



# BODIES CORPORATE NEWS

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## Insurance Focus **GEYSERS**

A great deal of confusion surrounds our most under-rated electrical appliance - THE GEYSER. They usually function well for ten years - then suddenly they die a natural death, and all hell breaks loose! Who is going to pay for the repairs, or replacement? Does the Body Corporate's insurance cover the replacement of geysers?

Section 37 of the Act compels trustees to insure all the buildings in their scheme, and keep them insured to their full replacement value. Management Rule 29(1)A is more specific, as it stipulates what buildings **must be insured** against. And we list the events that could affect a geyser, because the geyser **is part of the**

**building:**

- (i) Fire, lightning and explosion;
  - (ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
  - (iii) storm, tempest and flood;
  - (iv) earthquake;
  - (v) aircraft and other aerial devices or articles dropped there from;
  - (vi) **bursting** or overflowing of water tanks, apparatus or pipes;
  - (vii) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;
- So if NYASA Airways loses an engine while flying over the Villa Vista complex and it falls into Mr Nels' bedroom, totally destroying his bed including the geyser positioned in his ceiling, the geyser will be replaced under the body corporate's insurance policy. If Mr Nels' geyser were to **burst**, the schemes insurance cover would need to meet the claim. It's rather like a new motor vehicle: the insurance will



replace your vehicle if an asteroid falls on it, or if it is hit by lightning. The guarantee will even cover a ceased engine **provided the vehicle had been serviced regularly**. So if the owner has never maintained his car, or checked the oil, and the vehicle ceases due to a lack of oil, then no insurer or **guarantor** will entertain the claim.

In other words, insurance covers a geyser in the event of an unexpected or unforeseen accident, or when an event occurs in circumstances over which the owner had no control, e.g. Fire, earthquake, storm, riot, lightning, explosion.

*Continued on Page 2*

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

**IN THIS EDITION**  
YOUR QUESTIONS ANSWERED BY RENOWNED EXPERTS BOTH PAST AND PRESENT  
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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 newsletter 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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- M4** Common property and exclusive use areas
- M5** Trustees - Duties and responsibilities
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- P2** Management and Conduct rules with latest amendments
- P3** Complete Sectional Title Act - amended with Rules
- P4** All articles that appearing in BCN - Aug 04 -Aug 05
- P5** The AGM and 15 examples of documents used in Sectional Title
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*Continued from Page 1...*

Management Rule 68 informs us that the owner of a section is responsible for **maintaining** his own hot water installation. We all know that geysers **rarely**, if ever **burst**, we also know that they are seldom struck by lightning, or other natural causes.

So until more recently one could say that technically 99% of all geyser related problems were not covered by the **compulsory insurance that the body corporate must take out in respect of the building**. Geysers generally "pack up" because they were incorrectly installed, or because they become old, and it is up to the owner to **replace** the geyser at his **own cost**.

Let's fast forward to 2006 and consider current circumstances, and let's be

honest, humans are mere mortals, and most of us take advantage of any situation that presents itself, especially if finance is involved. Perhaps it's a play on words - burst / ruptured? Plumbers tend to report "**burst geysers**" to insurers when in reality one could argue that the problem is simply a leaking geyser. Insurers don't generally send out an inspector to check the geyser problem, as a result insurers were **paying out** claims in ever increasing numbers, and before long the insurance industry began to accept the false reality of the situation. The way around this was for insurance companies to **develop policy's** which apply a **compulsory excess** that works on a sliding scale. Under this scenario geyser excesses are structured

insured on the sliding scale structure and is five years old, the insurance may only provide say R1,600.00 cover, yet the cost of replacement is R3,200.00. The question of who pays the excess is a separate issue:

Because the Body Corporate is the insured party it is correct to assume that the body corporate is liable to pay the excess. However, bodies corporate usually **adopt a resolution** which places the responsibility on to individual owners, in which case they will have amended their conduct rules and re-lodge them in the deeds office.

