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*Sectional Title Owners also have duties*

*Municipal Rates crunch*

*Aspects of Neighbour Law*



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Rob McWilliams

**DTP Art and Graphics**  
Warren Hammond

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Rob McWilliams

**Subscriptions admin  
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Tony Milward

**Printing**  
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## Help line SUSPENDED

*Unfortunately the Help Line will be suspended from the 1st of March 2007. Bodies Corporate News will convert to a magazine format from May 2007 and, in the future, the editor will answer your questions in the pages of the new magazine.*

## ACKNOWLEDGMENT

THIS PUBLICATION ACKNOWLEDGES THE CONTRIBUTION MADE TO THE SECTIONAL TITLE INDUSTRY BY TERTIUS MAREE, GRAHAM PADDOCK, MARINA CONSTAS, KAREN BLEIJS, AND THE LATE BOB GOULD, WHO'S PUBLISHED WORK PROVIDES US WITH ADDITIONAL INSIGHT.

## INFORMATION INDEX

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*Bodies Corporate News is provided to empower chairpersons / trustees, by enabling them to maximise the property investment of owners in a complex. Our magazine needs to reach chairpersons or trustees as we offer them alternate copies free. If you received Bodies Corporate News by chance please pass it on to your Body Corporate.*

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# Sectional Title Owners also have duties and responsibilities

## Become involved and protect your investment

### Become involved by

Taking a little time to learn about sectional title matters. An empowered owner can participate, and support the trustees. After all it's your investment, don't simply become a non-participating critic. Be a positive force in your scheme, and remember that you and all the other owners (the body corporate) are all in the same boat together.

### Pay your levies timeously

There are costs associated with the running of a complex. Think of water, rates, common property electricity, insurance and maintenance. Some complexes also use a managing agent, gardeners, a caretaker, others have a pool, a laundry, tennis courts, perhaps even a golf course. If you fail to pay your levies the whole scheme could collapse, and a disaster of this nature will cost you far more than the original unpaid levies.

### Consider your fellow residents

Live in harmony with the community in your complex. Don't cause a noise nuisance, or any other nuisance to other residents. Use your section only for the purpose that was intended. If your scheme is residential then don't run a business from your section, or convert your

garage into a workshop.

### Maintain your own section

An owner is obliged to keep his section and exclusive use area clean, tidy and in a good state of repair. Neglect will in time affect other owners. Dirty sections are often breeding grounds for insects and pests that multiply and enter neighbouring sections. Trustees do have the powers to access your section and attend to matters that had surfaced due to your neglect, and also have the powers to pass on any costs incurred to your account: The maintenance of hot water geysers is your responsibility even if it is situated above the ceiling.

### Obtain written approval for any changes

You are not allowed to place any permanent object, or make any building improvement, or even make any structural alterations on your exclusive use area without written consent of the trustees.

### Obey the rules

Rules are necessary to regulate procedures and promote a safe and pleasant living environment. If you and all owners adhere to the rules, the value of your property will be

protected and elevated. Obtain a copy of the current rules from your trustees.

### Select your tenants carefully

If you are not going to live in your section, it is imperative that you apply your mind to the selection of a suitable tenant. Tenants of dubious character can do more damage to your investment than any bolt of lightning, earthquake or fire. Give your tenant a set of rules and pay due diligence to the compiling of an all-embracing lease agreement or your could find that your tenant has moved in with 16 relatives, and has chopped up your built-in cupboards as fuel for Saturday's braai.

### Maintain the harmonious appearance of your building

You should not do anything to your section that will compromise the harmonious appearance of the building. Buildings that look like Christmas trees will not provide owners with a great investment opportunity. Would you want to drive a car with one odd hubcap on a wheel.

For additional insight and reference see Sections 44 and 37 of the Act, plus Management Rules 68 - 70.

## Some **COMMON RULES** To keep in mind



In terms of the Standard Conduct Rules, which apply to most schemes, the following matters are strictly regulated:

### Pets

Do not assume that you are automatically entitled to keep a pet, and do not simply accept what may have been said to you by any person who is not a trustee or managing agent of the body corporate. To keep a pet you will need the written consent of the trustees and will have to comply with conditions set by them.

