 35 three Bedroom Simplex Townhouses and 40 two bedroom apartments in the "must live there" Suburbs.

I suppose it is relevant to wonder why I chose to live in a Sectional Title scheme and the answer is simple. While my husband is a whiz at his job he is useless when it comes to practical handyman skills. Besides which community living means better security. Doesn't it?

Leaving my husband to get better acquainted with our offspring I righteously sallied forth to honour my annual commitment to the place that I live by attending the Annual General Meeting and hoping that some other sucker (sorry I meant to say reluctant volunteer) would agree to run the day to day affairs and stand as a Trustee until the next AGM.

Our Complex has 75 Units so we needed 20% of the Owners to be present, or if they could find a willing friend, represented by proxy, in order to form a quorum and get down to business. Forming a quorum works on a sliding scale apparently and Complexes with 10 Units or less need a 50% presence to form a quorum and Complexes with between 11 and 50 Units require a presence of 35%. We made it; with 18 brave souls! Without a quorum we would have had to reconvene the meeting for the same time, same place, and same day of the following week. Believe it or not if the normal quorum is not present at the reconvened meeting within half an hour those present would constitute a quorum.

The Trustees elected the previous year all resigned which they are required to do at each AGM. As no nominations had been received prior to the meeting volunteers were requested. Suffice to say five Trustees seemed to be about the maximum number likely to be pressganged into volunteering for these alleged prestigious and coveted positions and so this number was agreed.

Now followed the process of cajoling, inveigling or flattering five suitable candidates who had only been half attending to the proceedings up to this point and like me just waiting for school to be out so they could get back to that chilled glass of white wine and in my case to watch the latest episode of "Days of Our Lives" dutifully recorded by hubby in my absence.

After our election had been recorded by the Managing Agent, who had been taking notes of the proceedings for the Minutes, the other Owners attending, after exhibiting various signs of relief at not having been elected as a Trustee proceeded, in my opinion, to make life as difficult as possible by directing and restricting the duties of the Trustees they had just elected. As they only get the chance to do this at a General Meeting of the Body Corporate it's not a complete surprise that this function is attacked either with great indifference or in the case of our Complex with considerable diligence and gusto.

Withdrawal as a Trustee is contemplated at this stage but reluctantly acknowledged as impossible without a major loss of face.

The Meeting is over at last and just as we are all about to rush out of the door the Managing Agent, who has affected the stature of a Major Domo, marshals the newly elected Trustees to order and recommends that we hold our first meeting to elect a Chairman. The idea is practical and if I thought that the coercing, inveigling and flattery stopped at the AGM I was soon to learn my mistake. My newly elected colleagues were either too busy, to shy, too short or too tall or they offered full time work commitments as the most relevant excuse not to take on the responsibilities of Chairman. I, on the other hand, was obviously the right height, and what was most important did not work, if bringing up three kids was classified as a non income producing profession. What is more, I would be available on the Complex during normal working hours. The result was inevitable; I was it! My erstwhile colleagues ganged up on me and voted unanimously for me to be the Chairman of the Trustees for the current term of office.

Not to worry says my Managing Agent, who sleeps with a copy of the Sectional Titles Act under her pillow; I will be there to guide and assist you.

And on that hopeful note I eventually escape and head for home, nursing my insecurities and wondering if I should call our local Estate Agent and put our home on the market.

My bubble was well and truly burst when I got home to my ever loving. The baby was teething; hubby was exhausted and was going off to bed. I eventually crawled between the sheets at 11pm and set the alarm for 6.30am, only to be rudely awakened from a dream that included golden sands, warm billowy breezes and cocktails brought every half hour by a waiter who could have doubled as Tom Cruise. OMG, was that the phone? Who has died; had a car accident? All these dreadful thoughts ran through my mind as I made my way blearily to the phone at 5.15am only to be brought up short by a male voice.

"My geyser's burst!" And good morning to you, I thought, what has that got to do with me? "Well you are a Trustee, you deal with it", I was told. How efficient are those jungle drums? He was a Tenant and on my enquiring whether he had advised the Owner of the Unit he replied that he lived in France and he wasn't phoning him at that time of the morning! Obviously consideration for his Owner was paramount whereas I came somewhere at the bottom of his list.

Having ascertained that the Unit was not underwater and remembering what my trusty Managing Agent had said about support I took details and promised to get back to him. I hadn't a clue what to do so I phoned the Managing Agent. How I hate answering machines! 9am would be the earliest time I could consult the sage.

By now the household has been well and truly disturbed and wide awake. Hubby decides to have an early start; so where is breakfast? The baby makes its dietary requirements known; loudly, and the other two kids are practising kung fu.

By 7.30am the chaos has subsided. Marvellous Minnie, our trusty domestic, has arrived and taken my high kicking kids to nursery school. Still too early for the Managing Agent, but not too early for a cuppa, surely? In my dreams!

Who can be ringing the doorbell at this hour? On the doorstep is John, the Complex Gardener. "I'm sorry Madam, but I need petrol for the lawnmower and I have run out of black bags. Here's the petrol container". Offering up a prayer to the mechanical gods who had fixed and returned my car only the day before I rushed to the local garage and purchased his supplies making a mental note to allocate responsibility for the gardener, and his supplies, to one of the other Trustees and to open an account with the local garage and hardware store so that the money did not come out of my pocket. Would I get reimbursed for my petrol and what I had purchased?

By now it's 9am and I can call the fount of knowledge. The fount was obviously very busy that morning gushing water because it was half an hour before I connected without the engaged signal.

Bliss! I was told that as a geyser was hot water apparatus it was the Owner's responsibility to fix but that he could claim from the Insurance taken out by the Body Corporate. Mental note to send a Memo to all Owners advising them of procedure. As a Trustee I would get reimbursed for out of pocket expenses and items purchased for Complex use. The Managing Agent would set up a Petty Cash float so that I did not have to use my money in future.

As for the rest of the day;

The automatic entrance gate broke down, and here to my relief the Managing Agent came galloping to my rescue. She efficiently contacted the Contractor which resulted in a satisfactory solution for all concerned.

At which point the Security Guards at the gate advised a greater need. They had run out of Toilet paper! I was somewhat relieved when the Complex handyman actually caught up with me before I left the Complex to brave the local supermarket on a Friday to let me know that the stock of Pool Chemicals was running low. A further Memo to me to make sure that these essentials were monitored on a monthly basis and another Trustee appointed to take over this chore.

The Managing Agent, bless her heart, had in the meantime contacted a plumber to attend to the burst geyser. She would also complete the Insurance documentation for signature by the Trustees before submission to the Insurance Company. Why couldn't the Managing Agent sign the claim documentation I wanted to know? Very simple, I was instructed, without the signature of two Trustees acting on behalf of the Body Corporate the document would not be valid as the Insurance Policy was in the name of the Body Corporate. The Insurance Policy would pay for the cost of replacing the geyser and the Owner of the Unit would be obliged to pay the excess. Two more snippets of information for the grey cells to absorb.

Finally at the end of a perfect day I had to step in between two neighbours who felt that the only way to resolve a parking dispute was to fight on my doorstep.

I realised after the first day my biggest asset would be a sense of humour.

Attention!

Stay informed...

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