Another option is to insure geysers on **an all risk basis** which will add approx. R25.00 per month to ones levy. This seems to be a good option especially if the trustees opt for this type of cover when the majority of geysers in a complex are seven years old, or older.

Please remember that the body corporates' insurance does not cover maintenance related geyser problems, and even if a Body Corporate has opted for an all risk geyser policy, the geyser will only be replaced if it is **irreparable**. The subject of insurance is on the agenda at every A.G.M. and a window of opportunity exists for the body corporate to consider their insurance needs. Unfortunately the subject is usually "brushed over" once a schedule of building replacement costs is proposed and seconded.

Regarding insurance claims, the answer lies in the content of the Insurance Policy.

*Thanks to Mike Addison of Addsure 021 551 5069 for his contribution to this article.*

according to the age of the geyser. A new geyser would carry an excess of say R500.00, whilst a nine year old geyser would carry an excess of say 75% of its cost which is around R3000.00. Many sectional title schemes opt for this type of cover today and most insurance companies that specialise in Sectional Title will include the sliding scale cover in their policies. At this point a question arises - who pays for the excess? If a geyser is

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# ASK THE EDITOR

Try to  
**Rob will answer your questions**

**Numerous requests for information are received. Unfortunately, we are only able to answer several in this regular column.**

**Q** We have four units in our complex. Do we have to get permission from everyone to change the insurance policy. We have a couple who don't want to change because they want to stay with ABSA. The rest want to go to AIG. They walked out of the meeting and said that we will not change. - Lynne van Wyk.

**A** Insurance is a mandatory item on an A.G.M agenda and is discussed at every A.G.M. Owners decide by majority vote on the insurance company and policy of choice. A two vs. two vote does not constitute a majority vote, and the status-quo would remain. However, any owner entitled to vote can demand that voting is concluded by poll, which means that voting is carried out on the basis of each owners participation quota, i.e. two votes by owners of larger sections overrules two votes by owners of smaller sections.

**Q** I am the Chairperson of Albion Body Corp and receive your newsletter with great interest. Please put me out of my misery!!!

I own a flat in a small complex in Plumstead. There are only 2 garages, one of which is mine. An owner in our block wants to enlarge his garden area which will encroach on my access to the garages. If he goes ahead with his plan, I could not leave my car parked in front of my garage because the person who owns the other garage will not be able to get his car out of the driveway. When I pointed this out to the owner, he said that I was not allowed to leave my car parked in front of my garage for any length of time. Is this so? I am so unhappy about this on-going saga that I just want to sell my flat!!!

**A** An owner cannot simply enlarge his garden. Land is either an exclusive use area or is common property and cannot be compromised without a resolution from owners. Regarding parking outside your garage, you will need to examine the registered conduct rules and sectional plan. Is the land outside your garage for your exclusive use or is it common property? Normally the area outside a garage is common property. Common property belongs to all owners in undivided shares, however it is common for the Body Corporate to restrict the positioning of vehicles if it inhibits the flow of traffic within the complex. If it is your

exclusive use area, then you may park there.

**Q** I am chair of a block of flats with 31 units. We have two security guards and a cleaner. The cleaner has been employed by us for 17 yrs. I assumed my duty as chair in August 2005. One of my strategies was to look at all contracts (for service providers and employees). I wanted to familiarize myself with employment circumstances and found that the cleaner does not have a contract. I got a copy from the Department of Labours website and asked her to sign a contract, she then asked about her benefits. We contacted our managing agent to find out about her provident fund and were told that the balance on the fund is R4000. Our managing agent informed us that the body corporate would have to pay her one week's salary for every year of completed service, when she goes on pension. It is my understanding that should any person resign from his/her job, the employer is not obliged to pay a severance pay as stated above. If she goes on pension, she is also entitled to collect UIF. Our concern is we don't have enough funds in the bank, if we have to pay her all her dues we won't be able to afford to pay all the service providers. We feel that the managing agent could have saved some money for this employee. How can we resolve this?

