



# BODIES CORPORATE NEWS

Keeping Trustees and Owners Informed

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## Good Management **“Improves Property Values”**

Many trustees need to refocus, and manage their complexes in a **proactive**, rather than a **reactive** manner.

Traditionally many urban sectional title schemes provide property ownership to first time buyers, or retired couples. Trustees are often drawn from the elderly component of a complexes community as the first time buyers are

often pre-occupied with survival and social activities.

The pace of change in recent decades has been phenomenal and many trustees resist these changing circumstances, and remain in an **ideological time warp**.

The high cost of property ownership in freestanding homes is forcing many young professionals to consider the sectional title option, and

many of these young professionals are demanding good management and are prepared to become involved.

Rapidly rising **utility costs** and irresponsible tenants are indeed one of the new dynamics that trustees have faced in recent years, and many have opted for a preoccupation that directs their energy's into **cost saving** measures, and the enforcing of rules.

*Continued on Page 2*

## If trustees are elected to **serve** the interests of owners surely they need **to communicate** with them?

The Sectional Title Act is a comprehensive piece of law and trustees often tend to discard the

legislation as they don't want or even try to understand it.

In other instances trustees try to conform rigidly, yet exercise no communicational discretion, as they operate as if the Act is a functional blue-print or straight jacket.

Obviously the Act does not provide basic management and communicational skills, and many trustees do not possess the skills to communicate effectively.

Communicating with owners is an obvious management skill, yet is seldom professionally applied. The Act only specifies certain occasions, or events, wherein trustees are obliged to notify or inform owners.

We strongly believe that communication is a key element in a well run Sectional Title scheme. Acts of law are geared to provide operational parameters and rules, and do not prescribe details of the communication skills required or how to implement such skills.

*Continued on page 3*

**!**  
If you are a chair / trustee and have not confirmed your contact details, please do so to remain on our mailing-list.

### IN THIS EDITION

THE FORMATION OF A BODY CORPORATE  
PG 6.

QUESTIONS ANSWERED BY EXPERTS  
PG 4, 5, 7 & 8.

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



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Continued from page 1

The new era trustees on the other hand tend to focus on **maximizing** the property **values** of units and complexes, by considering improvements, and in addition, put into place structures that distract delinquent behaviour. The younger professional tends to look towards the day when he sells, and considers his return on investment. They are less concerned about whether the levy is R600 per month or R675, as a saving of R75 per month only translates into R2,700 over three years. Over such a period the professional would expect to gain several hundred thousand if he

sells. In fact he wants his investment to double in value every four years. In a sense his focus is on **asset management**, and he is not overly concerned about savings of R75 per month which could compromise maintenance activities. The young professional regards such measures as false economy.

Trustees and managing agents need to respond to modern demands and try to move beyond the hand to mouth modus operandi and see the bigger picture.

Keeping levies as low as possible

is always a priority, but the end result should arise from efficiency rather than from eliminating category's of expenditure which could be detrimental to the longer term value of the property.

Let's look at practical implications. Imagine two identical 100 unit complexes, built at the same time. Complex A is run by a group of younger, forward thinking professionals, while the other complex, B has a traditional, conservative, and authoritarian cluster of trustees, who prefer to be known as "The Board of Trustees".

### COMPLEX A\_YUPPIES

#### KEY MOTIVATIONAL WORDS AND PRIORITIES

- ▶ Spend money to increase the value of our property
- ▶ Better service / Good management
- ▶ Amend conduct rules to suit our complex
- ▶ Assertive / Analytical
- ▶ Motivational communication with owners
- ▶ Download the Act and Sectional Plans to P.C.
- ▶ Keep maintaining and improving the property
- ▶ If some can't afford to live here, don't restrict the rest of us

