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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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THE OMBUDSMAN - WHEN, WHAT AND WHY?

HOW WILL IT BENEFIT SECTIONAL TITLE, AND OTHER FORMS OF COMMUNITY OWNED PROPERTY

Craig Coetzee of Watchprop talks to the Editor of Bodies Corporate News, Rob McWilliams, about the latest developments regarding the Ombudsman.

Craig Before we discuss the Ombudsman I would like to ask you a few questions. Why did you become involved in Sectional Title publications when your background lies more in marketing & publishing?

Rob I have been connected and involved in sectional title for over 17 years, but because it is a communal, voluntary, and part time challenge, I never regarded it as a commercial opportunity it was more akin to a hobby!

Craig Why then are you so involved?

Rob Because I soon understood that most available literature in the industry is written and driven by academics and that many ordinary owners and trustees "had no clue" as to what is involved when land is communally shared and owned.

Craig So what role do you play in the broader concept of community based lifestyles?

Rob Education - There is a huge need to provide ordinary citizens with empowering information that can benefit their communal lifestyle circumstances. The information provided must be easy to understand, and divorced from any intellectually competitive environments.

Craig Are you in conflict with the legal academics / boffins?

Rob Absolutely not. They are the true pioneers of changing circumstances, and their skills will advance the predicament of many property owners. I simply try to translate their valuable contribution into understandable terminology, and in so doing, I try to combine my 17 years of practical experience with their legal opinions and viewpoints.

Craig Why is there a need for an ombudsman service, which is as I understand it, a type of CCMA for owners who have purchased property in common interest schemes?

Rob When many owners inhabit a complex, yet communally own, use, and contribute to costs associated with managing and maintaining a single portion of land there will always be disputes. These must be resolved through an efficient and affordable mechanism.

Craig Explain some of the types of disputes that commonly arise.

Rob Issues that most often arise involve finances, the behavior of residents, the governance of a scheme, the legality of procedures and decisions made at meetings, the performance of managing agents, matters arising involving repairs, maintenance, improvements, alterations, and other works carried on in private areas and on common property. Fair access to documents and records also gives rise to friction and discord. These disputes are all consumer related and in sectional title there is no juristic "umbrella body" which handles such disputes. There is only litigation or arbitration, and both are very expensive. Sectional Title (including Share Block and Cluster Homes) need a mechanism to resolve disputes, a mechanism that is affordable! This is what the Ombudsman Service is all about.

Craig Are you saying that litigation and arbitration do not work?

Rob The introduction of management rule 71 (arbitration) was intended as a mechanism to resolve disputes, but in practice proved too costly.

Craig So community schemes will soon have their own juristic equivalent to the CCMA, is that it, or are there other roles that the Ombuds service will provide?

Rob According to draft proposals the role of the ombuds service



will:

1. Be to act as the custodian of documents that govern Sectional Title schemes. At present rules are simply filed in the deeds office. Nobody checks their content to see if the rules meet the legislative requirements, and protect the rights of property owners.
2. The office will resolve disputes through appointed full and part time adjudicators. The adjudicators will hold hearings and make decisions that are binding on both parties. The adjudicator's decision can only be challenged in the high court if the decision is legally flawed. Only issues of law can be challenged in an appeal.
3. Educate consumers: Complaints are significantly reduced when consumers understand their rights and obligations in a communal property environment.
4. Monitor compliance: The ombuds role could even extend to monitoring the governance of community schemes through a "report back" mechanism which could, for example, require schemes to submit a copy of their AGM data to the Ombudsman's office.

Craig What about the Sectional Titles Act, surely current legislation that governs communally owned property needs to be altered or reformed to incorporate the new Ombuds Service?

Rob Yes, indeed. At present the Sectional Titles Act falls under the Department of Land Affairs. In 2003 the government decided that the existing legislation should be split into two separate acts. Well known Sectional Title Attorney Graham Paddock was commissioned by Land Affairs as a consultant in 2004. His task was to come up with proposals relating to the separation of current legislation into two acts, and to investigate and propose a dispute resolution mechanism. Land Affairs is well placed to deal with plans, registrations, and transfer rights, but the sectional title model includes much more. The concept involves management, its customers are people, people who reside on communally owned property. There needs to be rules. Land affairs is not geared to add value to the management of community owned schemes. It only acts as the custodian of schemes governance documentation. It does not want to be involved in aspects of property management.

The Department of Housing is a logical department to exercise oversight, as most communally owned property is used for residential purposes.