**A** Bodies Corporate who employ labour must understand the countries labour laws. Trustees are responsible for the finances of their schemes. Trustees must also ensure that their members provide for their employees "in terms of the law" by building all labour auxiliary costs into levy payments. The managing agent can, if instructed, monitor these funds and keep them in a separate savings account. If you don't have the funds you will need to raise them via a special levy which all owners must contribute towards. Trustees determine the levy payments, not the managing agent!

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## Is your insurance compliant?

You've insured your buildings against loss and/or damage, but are you sure your policies comply with Sectional Title law?

Many Trustees are not aware that the Sectional Title Act specifies certain requirements over and above the

basic Buildings Combined policy and that the law makes it their duty to ensure compliance.

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# PETS IN A COMPLEX! *It can work if there are firm rules, and they are applied*

Sectional Title living is regulated by Management and Conduct Rules, Conduct Rule 1 States that:

- (1) An owner or occupier of a section shall not, without the consent in writing of the trustees, who's approval may not unreasonably be withheld, keep any animal, reptile or bird in a section or on the common property.
- (2) When granting such approval, the trustees may prescribe any reasonable condition.
- (3) Trustees may withdraw such approval in the event of any breach of any condition prescribed in terms of sub-rule(2).

We consider the practical reality of an

emotional predicament, that most complexes face. Let's try to find positive solutions.

Thousands of complexes throughout South Africa face Sectional Title's most contentious issue: How to plan, manage, and control pets. Most often complexes will **initially** take a progressive approach and allow pets, **provided** that owners have requested approval from the trustees. The trustees usually react by **granting** permission, and attaching conditions. The conditions that usually apply to the keeping of pets are somewhat predictable and are surely based on **common sense**:

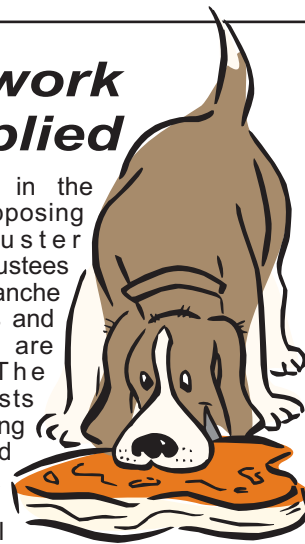
- Cats must be spayed
  - No large dogs
  - Dogs must be neutered
  - No pooping on the common property
  - Dogs should not bark, cry or howl for durations that create a noise disturbance to others living in the complex.
- Truth is, that it is the humans who often need a **common sense implant**, as within a short space of time, the pets run amok as they are uncontrolled, unsupervised, reproduce in vast numbers, and a

civil war is in the offing. Opposing camps muster forces, the trustees face an avalanche of complaints and battle lines are drawn. The bubble bursts when a meeting is called, and an attack ensues with live verbal ammunition fired in all directions. (I can imagine the pets sitting in the gallery watching the heated event.) The end result is often predictable! **No pets**, 25% against the banning motion, 75% for the motion. A special resolution is minuted, the rules are amended, and lodged in the deeds office. Fate accomplished - from a pet inclusive complex to a pet exclusive complex. Why such extreme measures? The reason is simple:

- Owners did not **conform** with the conditions given by trustees.
- Trustees did not **control** the situation, and it became unmanageable.
- Innocent owners who do **not have pets**, yet are open minded and compromising, became "fed up" and supported a total ban.

What is the solution? Surely there is a means of compromising! The only way that pets can be managed is if there is:

- A **set stringent policy** for the keeping of pets.
- A particular trustees who is nominated **to monitor** the complexes pets, and who **applies firm** but fair rulings whenever an indiscretion occurs.