### WHAT THEN IS THE POSSIBLE OUTCOME?

#### YUPPIES\_3 YEARS LATER

*"Our professional presentations, in combination with analytical and motivational communications resulted in resolutions, rule amendments, and improvements to common property to the extent that value was added to the scheme - added value resulted in increased rentals which distracted delinquent tenants. In fact our new pool, pool side restaurant, and tuck shop add quality to our lifestyle and our levies are complimented by R36 per month from rentals paid by the restaurant and tuck shop owners. Our levies are only R710 per month, we paid R400,000 for our units and they are now worth R780,000. Sadly three owners left as they could not afford the increased levies."*

### COMPLEX B\_OLD GUARD

#### KEY MOTIVATIONAL WORDS AND PRIORITIES

- ▶ Save money, keep levies low
- ▶ Obtain services at the lowest possible cost
- ▶ Enforce house rules
- ▶ Dogmatic, but with social inclinations
- ▶ Obey the rules or face the consequences
- ▶ I have eight years experience, don't need the Act or a P.C
- ▶ I know of a painter who will only charge R100 a day.
- ▶ Soon owners will be unable to keep pace with rising costs.

#### OLD GUARD\_3 YEARS LATER

*"We kept levies low, and enforced the house rules. Owners must understand that rules are rules and should not be disobeyed. We wanted to increase levies to fix the gutters and facia boards, but the fixed income residents could not afford to pay more so we could not raise levies, in any case one of the owners did promise to fix the gutters. We were forced to comply to avoid losing our status as "a member of the board". We try our best, we are not even paid, but by enforcing laws and keeping levies low we have benefitted owners. Our owners only paid R400,000 for their units. They are now worth R600,000, and it's only three years since they bought. Our levies are only R474 per month. I think that we performed well, for goodness sake, what do people expect. Do you know that only one owner had to sell as our levies only increased by 5% per year yet costs increased by 7%."*

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Bodies Corporate can now attend to pressing repairs to outside areas (such as a leaking window on the fourth floor) without having to wait and combine that urgent task with the main maintenance program, scheduled for some time in the future.



Continued from Page 1

BCN now provides templates of what we consider relevant communicational literature that allows trustees to communicate meaningfully with owners. The Act prescribes communication by way of documents such as A.G.M notices, notices of general meetings, the distribution of statements, minutes, and financials, to name but a few, but these are only some of the mandatory forms or documents that are required according to the Act.

1. NEWSLETTERS:

Trustees who keep their owners well informed are indeed respected, and are seen as professional administrators. Newsletters promote a communal culture, encourage intercommunication, relieve stress, dissolve potential conflicts, dispel rumours, encourage transparency, and can be used as an educational tool, keeping owners informed of their commitments and responsibilities in terms of the Act. A typical newsletter could be formatted as per the following example.

NEWSLETTER NO. 13 July 2005  
MONTHLY NEWSLETTER  
VILLA VISTA BODY CORPORATE

Trustees, keeping owners and residents informed

Maintenance Update - progress report

Steven continues with the task of sealing / waterproofing our various residential blocks. Three out of the 12 blocks have been completed, and four others are in various stages of completion. We estimate that 40.83% of the renovation project is now complete. Our aim is to complete all residential sections by February 2006. Obviously winter's weather conditions will hamper progress for several months.

Help us catch the thief

Plumbing fixtures and fitting continue to be stripped from our public areas. As you know, the toilets in our pool changing rooms are consistently non-functional as the thief strips parts as fast as we replace them. Other incidents occur in the laundry. The criminal is obviously interconnected with plumbing activity and knows precisely what items to select. Owners in Villa Vista cannot be expected to support this individuals business, and provide him with stock. A docket has been opened at the local police station, but evidence is required. In fact the trustees are reasonably confident that they know who the culprit is. If you have any knowledge, or evidence, please phone the confidential help line 0860 443 667.

Oil leakage - damage to common property

Conduct rule3 (appendix 9) item (3) legislates that an owner or occupier of a section shall ensure that their vehicles, and the vehicles of guests do not drip oil or brake fluid onto common property. In terms of our duly constituted and amended conduct rules, fines will be imposed. Inspections will occur in the coming weeks and actions will be taken. If you have a problem in this regard please purchase power lift or a similar product and clean from a local hardware store, and clean the affected area. Also please attend to your cars oil leak, or alternatively park outside of the premises.

