

### 30. Can I let or sell my sectional property as I wish?

Generally you can, but you should check the rules of the scheme to make sure that there is no restriction on letting or selling.

In some schemes the rules restrict short-term letting, and some retirement schemes require that on the sale of a unit a share of the profit is paid to the body corporate to subsidize levies.

You will not be able to transfer your property to a buyer until you have paid all amounts due to the body corporate.

### 31. Where can trustees and owners obtain more detailed information?

- Read the Sectional Titles Act and the scheme's rules. Make sure these are available to all owners, tenants and other occupiers of sections.
- Call upon the experience and knowledge of your managing agent.
- Read the manuals and books available, e.g. *'Sectional Title Survival Manual'* by Graham Paddock.
- If you have access to the Internet, visit **Sectional Titles Online**, at <http://www.grahampaddock.com>

### 32. Conclusion

In a sectional title scheme, whether you are a trustee or an owner:

## ***'KNOWLEDGE IS POWER'***

Do whatever you can to increase your knowledge of your scheme's rules and the Sectional Titles Act. This will give you the power to protect your investment.

# ***Introductory Booklet for Sectional Titles***

*by Graham Paddock*

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### **1. What is sectional title?**

Sectional title is a system in which 'sections' of buildings are individually owned. A 'sectional plan' is registered for each development scheme. It shows the sections – which are individually owned – and the 'common property', which is the land and all parts of buildings that are not part of any section.

The common property is owned jointly by all the people who own sections. Some parts of the common property may be set aside for 'exclusive use' by particular owners.

## 2. How is sectional title ownership secured?

The Deeds Registry records include a list of all the sections in the scheme and give the name and details of the owner of each one.

The Registry records also show any registered 'exclusive use rights', to areas such as parking bays and garden areas.

## 3. Is sectional title only for homes?

No, sectional title developments can include homes, offices, shops, factories, holiday accommodation, etc. Sectional title ownership is possible in high-rise buildings, low-rise clustered structures or entirely separate buildings.

## 4. As a sectional title buyer, what will I own?

You will own your section, perhaps a number of sections (such as a townhouse and a garage). The boundaries of your section are the centre lines of the walls, floors and ceilings that surround it. Also, you will own a share of all the common property in the scheme.

The size of your share in the common property is usually based on the floor area of your section.

Your section, with its share in the common property, is known as a 'unit'. You may also have 'exclusive use rights' to one or more parts of the common property.

## 5. What should I check when buying sectional title property?

- Look at the sectional plan, to determine your section boundaries, the scheme boundaries and that any section you are buying has not been informally "extended" or altered.

## 27. Must the scheme have reserves for future expenses?

The owners are obliged to include in their approved budget what they consider to be a reasonable provision for future maintenance and repairs and should also make provision for other unforeseen expenses by creating a reserve fund. But, whilst reserve funds are desirable, in practice many schemes do not build up reserves.

When buying into a scheme you should establish whether the body corporate has a reserve fund and if it is adequate to cover likely future expenses.

## 28. How do I pay rates, water and electricity on my sectional title property?

At present the body corporate pays rates for the entire scheme and recovers these from owners as part of the levies. Soon sectional title properties will be individually rated.

Consumable utilities such as electricity, water and gas are supplied to the body corporate which recovers the costs from individual owners. These may also be separately supplied in future.

## 29. What does the body corporate insurance cover?

The body corporate must insure the buildings (which includes the sections and the common property), all the common facilities and any movable property it owns to full replacement value. Bear in mind that replacement value and market value are different.

Any owner is entitled to require that the amount of insurance cover applicable to his/her section be increased, but must then pay the additional premium.

Owners must insure their own furniture, fittings and personal effects.

- Dealing with unwarranted criticism.

### 23. What are levies?

Levies are the contributions, usually paid in monthly installments, which each owner makes to the scheme's running costs.

The levy payable by an owner is calculated on the basis of the participation quota of the section(s) s/he owns. An owner who is entitled to exclusive use rights must pay the costs attributable to the upkeep of that area.

### 24. Who is liable for levies?

The person who is the registered owner of the unit when the trustees decide upon a levy is responsible to pay that levy.

Bear this in mind when entering into a contract to buy or sell a unit.

### 25. How are levies increased, and can I be asked for extra money at any time?

Annual levies are based on a budget approved by owners for a twelve month financial year, so you can expect them to be revised each year.