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Continued on Page 5

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*Help line no longer Available to the General public*

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

**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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Continued from Page 4

How can one deny a 65 year old widow, or a blind man access to their pet when they want to move into a complex? Trustees must **apply their minds** when formulating a pet policy. For example: Trustees could require that;

- ♦ **Cats must be spayed and proof from a vet is essential.**
- ♦ **Dogs must be neutered and proof from a vet is essential.**
- ♦ **No unsupervised pets, (or even unleashed pets should be allowed on the common property.**
- ♦ **All pet droppings must be cleared by the pets owner, or a fine is imposed.**
- ♦ **Only one cat or one dog should be permitted in a one bedroom unit, only two cats or two dogs or one dog and one cat should be permitted in a two bedroom unit.**
- ♦ **Widowed pensioners or blind owners may keep a pet provided that - the pet wears a dog collar with tags/plates that identifies the dog with the complex, and the owners section. Untagged dogs could represent "illegally present animals".**
- ♦ **consider a "registrar of pets". When an owner applies for permission to keep an animal, the consent conditions, and details of the animal are recorded in an official registrar, and a tag is provided**
- ♦ **Remember that the size of a**

*dog, and the amount of space that they require are often unrelated. Some large dogs live happily in small areas, whereas some small dogs, like Jack Russell's are very problematic when placed in confined areas.*

When formulating a "Pet Policy" consider:

- ♦ *The size and demography of sections, population density, and the extent of close proximity living (i.e. space between sections, freestanding, high rise or duplex)*
- ♦ *Availability / size of common property land for recreational use.*
- ♦ *The average age group of the majority of residents.*
- ♦ *The degree of "coverage" or "bulk" on a given area of land.*
- ♦ *The rural or urban location of the complex in relation to immediate interfacing infrastructures.*

The key issue is control, I must repeat: **The key issue is control.** A complex, like a government, can have hundreds of pages of rules, but unless they are **enforced** they have no **meaning** or impact on members / owners / citizens. In fact rules that are unenforced are a joke, and **undermine** the authority of those who

compile them, and those who are expected to enforce them! Every body corporate must have trustees, and in our opinion, every group of trustees should allocate **specific portfolios** to individual trustees. The portfolio of "pets administrator" or "minister of pets" or "pet controller". Whatever suits - it does not matter. What

matters is that every complex with over 20 units should have an individual trustee who is specifically assigned to monitor / control and manage the complexes pets. **Citation forms** can be a useful tool in managing predicaments within the complex. Here is an example of a form that a complex could use to control and manage pets.

A CITATION FROM THE VILLA VISTA TRUSTEES


Date issued:..... 17-05-2004 ..... Citation No..... A3 (1st) .....  
 Issued to:..... Tenant - Owner ..... Flat No:..... 26 .....

Dear Sir / ~~Madam~~

We wish to communicate with you.

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

The trustees have been informed / ~~have observed that:~~  
*You have a dog in your flat and the Trustees agreed that due to the rules of the Villa Vista Complex that no dogs are allowed. You are therefore asked to get rid of your dog. You are given seven days to react.* *Thank You*

Signed by:.....  ..... 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, ~~58~~, 33, or 18.

Reply

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

\*Note. Complaints issued to residents are recorded. If a citation is issued twice for the same complaint, the managing agent will receive copies which are recorded for future possible legal action. When a tenant occupies a section, and a second complaint is received the property owner as well as the managing agent will receive a copy.



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

Bob Gauld 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.

### Extracts from past Questions and Answers that were provided by the late Bob Gauld

*"Our attorneys have advised me that Sectional Title rules can be amended to make owners responsible for the maintenance of their own roofs and walls. Can they?"*

Any owner who owns a roof would certainly have to maintain it! However section 5(4) of the Sectional Titles Act defines the roofs, outer walls and foundations **as parts of the common property** and section 37(1)(j) requires the body corporate **to maintain** those parts of the common property.

These are not requirements of the rules; **they are requirements of the Act**, and

may **not be amended** by a resolution of the body corporate **or an amendment to the rules**. Even if the present owners voluntarily agreed to maintain specific parts of the common property, neither they nor future owners **could be forced** to do so.