General

Our financial year has ended and our AGM is planned for September / October. Notices will be posted soon.

VILLA VISTA, THE COMPLEX THAT OFFERS MORE

The Trustees - Villa Vista

The Trustees - Villa Vista

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2. WELCOME NEW OWNERS AND TENANTS

It is so important that new residents receive a welcome note and feel part of the close knit community. Their initial encounter with the community often determines their attitude towards other members, and provides an ideal vehicle for trustees to subtly introduce the conduct rules. Here is an example:

3. CITATION FORMS

From time to time owners and residents need to be singled out or cited or be acknowledged for incidents that are regarded as being "worthy of note" within the community. The incidents can be anti-social and in conflict with the rules, or they can be incidents that deserve the praise of the community. We as mere humans tend to focus on the negative, but a well run scheme could find benefit in issuing as many positive citations as negative ones. Here is an example:

GREETINGS FROM THE VILLA VISTA RESIDENTS

The owners and trustees welcome you and your family to our complex. We hope that you will enjoy living here, and will even participate in the upliftment of our community.

Close proximity living has its restrictions, though there are many rewards and benefits. The owners have, over the years, met, compiled and registered a few logical rules which accommodate the needs and well being of most residents. We provide you with a copy of these rules for your perusal.

We trust that you and your family will enjoy living amongst us, and look forward to your positive contribution to the well being of our community.

A CITATION FROM THE VILLA VISTA TRUSTEES

Date issued: 17-05-2004 Citation No. A3 (1st) Flat No: 26  
Issued to: Mr. Robert McWilliams

Dear Sir / Madam

The trustees wish to communicate with you.

We are proud of our complex and want to ensure that all residents enjoy living here. Our interests, lifestyles, habits and hobbies sometimes affect other residents in a communal environment. We need to give and take, yet be mindful of the needs of others.

It has come to the attention of the trustees that:  
You have 2 dogs in your flat and the registered rules only allow for one pet per section. The trustees ask that you find alternative accommodation for one of your dogs by the end of the month. Thank You.

Chairman

Trustee

If you wish to reply, please do so below and return this form to any trustee i.e. in flat no's 3, 22, or 36, or to the supervisor in flat no 7.

Residents Reply

We were only taking care of one of the dogs while her owner was away on business. She has been returned to her owner.

\*Note. Citations issued to residents are recorded. If a citation is issued twice for the same complaint, the managing agent will receive a copy which is placed on file for future reference. When a tenant occupies a section, and a second citation is issued the property owner as well as the managing agent will receive a copy. Citations may be used if legal action is necessary.

When neighbours do not get along...



Many thanks to Mimi Dempers from Pietermaritzburg for sending us this picture.

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# BCN pays tribute to Bob Gould by publishing a series of his articles

Bob Gould was widely acknowledged as the doyen of Sectional Title in South Africa. He unselfishly dedicated his life to the upliftment of the Sectional Title Industry.

## AN OMINOUS RUMBLING

A copy of a letter received by the Helpline has the potential to change a status that was fairly quo into a potentially very serious situation.

In terms of section 24 of the Sectional Titles Act, an owner wanting to extend his or her section needs the consent of the body corporate, authorised by a special resolution of its members. With the assistance of a land surveyor and an attorney, the owner will have to have the Sectional Title plan amended, approved and registered. In addition, if the extension is more than 10% of the existing area of the

section, the owner will need consent from all the bondholders within the scheme. In schemes comprising many units, the latter requirement makes it very expensive to get the extension approved.

Thousands of bodies corporate throughout South Africa have tolerated owners who extended their sections while totally ignoring the requirements of section 24 of the Act. These range from conversions of courtyards into kitchen extensions, to sections that have been more than doubled in size. Through ignorance, trustees, often with the tacit approval of

managing agents, have approved many of these extensions. Added to the determination of owners to carry out extensions without observing formalities, in some schemes, the situation is chaotic.