But if the body corporate encounters a necessary and unbudgeted expense, the trustees can declare a 'special levy' without calling a general meeting and each owner will be liable for their share of the additional amount.

### 26. What is a budget?

A budget is an estimate of the scheme's income and expenditure for the forthcoming year. The trustees, usually with the assistance of the managing agent, propose a budget for consideration and approval by owners at each annual general meeting.

The approved budget forms the basis of the annual levies raised by the trustees.

- Establish who owns or has exclusive use rights to parking, garden, storage areas, etc. Make sure that you are obtaining rights to any area you expect to be able to use exclusively, such as a parking bay or garden area and whether they will be recorded at the Deeds Registry or in terms of the scheme rules.
- Check the participation quota of the sections. This usually determines your share of the body corporate expenses which you pay monthly in the form of a levy and the value of your vote.
- Get a copy of the scheme rules - read these and look particularly for any rules that change your liability for levies or create exclusive use rights.
- Check the current monthly levies and what expenses are included in the most recent operating budget.
- Inspect the condition of all the scheme's common property, to assess the likelihood of any significant expenses for repairs and maintenance in the near future.
- Read the most recent set of financial statements - look particularly to see if there are sufficient reserves for maintenance and unexpected expenses.
- Find out whether the body corporate owes money to a levy financier, the local authority or a supplier, and if it is involved in litigation or has judgments against it.
- Check the amount and type of insurance cover and the current insurance replacement value allocated to the section.

### 6. What is a sectional plan?

The sectional plan is an approved survey document showing the boundaries of all sections in the scheme, all the common property, any registered exclusive use areas and the details of the participation quotas of each section. It is approved by the Surveyor-General and registered at the Deeds Registry. The sectional plan is available for inspection by the public at both of these offices.

## 7. What is common property?

The common property is everything in a scheme (ie. everything shown on the sectional plan) that is not part of a section. For example, the common property includes all the land, the foundations, roofs, passages, parking bays, lifts, garden areas, swimming pool and any other facilities.

## 8. What is a participation quota?

A participation quota is a percentage or a decimal fraction representing the 'share' in the common property which is allocated to each section. Participation quotas for all the sections are set out in a 'Participation Quota Schedule' at the back of the sectional plan.

Generally, the participation quota for each section is determined according to the size of the floor area of that section compared to the floor areas of all sections in the scheme as follows:

*Floor Area of Section X 100 / Total Floor Areas of all Sections.*

*For a section with a floor area of 94 square metres in a scheme where the total floor areas of all sections is 1853 square metres the participation quota would be arrived at as follows:  $94 \times 100 / 1853 = 5,0728\%$ .*

This is usually the basis for the calculation of each section owner's contribution to the common expenses of the scheme – known as their 'levy' - and the value of the owner's vote.

## 9. What is a unit, as opposed to a section?

A unit is your section plus its share in the common property. A person who owns a section also owns a share in the common property, the section plus its share in the common property is called a unit.

## 10. What is an exclusive use area?

An exclusive use area is a defined part of the common property set aside for exclusive use by a particular owner. You may buy and

## 21. What do you need to be a trustee?

- A responsible attitude to the affairs of the body corporate.
- The ability to run the scheme sensibly, but at the same time to be sensitive to the needs and welfare of all owners on an impartial basis.
- To set a good example to others, for example in obeying all scheme rules.
- Leadership and communication skills.
- A working knowledge of the management provisions in the Sectional Titles Act and the scheme's rules.
- An ability to run and/or participate in trustee and body corporate meetings, striking a balance between efficiency and social interaction.
- To be efficient, compassionate and objective in dealing with owner issues.
- The ability to understand the scheme's financial affairs.

A person cannot serve as a trustee if they have been declared insolvent or disqualified from acting as a director of a company in terms of the Companies Act.

## 22. What are some of the difficulties trustees can face?

- The need to make unpopular decisions, collecting outstanding levies and enforcing the scheme rules.
- Applying the provisions of the Sectional Titles Act, the scheme's rules and owner directions equally to owners
- Dealing with owners who insist on contacting them directly.
- Trustees need to know when to seek professional advice in regard to complex financial, legal or major maintenance matters where they lack the required expertise.
- Dealing diplomatically with difficult owners, at meetings and on a one-on-one basis.
- Finding time to prepare for and attend meetings.