*"Can we do anything to stop the invasions of holidaymakers into our block? Of the eighteen units, only eight are permanently occupied, the rest being used for holiday accommodation. One owner owns five units all of which are used as income generators. We have retired to this beautiful part of the South coast. Can we stop holiday letting? We feel as if we are under siege!"*

Providing that **all the owners agree**, it would be possible to formally **amend the rules** to impose a minimum rental period. The practical difficulty is that owners who routinely generate income by holiday letting are **very unlikely** to agree to such an amendment.

Although Section 44(1)(g) of the Act prohibits a section from being used for a purpose for which it is

not intended, it would be hard to argue that **holiday letting** violates that subsection of the Act. It is a pity that so few developers amend the rules to impose a minimum rental period. Many buyers would be prepared to **pay higher prices** to have the threat of space-invaders removed from their retirement years!

*"At a special general meeting called to discuss a non-luxurious improvement, the trustees raised the issue of pets and persuaded the owners present to vote to ban them. They say that as thirty days notice was given and a vote of over 75% was obtained, new pets have been banned. If the item had been on the agenda, the pet lovers would have been there in force to vote against it. What happens now?"*

A fine piece of flawed reasoning! Although the percentage and notice period **were adequate to pass the special resolution** needed to amend a conduct rule, a vote to ban pets **could not be taken**, as the item was **not on the agenda**. General meetings of a body corporate **may not contain** a 'general' item on the agenda. Only business **of which notice has been given** may be voted at a general meeting.

The trustees are welcome to submit a **proposal** to ban pets **at another special general meeting** of which at least thirty days notice will be required. Forward the Maltese Defence League?



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## Trustees **don't allow** owners quoting legal jargon to **manipulate you and obstruct** your proposed **improvements**

### Proprietary Rights

Trustees will on most occasions face opposition to every proposal that they motivate, even when they believe it is in the best interests of the body corporate.

Trustees who mean well and apply common sense are often bamboozled by some owners who selectively quote what appears to be legal jargon in an attempt to derail their plans; If only trustees would spend one hour a week reading literature on sectional title matters, they would be well positioned to counter the stumbling blocks that are placed in their path.

A Body Corporate in Seapoint wanted to create extra parking bays within their complex as several owners had no parking space, and had no choice, but to park outside the complex. Many complexes have a shortage of parking space on common property, so this predicament is not unusual.

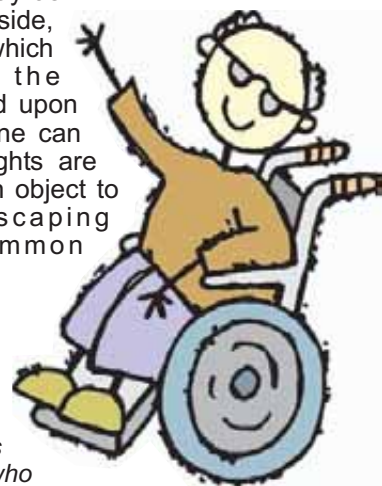
A community conscious chairman wanted to resolve the problem, after all, the block only had nine flats, and a community spirit motivated our chair to pace every inch of the common property in search of identifying an area to house three cars. This is surely a noble gesture, especially when one considers that the three members cars, that are parked outside, were continually subjected to break ins. Can't fault the chairmans motivation. Our chair eventually came up with a plan that involved some minor adjustments to a wall where the bins are housed, plus required the surfacing of a small area of the reasonably large garden. The area identified for improvement was only 45m<sup>2</sup> (30m<sup>2</sup> of which would encroach on the 300m<sup>2</sup> garden), and its development did not appear to affect any individual owner. In fact the chair had discussed his idea with most of the owners, and all seemed to agree with the concept. A trustees meeting was scheduled to debate the issue, but before it commenced, a well dressed, imposing, and legal looking new owner intervened and informed the chair that he would block the proposal on the grounds that it would affect his **proprietary rights**, because extra vehicles in the complex would create additional noise and fumes! In fact the objectors flat is situated 20m away from the proposed parking bays.

The trustees thought they had the pending resolution "in the bag" as all other owners seemed in favour of helping their compatriots "get their vehicles off the crime ridden streets" - so much for community values. The trustees were baffled as the new owner seemed to know what he was talking about, and the trustees were caught in the deep end.