### Refuse disposal

Find out from your trustees what the arrangements are.

### Vehicles and parking

You cannot simply park wherever you want and must stick to the relevant parking arrangements.

► Repairs to vehicles, except for minor repairs, are not allowed anywhere within the boundaries of the scheme.

► You must ensure that your vehicle does not drip oil or other fluids on the common property.

### Alterations to common property

You have no right to make alterations to your section which affects common property, or alter the common property in any way. Although the conduct rules make provision for the installation of exterior burglar-proofing, security doors and similar items, you may not proceed without first obtaining the trustees' written consent.

### External appearance

You may not place or do anything on any part of

your unit or on the common property, including balconies, patios, verandas and gardens which, at the trustees' discretion, is unpleasant.

### Signs and notices

You may not place any sign, notice, billboard or advertisement of any kind on any part of the common property, or even in your unit, if it is visible from outside your section, without the prior written consent of the trustees. This includes a notice board on the common property.

### Littering

You may not deposit or throw any rubbish, including dirt, cigarette butts, food scraps or any other litter of any kind on the common property.

### Laundry

You may not, without the written consent of the trustees, erect your own washing line or hang any washing, laundry or other items on any part of the building or the common property so as to be visible from outside the buildings or from any other sections. This includes hanging washing on balconies!

### Flammable materials

You may not keep or store any flammable material or substance or do anything dangerous which may result in an increase of the insurance policy premium, payable by the body corporate.

*Remember - all tenants and visitors of your section are bound by the conduct rules and the Body Corporate may hold you responsible for their conduct!*



# Sectional Title rates crunch hits Cape Town first

Update of an article originally exposed on web sites by Sanchia Temkin, Professional Services Editor

OWNERS of sectional title units in the Western Cape may be forced to dig deeper into their pockets from July when they receive their first individual property rates bill from their municipalities.

A new rates policy is to be implemented across SA under the Local Government Municipal Property Rates Act 2004.

Under the new dispensation, property owners may in some areas be required to pay higher rates.

Western Cape will be the first to implement the process, which will take effect from July 1 this year.

The new policy is expected to be rolled out in Gauteng from July 1 next year, with other provinces following later.

The Cape Town city council is busy populating a database, said Nansindaba Accounting and Training SA member Ainsley Williams.

The act was intended to expand the revenue base of metropolitan councils. Its purpose was to help

in building a financially viable and sustainable local government, Williams said.

Property rates are set, collected and utilised locally. National and provincial governments do not have the power to levy rates, nor do they share in the revenue collected.

The cost of implementation of the policy and valuation roll in Johannesburg is expected to be in the region of R33,6m over three financial years.

There are about 40000 bodies corporate in SA, comprising 800000 unit owners of sectional titles with about three occupants per unit.

Of the estimated R5bn raised a year in levies in the industry, about R3bn is in arrears.

At the date of transition it is expected that only R2,5bn turnover will be raised a year.

"Rates could amount to about 50% of a levy bill, and from July the 1st owners of sectional title properties in the Cape can expect to receive their first rates bill.

"This could cause endless problems for owners," Williams said.

"Although levies raised from July 1 should decrease by the portion that was allocated to rates, bodies corporate could well experience serious financial problems due to the practice of rolling over current-month income and paying arrears to service providers," said business consultant, Joe Gatz.

For instance, bodies corporate will still need to pay the June rates account (perhaps for additional months if they are in arrears) during the month of July, but will not be generating any income to pay this amount.

The more affluent bodies corporate that have sufficient reserves and are not in arrears with their municipalities will be able to ride out the cash shortfall.