There are signs that this could change. The letter to which I referred was from the office of one of the Surveyors General (SG) to an owner of a sectional unit who had extended a section without having the sectional plan amended. The letter stated that if the owner did not apply for permission under section 24, the SG would request the Registrar of Deeds for the area to suspend all transfers of units within the scheme. I am not naming the area in which this has happened, as it is not relevant at this stage and I don't want to prejudice the scheme concerned.

What is relevant is that if transfers are stopped, sales of units within the scheme will cease. Equally



relevant is that if the bond granters decide to withhold bonds in schemes at which unauthorised extensions have been condoned, sales in hundreds of schemes throughout South Africa will cease.

In common with many property professionals, I view this situation with a degree of ambivalence. I support all efforts to bring sectional schemes into a state of compliance, but cessation of sales in affected schemes fills me with horror.

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The editor of Bodies Corporate News is unfortunately forced to limit the amount of time spent on the Help line as it has reached the point where it seriously distracts from his prime function, i.e. the production of Bodies Corporate News. In future the Help Line will only be available to subscribers and trustees.

**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.

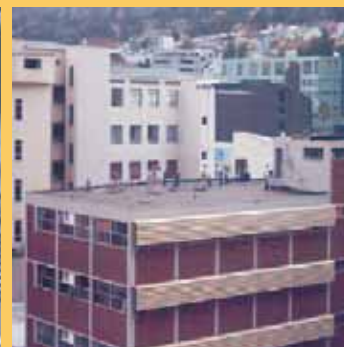


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# BCN pays tribute to Bob Gauld by publishing a series of his articles

Ignorance should not be penalised but deliberate disregard of the Act and regulations should not be tolerated. If registration authorities throughout South Africa decide on similar bans, a solution will have to be found.

The sectional title community, along with bond granters, must decide on a plan of action to bring offending schemes into line. Bondholders should agree to streamline the process and costs of obtaining their consents, and the registration authorities should be asked for a delay of at least a year before preventing transfers.

Bodies corporate and their trustees should immediately obtain a copy of the approved sectional plan

for their scheme, from which they can prepare a schedule of deviations. Having got the information, bodies corporate, with some not so gentle prodding by the bond granters must then act against all offenders. There are two choices. Either have the extension approved, or remove it.

If the extension is more than 10% and the scheme is a large one, the bondholders will have to assist with the costs of consents. Bondholders have registered hundreds of bonds over sections that are smaller than they think, and the owners of which are facing substantial costs of rectification. Hardly good security!

In discussions with some senior property

practitioners, it is clear that bond granters have become far more cautious than they used to be. Sectional plans are being scrutinised, rules checked, and finances investigated.

Developers of sectional schemes who have added to the size of sections or deviated from the sectional plan to appease buyers have compounded the problems. From the date of establishment, these schemes are in trouble. This problem would be reduced if the providers of development finance paid

more attention to what the developer is developing.

I am not being alarmist so please don't shoot the messenger! What I have related has happened. I don't know if the Registrar concerned intends to act on the Surveyor General's request, but a specialist attorney in the area is investigating. In the meantime, trustees and their managing agents should be assessing the deviations and extensions in their schemes. Please don't wait until it is too late.

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# The formation of a Body Corporate

## The First Special General Meeting

We start at the inception of a Sectional Title scheme. When a new complex is built or initiated, the developer of the complex will start to sell off units to individual buyers. Once the first sale to a new owner is registered, a Body Corporate is officially formed. The developer must then convene the first special general meeting of the new body corporate within 60 days of the registration of the first sale to a new owner (this could be four months after the first sale commences). Every owner is a trustee until that first meeting is held (the inaugural meeting) and if the developer does not call the first meeting within 60 days of transferring his first unit, he could face imprisonment for a period of two years. Prior to this first

special general meeting, the developer is the chairman and the first new owners are the trustees. Seven days written notice of the first meeting must be given by the developer to all owners. The agenda of the meeting must accompany the notice, and the developer has to furnish owners with certain documents and proof at the meeting. The Act informs us as follows:

## Management Rule 50 - Meetings of Owners

50(1) *The first meeting of owners shall be held within sixty days of the establishment of the body corporate, at least seven days' notice of which shall be given in writing, and which notice shall be accompanied by a copy of the agenda of*

*such meeting and details of the items referred to in sub-rule 2.*

(2) *The agenda for the meeting convened under sub rule (1), shall comprise at least the following:*

(i) *The consideration, confirmation or variation of the insurances affected by the developer or the body corporate;*  
(ii) *The consideration, confirmation or variation of an itemized estimate of the anticipated income and expenses of the body corporate for the ensuing financial year;*

(iii) *the consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the building from the date of establishment of the body corporate to the date of notice of the meeting referred to in sub rule (1);*

(iv) *subject to section 47(2) of the Act, the taking of cession of such contracts relating to the management, control and administration of the building as may have been entered into by the developer for the continual management, control and administration of the building and the common property and in respect of which the developer shall be obliged to submit such contracts to the meeting;*

(v) *the appointment of an auditor, or where applicable, an accounting officer;*

(vi) *the election of trustees;*

(vii) *any restrictions or directions to be given in terms of section 39(1) of the Act; and determination of the domicilium citandi et executandi of the body corporate.*

## Section 36(7) (a)

A developer shall convene a meeting of the members of the body corporate not later than 60 days after the establishment of the body corporate, the agenda of the meeting to be as prescribed in the management rules, at which meeting he shall furnish the members with-

(i) a copy of the sectional plan;  
(ii) a certificate from the local authority to the effect that all rates due by the developer up to the date of the establishment of the body corporate have been paid; and  
(iii) proof of revenue and expenditure concerning the management of the scheme from the date of the first occupation of any unit until the date of the establishment of the body corporate.

The developer shall pay over to the body corporate any residue, as revealed by the proof referred to in paragraph (a) (iii).

## Management Rule 4(3)

The chairman of the trustees referred to in rule 4(2) shall be the developer concerned or his nominee, who shall hold office until the general meeting referred to in the said rule, when he shall retire as a trustee and as chairman, but shall be eligible for re-election in terms of rule 18.

The developers interests in the Body Corporate diminish as he sells off his units, and when the last unit is sold, the developer ceases to be a member of the Body Corporate.



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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 regular column.

**Q** Thieves broke into our complex last weekend and broke into 2 cars. The security lighting globes above our back door have not been replaced in 2 months & we stay in the corner unit where the store room is. The thieves then used the darkest corner at the store room (2 meters from our back door) as a toilet, human faeces now stinks the whole place out & despite speaking to the chairperson of the governing body and asking her in writing to sort out the problem, she simply ignores me .... what do I do? We have also not had a cleaner in the complex for the past 2

months. Please, who can I contact in Port Elizabeth? Is there a higher authority over all the governing bodies that I can contact?

Developer paying towards the Managing Fees?

**A** It is not uncommon for developers to appoint a managing agent prior to the inaugural meeting. In my opinion this appointment should be made prior to the formation of the body corporate, though often the appointment is made prior to the first meeting. Nonetheless the first meeting must be held **within 60 days** of transferring the first unit, which in your case was 04/02/2006. Your first meeting was only held on 10/04/2006 which is 64 days after due date.

I suggest that you discuss your predicament with a sectional title attorney as the managing agent was appointed **after** your first meeting should have been convened.

**Q** I subscribe to BCN. I am a resident owner in a complex of 22 units. For years the administration has been managed by an owner within the complex appointed yearly at the AGM. The person appointed is paid R700 p/m, this arrangement works well.

Our trustees work during the day and we encounter problems when repair work is to be undertaken and no trustee is present.

As we have a few pensioners in our complex. We believe that the Body Corporate should appoint a person, that is willing to act as caretaker, and pay them R25 per unit p/m, which should be included, in the levy.