## 19. What are the duties of the trustees?

- To control, manage and administer the common property and body corporate's assets and affairs.
- To ensure that owners and other occupiers of sections comply with the provisions of the Sectional Titles Act and the scheme's rules.
- To ensure that levies are promptly collected.
- To arrange regular annual general meetings and other meetings of owners when necessary.
- To meet with each other as often as is necessary to run the scheme efficiently.
- To ensure that proper notices are given for all meetings and to make sure that records – known as minutes - are kept.
- To keep, or arrange for the managing agent to keep, secretarial and financial records and allow these to be inspected on reasonable notice.
- To act honestly and in good faith.
- To make sure that the scheme buildings and assets are adequately insured to replacement value.
- To ensure that expenses attributable to exclusive use areas are recovered from those who have rights to those areas.
- To raise special levies when necessary unbudgeted expenses are incurred.
- To make sure that the common property and facilities are maintained and repaired.
- To supervise the activities of the managing agent and any other body corporate employee, contractor or agent.

## 20. How do trustees make decisions?

Trustees make decisions by majority vote. Owners are entitled to attend trustee meetings and to speak, but not to vote.

become the owner of 'exclusive use rights' that allow you the sole rights to use and occupy that part of the common property, such as a parking bay, carport, yard or garden area.

## 11. Are sectional title schemes the same as share block schemes?

No, in a share block scheme you do not get registered ownership of property, you get unregistered rights to occupy a portion of the property. Only the whole property can be bonded and only the shareblock company can arrange this.

In a sectional title scheme you own one or more units and you can individually arrange to register a mortgage bond over your property. Your unit and any registered exclusive use rights are usually acceptable as security for mortgage bond finance.

## 12. Does a sectional title unit owner have the same rights as an ordinary house owner?

No. Sectional title ownership involves communal living. To regulate the shared living environment there are provisions in the Sectional Titles Act and the scheme's Management and Conduct rules that place restrictions on your behaviour. Some other differences are:

- Your bondholder will be entitled to exercise your vote at body corporate meetings if it considers this necessary.
- You are responsible for a share of all body corporate debts, whether or not you obtained any personal benefit and whether or not you were a member of the body corporate when the debt arose. If you own a unit in a scheme where the body corporate owes money, a share of that debt could be recovered from you.
- You are liable for a share of the costs of all repairs and maintenance to the common property and common facilities, even if you do not use them.

- If you do not pay your levies, the body corporate can take legal action against you at your expense.
- If you cause damage or fail to carry out necessary repairs in your section or exclusive use area, the body corporate can carry out these repairs and recover the costs from you.

### **13. What is the body corporate?**

Every scheme has a body corporate. This is an association – not a company or partnership – with the ability to contract, to sue and be sued and all the owners of units are members. It exists to administer the scheme and manage the common property

The body corporate takes decisions at two levels, at meetings of owners and at meetings of trustees.

### **14. Who controls the body corporate?**

All owners of units are members of the body corporate. They elect trustees to conduct the day-to-day business of running the scheme. Often the trustees employ a managing agent to assist them.

The Trustees are obliged to manage the scheme in accordance with the provisions of the Sectional Titles Act, the scheme's rules and in accordance with any restriction imposed or instruction given by the owners at any general meeting.

### **15. Will the managing agent or supervisor do repairs in my section?**

No, the managing agent and/or supervisor are employed to assist in the administration of the scheme generally and to care for the common property and not to deal with private maintenance, repairs or improvements inside a section.

### **16. What happens if the trustees do not look after the common property properly?**

The first step is to discuss the matter with the trustees and the managing agent. If this does not lead to a satisfactory result, you are entitled to get the support of other owners and call for a general meeting of owners at which the trustees can be given specific instructions by majority vote of the owners.

### **17. What are the managing agent's duties?**

Managing agents assist the trustees to administer the scheme. They perform the day-to-day management tasks, taking primary responsibility for administrative and record keeping requirements and assisting in the physical management of the scheme.

The managing agent provides the trustees with regular financial and other management information and assists them to make decisions. They usually provide a full accounting and levy collection service, deal with the payment of body corporate debts, assist in the appointment and supervision of any body corporate employees and in managing maintenance and repair projects.

A managing agent has a duty to individual owners, but usually takes direction only from the trustees.

### **18. How are trustees elected, and does each owner take a turn being a trustee?**

No, owners do not take turns being trustees. Trustees are elected at each annual general meeting of owners. As an owner you have a right to make yourself available to act as a trustee, but you do not have to do so.

The trustees do not all have to be owners and they are not normally paid for their services.