Editor

At the time of writing, the valuation role had already been developed to include sectional title owners and the

value of their properties based on land and improvements. The valuations had already been posted and individuals have until the 24th of March to object. The time period for objections could be extended, as in many cases the municipalities sent sectional title property valuations to the schemes' managing agents instead of to the individual owners. This hiccup caused a great deal of frustration, as managing agents try to "marry up" hundreds of unaddressed valuations, with individual owners and their various schemes and sections. Many larger managing agents have received over 1,000 valuations and simply cannot guarantee that they can redirect them to owners ahead of the deadline for objections. There is also a question of costs incurred which could be huge! None the less there is an onus on property owners to find out what the properties are valued at.

For useful info:

email [st@capetown.gov.za](mailto:st@capetown.gov.za)  
[www.capetown.gov.za/property\\_valuations](http://www.capetown.gov.za/property_valuations)

## Aspects of neighbour law

Trustees and owners should find this topic interesting. We are often asked questions relating to a Bodies Corporate responsibility in relation to walls and trees that are positioned on a neighbour's property, adjoining their scheme

It is the function of the law to regulate and harmonise conflicting ownership rights. One of the ways in which this is achieved is through restrictions to ownership in the interests of neighbours. Where properties border on one another, the manner in which one of the owners uses their property may considerably influence the other owners' enjoyment of their property. A conflict of ownership rights may develop and the principles of neighbour law regulate these possible conflicts. Instances of the application of neighbour law can be

distinguished, and amongst others include:

1. Encroachments
2. Party walls and fences
3. Elimination of danger
4. Nuisance

### 1. Encroachments

When owners encroach on their neighbour's land, the rules regarding encroachment come into operation. A distinction is drawn between buildings and trees (branches and roots).



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#### 1.1 Buildings

The owner of the land on which encroachment has taken place can use one of the following remedies:

I. The owner can claim removal of the structure. The owner cannot, however remove the encroachment because he / she cannot take the law into his / her own hands. Removal cannot be claimed if he / she stood by and, with full knowledge of the facts, did not insist on removal. The courts have a discretion in deciding whether to order removal or payment of compensation. The court can also transfer the piece of land encroached upon to the encroacher.

II. The owner can claim

ejection from his / her land against payment of compensation for the enhancement of his / her property. On the grounds of equity and convenience the courts can also order transfer of the land encroached upon against payment of compensation.

III. The owner can claim that the encroacher should take transfer of the land encroached upon and pay compensation. This compensation is determined with reference to:

- ▶ All the costs of the transfer (including the costs of a survey and diagrams)
- ▶ The value of the land
- ▶ A solatium (compensation for personality infringement) for the trespass and involuntary deprivation of land.

### 1.2 Trees

#### A) Branches

If trees are planted so close to the boundary that the branches overhang into the neighbour's land, the neighbour can request the owner of the trees to remove the branches. If the owner refuses, the neighbour can approach the court for an order compelling the owner to do so or the neighbour can do it himself. The neighbour may not keep the cut branches, unless the owner consents or fails to remove them within a reasonable time after demand.

#### B) Roots

In Principle the same principles expounded above should apply to roots. There is ample authority for the principle that the neighbour may remove the roots encroaching on his / her land, but little authority on the question whether he / she may compel the owner of the plant to do so. In one case, where the roots of trees destroyed the neighbour's flower garden, it was held that the owner of the trees had to remove the tree since it caused a nuisance. The owner had to remove the nuisance itself, not merely the encroachment. In another case, where roots and plants intruded five metres into the neighbour's land, the court held that the neighbour could remove the roots and plants. The court left the question open whether the neighbour could claim damages from the owner or could compel him to remove the encroachments.

### 2. Party walls and fences

A party wall is a wall built on the boundary between two pieces of land in such a manner that it stands partly on the land of one owner and partly on the neighbouring owner's land. Each owner is the owner of that part of the wall which is on his / her property with a servitude of lateral support over part of the wall which is on the other side. The fact that one of the owners erected and paid for the wall is irrelevant.

A party wall may not be demolished without the consent of the other owner. An exception is that a wooden fence may be demolished and replaced by brick wall. Both owners are liable for the maintenance of the wall, unless one of the owners has abandoned his part of the wall in favour of his / her neighbour. Both owners should refrain from doing anything which could affect the stability of the wall. Each owner is entitled to beautify his / her section of the wall or to extend his / her section of the wall.