The plan was put on hold (essentially because the trustees lacked the knowledge to challenge the seemingly knowledgeable and well spoken new owner) - **what are proprietary rights?**

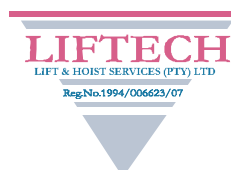
In effect a proprietary right is an inherent attribute or quality of a property that even has an economic value, and that was **linked** to the individuals **decision** to purchase the property in the first instance, and furthermore **underlines** the individuals **desire** to remain in the property (*we've tried to simplify the description of the right*) E.g. If a man who is wheelchair bound buys the only flat in a complex which does not have a steep

gradient between his garage and his flat, one can say that his purchase was conducive to his impaired mobility, which relates to his activity, as he is required to attend many meetings given that he is an "on call" language interpreter for the Vietnamese Embassy. If the Body Corporate plans to divert the pathway upon which he travels between his flat and garage by building a large raised rockery and fountain which burdens his pathway as he must now pass alongside, and negotiate slopes which drastically affects the demographics of the land upon which he travels, then one can say that his propriety rights are compromised and he can object to the proposed landscaping improvement to common property.



The picture regarding proprietary is clear but perhaps the overall message needs re-enforcing. *Incidentally it is obvious that the individual who objected to the parking proposal was talking nonsense.*

- Trustees must not give in because an owner claims to be a lawyer, accountant, or specialist in any field which relates or seems to relate to sectional title.
- Trustees should not "back down" simply because an owner is well dressed, well spoken, and assertive.
- Trustees need to have an understanding of the sectional title act - knowledge is power.
- Trustees must accept that there are professional moaners, and objectors in nearly every complex, and should learn how to manage such personalities.
- Most logical decisions in a sectional title scheme only require an ordinary or special resolution, so don't become de-motivated by a tiny minority who object to every decision proposed or concluded.



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# Contentious questions answered by Tertius Maree

**Q:** When a trustee is absent for prolonged periods the trustees may appoint an alternate trustee. Is it a good idea to appoint an alternate trustee at an annual general meeting?

**A:** Standard Management Rule 9 clearly specifies that the trustees may appoint an alternate trustee, not the owners.

**Q:** Five trustees are elected at an annual general meeting. Later in the year three trustees sell and move leaving only two. Two is the minimum requirement in terms of the Act. Can they continue to act legally or do they no longer form a quorum?

**A:** According to management rule 16(1) fifty percent of the number of trustees shall form a quorum. Two would not form a quorum. When trustees sell and move it is important to realise that they still remain trustees unless they resign.

**Q:** Who is responsible to clean a section's outer windows?

**A:** In our opinion the median line of the wall separating the section from common property follows the median line of all permanent structures such as windows

and doors therein. The outer half of the window is thus considered common property and the body corporate must clean it on the outside.

**Q:** An owner is surely entitled to an air conditioner and a television aerial. Strictly speaking these are improvements to the common property and require a special resolution. Often a special resolution is taken and these items permitted provided their positioning is harmonious. Any opinions on this issue?

**A:** The standard rules do not address this issue. Firstly, these must not be seen as improvements to the common property in terms of management rule 33. This management rule is only applicable where trustees wish to affect improvements to the common property, not, for example, where an owner wishes to erect a television aerial.

To clarify matters it is advisable that conduct rule 4 dealing with damage, alterations or addition to the common property by owners be amended. This could provide for the trustees'

consent in these matters subject to reasonable conditions.

The conduct rules can be amended by way of a special resolution.

**Q:** Our building was badly constructed and our maintenance man is constantly repairing cracks on the outside of the building. As a result of these cracks moisture is causing the paint to bubble on the inside of my building. I argue that the bubbling on the inside was as a result of a problem on the outside. Am I correct?

**A:** The body corporate should be responsible for the damage caused to the inside of your section if it were negligent in maintaining or repairing the common property.




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