Are we within the law of the Sectional Title Act in paying such remuneration? As some owners believe that persons may not receive any remuneration. I would appreciate your advice, as this would solve a lot of problems and confusion, within our otherwise well run complex.

**A** There is no reason as to why an owner or tenant cannot be appointed as caretaker and earn a small income. The restrictions on earning a salary only affect **trustees**. We believe in transparency and would suggest that trustees call a meeting to discuss the matter with owners as levies will be affected. If the majority of owners agree, then go for it. If the individual that is to act as caretaker is **already a trustee**, then a special resolution of owners is required, before the trustee can be paid.

**A** I'll answer your last question first: At the present time, there is no umbrella body that controls bodies corporate.

Owners collectively govern themselves through elected trustees who use the Sectional Title Act as their point of reference. The Act requires trustees to ensure that their schemes are adequately maintained, so light bulbs situated on common property should be replaced when necessary. The Act does not stipulate that a complex should deploy a cleaner. Most smaller complexes do not have cleaners. Staff are usually engaged when owners agree, collectively, to share the cost burden.

On the surface it seems as if your complex is experiencing financial difficulty, or the trustees are simply disengaged. It is up to the owners to hold the trustees "to book" by either electing new trustees at the next A.G.M or by calling a special general meeting wherein the majority of owners agree to remove the trustees or request that they perform.

**Q** I recently purchased a unit in a new sectional title development, which was registered in the Deeds Office on the 6th December 2006.

On the 1st March 2006, the Developer signed a one year contract appointing Managing Agents.

At the First Meeting of the Body Corporate which was held on the 10th April 2006, the Developer said that it was his prerogative to appoint Managing Agents.

My understanding of the Sectional Titles Act is that once the first transfer has been registered a Body Corporate is deemed to be established and therefore the Developer has no authority to sign an Agreement appointing Managing Agents without the consent of all the Trustees.

At present there are four Units and the developer has a right to extend a further 7 Units, which will only be completed in approximately 2 years time. The Trustees object to the Developer appointing Managing agents as they are quite capable of running the complex - one of the Trustees is a Bookkeeper and has had previous experience in managing a complex.

My question is, could we insist on the

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### Extended Geyser Cover

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# Issues regarding Exclusive Use Areas Tertius Maree

An owner writes:

*'I want to replace my carport with a garage, but my carport is situated on common property. The trustees inform me that I cannot do so unless I purchase the land (20 square meters) first at a price of R 5 000,00. Why must I purchase the land? The trustees also say that all owners must agree to my buying the land. They also inform me that a second meeting of owners must take place to create a new rule which gives me exclusive use over the land which I will have purchased. Surely if I pay R 5 000,00 I own the land? They also told me that they (the trustees) must approve the garage design as it must blend with the surrounding buildings and that council must also approve my plans. I agree with these suggestions but I don't agree with the fact that they want to increase my*

*levy as the trustees say that they must maintain the outside of my proposed garage.'*

It is important to ascertain whether the carport is not already an exclusive use area created in terms of the Sectional Titles Act. If the answer is yes, then in terms of management rule 68(1)(vi) the owner would only have to obtain the trustees' permission to place structures or building improvements on the area. If the answer is no, the right of exclusive use of an area can be created in terms of the conduct rules. To amend the conduct rules entails a special resolution of owners (75%). All the owners' consent is therefore not necessary.



Additional levies are charged on exclusive use areas in terms of section 37(1)(b) of the Act. The trustees cannot charge this additional levy. The owners have to approve it, preferably every year at the Annual General Meeting as part of the budget approval. The trustees are correct that this additional levy would include provision for maintenance of the garage but they are wrong if they think it would only be for the outer shell. The body corporate will be responsible for repairs and maintenance of the entire garage, outside and inside, and the levy determined for the garage must be based upon an estimate for such expenses.

Many bodies corporate do sell rights of exclusive use to owners. The fact that the trustees refer to the purchase of land is wrong. The land will remain common property and so will the entire garage. What the owner will be purchasing is the right of exclusive use of a part of the common property.



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