### 3. Elimination of dangers

Liability for the creation of danger is dealt with extensively in the law of delict. However, it is important to note here that an owner has a duty to remove or eliminate dangerous situations on his property, for example, the storing of poisonous substances, keeping of vicious dogs, etc.

### 4. Nuisance

Neighbour law deals with limitations placed on owners in the exercise of their entitlements as owners, in the interests of neighbours. Interests must be balanced against one another and the criterion by which neighbourly relationships are judged is that of reasonableness. Neighbours are expected to behave reasonably towards one another. An owner must therefore exercise his / her entitlements as owner reasonably and the neighbour must endure such exercise in a reasonable way. A certain degree of tolerance is expected of neighbours in the exercise of their entitlements as owners.

The standard to be taken must not be that of the perverse, finicking, or overscrupulous person, but rather that of a normal man with sound and liberal tastes and habits.

A distinction is drawn between nuisance in a narrow and in a broad sense. In the narrow sense nuisance occurs where a neighbour's right of personality or entitlement of use is infringed by, for example, noise, smell, etc. This infringement does not necessarily result in damage, but rather in a personality infringement. The remedies are a prohibitory interdict and / or compensation. Nuisance in the broader sense results in damage to property and the remedies are a prohibitory interdict and / or a claim for damages. The remedies in neighbour law are both property-law remedies or delictual remedies.

#### WHAT IS AN INTERDICT?

An interdict is a remedy to protect the applicant's right to a thing or control over a thing from prejudice ensuing from the continual or imminent disturbances of his / her right. This is a summary court order ordering or prohibiting a specific act, in order to prevent the prejudice from continuing or occurring.

The following requirements must be met for a successful reliance on this remedy:

I. The applicant must have a clear right to the thing.

II. The respondent must continually and unlawfully have disturbed the applicant's exercise of his or her right, or there must be a real danger that the respondent will disturb this right in the near future, as a result of which the applicant will suffer prejudice.

III. There must be no other appropriate remedy by which the applicant can obtain effective protection of his or her right.

The interdict is a remedy used by a legal subject to protect his or her right to a thing from impending or continual disturbances. When someone infringes another person's right, or as soon as the holder of the right realizes that someone is about to do so, he or she can request the court to protect his or her right by issuing an interdict ordering the respondent not to infringe this right, or to cease from infringing it.

An interdict can therefore prevent infringements or limit the damage caused by such an infringement. If the damage has already been done, an interdict can only prevent further infringements; other remedies should then be sought for the damage. That is why the third requirement is that no other effective remedy should be available to protect the applicant's right. The interdict is therefore a last resort.



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# ASK THE EDITOR

Try to  
**Rob will answer your questions**

Many requests for information are received.. Regrettably, we are only able to answer several in this column.

Mr P. Coetzer of Tulip Park asks the following questions regarding vehicles parked illegally on common property and poor construction standards:

Why wait for 30 days before taking action against a culprit?

Who tows the vehicle away?

Where is the vehicle towed to?

What if the towed vehicle is damaged during towing or storage?

Does a body corporate have any claim against a construction company for poor workmanship?

The Sectional Titles Act prescribes that  
(1) No owner or occupier shall park or stand any vehicle upon the

common property, or permit or allow any vehicle to be parked or stood upon the common property, without the consent of the trustees in writing.

(2) The trustees may cause to be removed, or towed away, at the risk and expense of the owner of the vehicle, any vehicle parked, standing or abandoned on the common property without the trustees' consent.

(3) Owners and occupiers of sections shall ensure that their vehicles, and the vehicles of their visitors and guests, do not drip oil or brake fluid on the common property or in any other way deface the common property.

(4) No owner or occupier shall be permitted to dismantle or effect major repairs to any vehicle on any vehicle on any portion of the common property, an exclusive use, or in a section.