Craig Does this mean that the current legislation will split into two acts? One falling under Land Affairs, whilst the governance and management aspects of the act, including the Ombuds service will fall under The Department of Housing.

Rob Yes, but we must also consider that the Department of Justice and the National Treasury also have an interface with the current proposals.

Craig How will the Ombuds Service be funded?

Rob - It is proposed that the initial set up be funded by the Department of Housing, thereafter by way of an additional levy paid by every property owner, and by way of a charge for the services provided by the ombuds office, e.g. A nominal fee charged on consumers who have their complaints resolved in the ombuds office or for the provision of documents such as rules to prospective buyers.

Craig Surely there needs to be Ombuds Service Centres in all

large towns and cities? Perhaps as many as 10 to 15 offices.

Rob As far as I know only three are proposed, and I assume that these will be positioned in Cape Town, Durban, and Johannesburg.

Craig When are all these changes likely to occur?

Drafts have been submitted to government, and as far as I know the earliest possible date could be linked with the first session of parliament next year. This is an optimistic view.

Craig You have closely monitored developments relative to the Ombuds Service, give me a sense of how an ombuds office will be administered.

Rob The Ministry of Housing

will appoint a Chief Ombudsman. The Chief Ombudsman is the C.E.O of the service. His role will be administrative. The minister also appoints Ombuds for the regional offices. The Chief Ombudsman appoints Deputy Ombuds. The adjudicators will be full time or part time. They are the experts who will actually hear the disputes. They are akin to commissioners at the CCMA.

Craig One of the weaknesses with the current arbitration system is that awards are not published, and no reference is available to influence future decisions. Will the awards made by adjudicators be published?

Rob Yes.

Craig Will adjudicators receive any training?

Rob It is proposed that the Department of Housing train adjudicators, but like all aspects of a proposed draft, final decisions have yet to be concluded.

Craig Final comments?

Rob The Ombuds Service seems to be a very appropriate system to resolve disputes for all community schemes. At the end of the day its success will be determined by its affordability to consumers, the quality of its adjudicators, and effective access to its services. If the waiting time for a hearing is many months then there will be problems. I hope the Ombuds Centres are sufficiently staffed because I believe that there are potentially thousands of latent disputes awaiting an opportunity to be heard.

Trustees, don't get caught with your pants down

Meetings - tip of the month

There seems to be a direct link between members attendance at meetings and their confidence in trustees - let's explain.

In a well run scheme one finds that owners generally avoid attending their AGM - It's a waste of time! - They are happy with the way things are. They prefer not to be involved - they would rather watch "3rd Degree" and stay at home.

In a poorly run scheme, owners generally tend to participate as their property investment could well be subjected to mismanagement.

Management Rule 58 informs that: If within half-an-hour from the

time appointed for a general meeting a quorum is not present, the meeting shall stand adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within half-an-hour of the time appointed for the meeting, the owners present in person or by proxy and entitled to vote shall form a quorum.

So how does this rule affect a well run scheme? Let's give an example (true story).

A well run 68 unit scheme held its AGM on the 18th of September 2005 at 6:30pm. The scheme traditionally hold their meetings in the local nursery school as the scheme has no

community hall of its own, and obviously 64 owners could never fit into a single section.

Year after year the Body Corporate used the same venue, after all it only cost R50.00 per hour, and it was situated just down the road from the complex. Owners could even walk.

But on the 18th of September 2005 the AGM was adjourned as no quorum was present, even after having considered the number of proxies held by the chair.

This dilemma arose because the scheme was "well managed".

The chair announced to the seven

members present (notwithstanding the five proxies) that the meeting was to reconvene a week later at the same time and venue. Big mistake - the local nursery school had previously been pre-booked for a ratepayers meeting on the 25th of September 2005, at 6:30pm.

As a result the Body Corporate had to resume the entire procedure that is required prior to holding an AGM; New notices, new dates - an expensive exercise.

So, when in doubt, book a hall for **two weeks** running. You never know what can happen!

NEW SECTIONAL TITLE WEBSITE

Sectionalink launches interactive online diary!

www.sectionalink.co.za

Now readers can interact, share information and give opinions online. The Editor of BCN will from time to time answer questions.

The blog provides an informal and friendly medium for owners and trustees living in community schemes

RED-LINING FACT OR FICTION?