Standard Conduct Rule 3 authorises the trustees to have a vehicle towed away or removed at the expense and risk of the

owner if it is found parked or abandoned on common property without the trustees consent. The Act has empowered trustees to take this action. In other situations, such as when owners install or erect items on common property the Act does not empower trustees to remove an installed or erected article as they would need to approach the courts for a court order forcing the owner to remove the item. An exception is therefore made for vehicles!

The rule does not extend to vehicles parked in unreserved parking bays on common property. To control vehicles which stand for long periods of time in unreserved parking areas, Bodies Corporate must adapt their rules to combat this predicament and in some cases bodies corporate allow a 30 day grace period before taking action.

So much for theory, but in practice

having vehicles towed away does not work because towing contractors want money "up-front," and often don't have storage facilities. The best way to resolve this issue is again for the rules to be amended (you will need a special resolution to amend the rules) to make provisions for wheel clamping, and / or fines as an alternative. The rules do not bind visitors. Action against visitors can only be instituted when there are clear warning signs placed in strategic positions.

With regard to poor construction, there is no simple avenue for recourse if the builder is not a member of the NHBRC. Your ability to take legal action will depend on the contract you signed with the builder and the guarantees that were provided therein. If the builder claims bankruptcy then the costs of recourse through legal action could be huge.

## ADVERTISING BOARDS

### *Tertius Maree*

There are many mixed sectional title schemes consisting of a residential and commercial component. Problems often occur when the commercial sections want to advertise by erecting advertising boards on the common property.

Standard Conduct Rule 6 states:

No owner or occupier of a section used for residential purposes, shall place any sign, notice, billboard or advertisement of any kind whatsoever on any part of the common property or of a section, so as to be visible from outside the section, without the written consent of the trustees first having been obtained. (My emphasis)

It is clear that the rule does not provide for the erection of advertising boards by the owners or occupiers of commercial sections. It would therefore seem as if the trustees have no authority to either grant or refuse a request for placing an advertisement on common property.

The above view is not necessarily correct. Section 44(1)(f) of the Act states that it is the duty of an owner to use and enjoy the common property in such a manner as not unreasonably to interfere with the use and enjoyment thereof by other owners or other persons lawfully on the premises.

The provisions of the Act and Rules must be interpreted keeping the nature of the scheme in mind as well as the permitted usage of the sections. It would be reasonable to assume that the owner of a commercial section may place advertising boards on walls or windows subject to the following:

(1) It should not interfere with the use and enjoyment by other owners Section 44(1)(f).

(2) It must not be injurious to the reputation of the building Management Rule 68(1)(i).

(3) It must not prejudice the harmonious appearance of the building (keeping the commercial nature of the section in mind) Management Rule 68(1)(iv).

(4) It must not, in the discretion of the trustees be aesthetically displeasing when viewed from the outside (again keeping the commercial nature of the section in mind Conduct Rule 5.

Trustees have to accept that in principle commercial sections have a right to place advertising boards on common property subject to the provisions of the Act and Rules. In order to avoid disputes it is recommended that special rules be adopted for mixed schemes.



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fax: 086 694 8320

**Sectional Title Information Storage Centre**

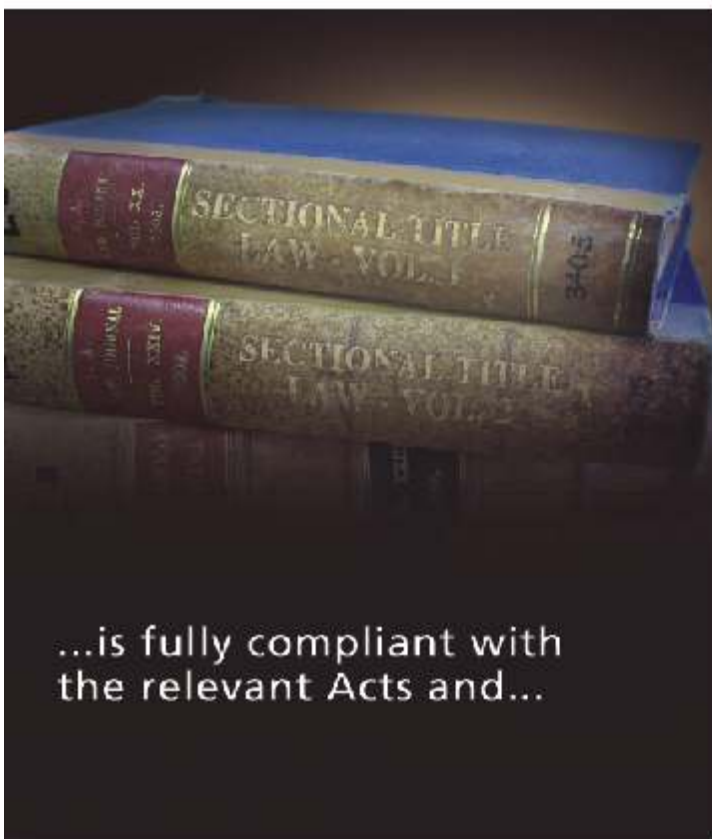
We will load and securely store your body corporate information for only **R5.00** per unit per month



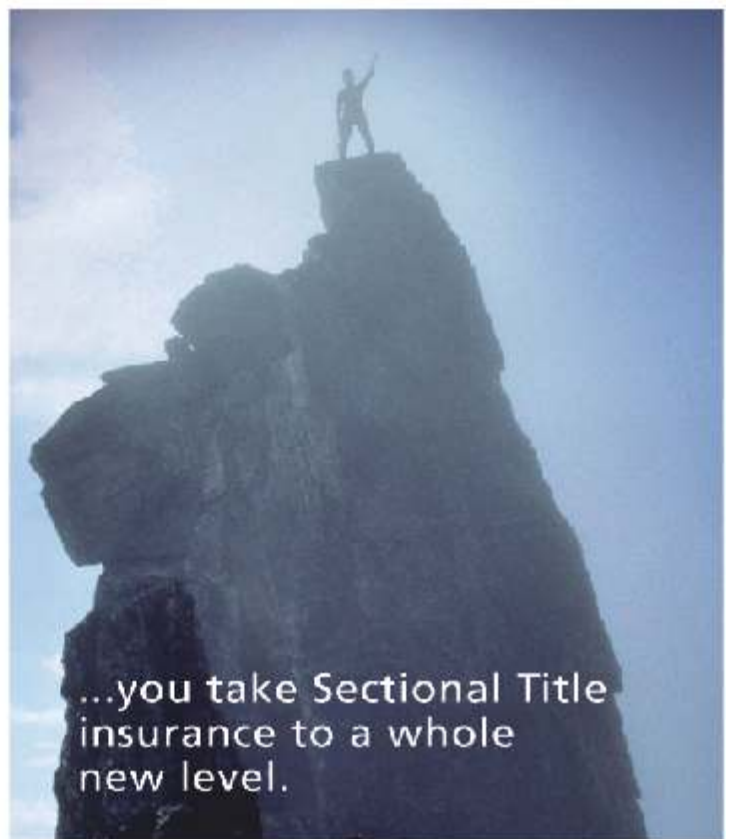
Create an original idea  
that will endure...



...make sure it leaves nothing  
to chance...



...is fully compliant with  
the relevant Acts and...



...you take Sectional Title  
insurance to a whole  
new level.

## We've put a little more imagination into our product than most

There's a logical reason why Corporate Sure is South Africa's number one Sectional Title insurance policy- innovation.

Created by C-Sure Underwriting Managers, underwritten by Santam Limited and compliant with the Sectional Titles Act, Corporate Sure was created through a deep understanding of marketplace needs

and developed with an imagination that has innovated every aspect of Sectional Title insurance.



For the most comprehensive residential and office block insurance available, the logical choice is Corporate Sure.

**C-Sure Underwriting Managers**  
(Tel) 031 571 2500. (Fax) 031 571 2527/562 8971.  
email [c-sure@corporate-sure.co.za](mailto:c-sure@corporate-sure.co.za) or call your insurance broker.