“Isabel Jones spoke on 'Cape Talk' about bond red-lining. Our block is not in a red-lined area, but all the major banks are refusing to grant bonds to buyers. They say that we are a bad risk. Does red-lining exist? If so, what is it and is it in areas or individual blocks?”

In her inimitable and efficient style, Isabel did indeed cover this contentious issue on Radio 702 and Cape Talk. “Red-lining” is the term given to areas where the major banks are reluctant to grant mortgage bonds to buyers of residential properties. Areas such as Hillbrow and Berea in Johannesburg, and parts of Sunnyside and Arcadia in Pretoria are examples of particular interest to the Sectional Title community. Officially, red-lining does not exist. In practical terms, it is common.

As this series deals with Sectional Title, we will concentrate on problems relating to sectional schemes. In a previous article we referred to the hardening attitude of the mortgage lenders towards sectional schemes with a history of poor financial control and budgeting.

Every application for a mortgage bond over a residential property is assessed on the record of the borrower and the value of the property. Assessing a borrower is fairly simple; assessing the property is more difficult. Property values are based on objective and subjective criteria. Inevitably, run-down areas with a large number of properties for sale will carry lower values than more sought-after areas.

In assessing an area, the mortgage lender will be aware of future trends. An area in decline will attract fewer buyers. As residential property prices are based on the “willing buyerwilling seller” rule, bond granters will either decline bonds or offer lower amounts than most buyers will accept. Is that red-

lining? If so, is it justified?

Sectional Title bond applications introduce the state of the sectional scheme and the body corporate's finances as additional variables. Members of a body corporate that owes money for unpaid rates and services will be held collectively responsible for the debt. In turn, bondholders foreclosing on bonds or taking properties into possession will assume responsibility for the unpaid amounts accumulated to the unit in possession.

In assessing a sectional scheme's suitability for mortgaging, the granter must consider levy arrears, the physical state of the common property and the financial reserves of the body corporate. Recently, some schemes in fairly upmarket areas have been assessed as “unsuitable”. Have they been red-lined?

Before a sectional unit can be transferred from a seller to a buyer, the Registrar of Deeds will call for a clearance certificate stating that the seller does not owe money to the body corporate. This certificate will be issued by the conveyancer, who in turn will request a similar certificate from the body corporate, issued in accordance with section 15B(3)(a)(i)(aa) of the Sectional Titles Act. These certificates deal specifically with unit owners' who are selling their units. They do not apply to the collective debts of the body corporate and the much larger issue of schemes that owe money for services. The clearance certificate says nothing about the scheme!

Officially or unofficially, red-lining of areas has been in place for many years. From the start it has been controversial and like so many things in South Africa, it has carried a racial stigma. Call it what you will, but banks will be failing in their duties to their investors if bond granting becomes an emotional issue



rather than a financial one. It does not matter whether the applicant is among the “previously disadvantaged” or “presently disenchanting”, banks must and will exercise control over lending into high-risk sectional schemes.

When the levy and services payments of a flat exceed the average monthly bond repayment, the scheme is in trouble. Most borrowers borrow the maximum amount for which they qualify. The borrower who qualifies for a bond repayment of R800 per month is unlikely to be able to afford a further R600 for levy and electricity.

The needs of red-lined areas are a social issue and must be addressed at political and local government levels. It cannot be left to the mortgage lenders - it is simply not their responsibility.

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.

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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.

I am chairman of Zevenwacht Village, and I have two questions regarding the future of our Village.

We need to amend our Articles and our Management Rules this year. They have not been touched since 1997.

I read an article about a seminar held at Stellenbosch suggesting major changes in the administration of Sectional Title and the system for the adjudication of disputes.

Q¹ Should we go ahead with our plans to amend Articles or would it be wise to wait until more information is available?

A Dear Mr Lois, I am confused. Is your complex a Sectional Title scheme or a share block? Sectional Title Schemes are governed by the Sectional Titles Act, the Management Rules, and the Conduct Rules. Cluster developments have a Section 21 Company with a memorandum and articles of association. It is not likely that you have both articles of association and management rules. In Sectional Title Management Rules are

seldom amended, as amendments require a unanimous resolution which is difficult to obtain. Perhaps you mean conduct rules. In sectional title conduct rules can be amended by way of a special resolution, which requires an agreement of 75% of owners. It is prudent to amend conduct rules from time to time as circumstances do change.

Q² What is your opinion on this seminar, are changes really on the way?

A The Seminar held in Stellenbosch dealt with the establishment of an Ombuds service. This has been dealt with in this issue, see page four and five. Hopefully change is on the way, it is positive, and it looks like it will come into fruition some time next year.

Q On resignation of a Chairperson, can a trustee be appointed in an Acting position until further discussions by Trustees?

A Chairpersons are elected by trustees, so if a chairman resigns all the trustees, including the ex-chairman, must elect a new chairman who will hold office for

the remainder of the previous chairmans term.

There is no provision in the Act that allows a trustee to appoint a temporary chairman in an acting position until such time as the trustees can meet and re-elect a chairman. Trustees can usually function without a chairman for a while!

Q Can a tenant together with his\her landlord attend a trustees meeting if he\she is accused of misconduct to air her views?

A Owners can attend "official trustees meetings" but tenants cannot, unless all the trustees agree. Usually trustees will meet with a landlord and his tenant in order to resolve a dispute, but this encounter need not be at an "official trustees meeting". Some schemes give their trustees portfolios, and a particular trustee will try to resolve disputes. What your landlord may want is simply a "hearing" in order to give the viewpoint of his tenant. Everyone is entitled to be heard, and this need not involve an official trustees meeting. Problems need to be addressed in their early

stages in order to avoid arbitration at a later stage.

Q Can a chairperson\trustees be stripped of their designation at a trustees meeting or AGM?

A A chairperson can be stripped of his portfolio at a trustees meeting if the majority of trustees vote in favour of removing him as chairperson. The chairman will remain as a trustee, however the trustees including the newly removed chairperson will "vote in" a new chairperson. Trustees cannot remove other trustees from office. Only the owners can remove trustees from office, as they elected the trustees in the first instance.

Trustees are elected at an AGM and serve until the next AGM. AGM's are held annually. Trustees can only continue to serve beyond the period of an AGM if they are nominated, and re-elected by the owners for the ensuing year. A Chairperson is elected by trustees from amongst their number after an AGM. A chairpersons term of service ends after an AGM, unless he is re-elected as a trustee, and subsequently as a chairman.

WHO PAYS FOR WINDOWS?

by Tertius Maree

"We would like to know who is responsible for replacing wood window frames with aluminium in our sectional title block. Is it the insurance company, the respective owners of the sections, the body corporate or a 50/50 division between the owner and body corporate?"

The reader did not mention the reason for the replacement of the windows frames which could very well influence the answer to his query. I assume that the replacement of the windows and frames is due to normal wear and tear. The replacement of wood frames usually occurs in the following instances:

Buildings used for holiday purposes that are not permanently occupied;
Buildings close to the sea;
Buildings where maintenance has been neglected in the past.

Replacement of wood frames with aluminium comes at a cost. The rationale behind it is that the saving in future maintenance on the aluminium frames will more than make up for the extra expenditure. It should, however, be

borne in mind that metal frames also present peculiar problems in the long term.

To return to the specific question, the insurance company can immediately be eliminated. Insurance only covers loss caused by physical damage such as storm damage.

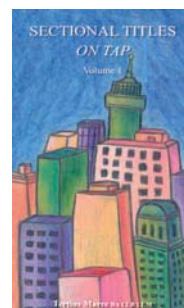
Accordingly the financial responsibility lies somewhere between the owner and the body corporate and the answer depends on what theory, with regards the boundaries of sections and common property, is supported. The theory that we support is that the boundary between the section and the common property is the median line of the boundary wall including all permanent structures (such as windows, doors etc.) therein. This means that the median line diverts at every structure so that the interior half of the structure would always be part of the section whilst the exterior half is common property.

When the need arises to replace a window frame it could be argued that the cause is neglect by the body

corporate to perform proper maintenance. However, an owner cannot sit idly and watch his window frames deteriorate. He is a member of the body corporate and should take active steps to ensure that proper maintenance is done.

Taking the above into consideration a general replacement project can be funded by dividing the costs between the body corporate (special levy or reserve fund) and the owner of each window allocated as a direct expense. Each party would then be responsible for one-half of the replacement costs.

In our opinion the approach outlined above is the most practical and will ensure the fairest results.



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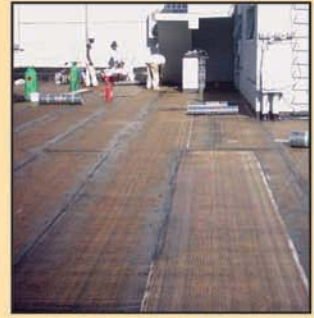
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Give us a call ensuring that your company is compliant

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