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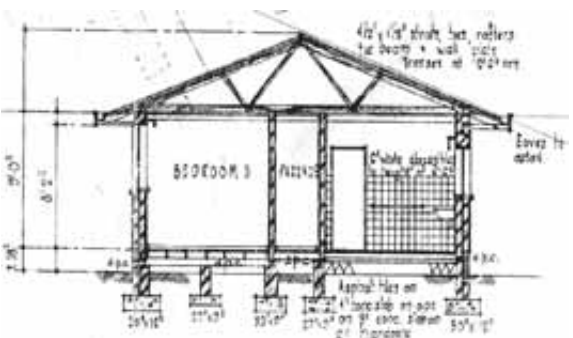
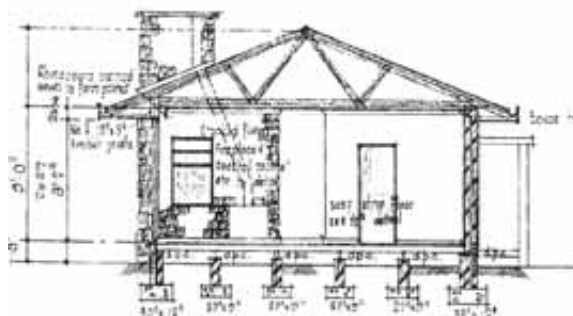
Understanding Sectional Title Concepts

The Sectional Plan

Most of us think of a sectional plan as a detailed document, that builders use as their **construction blueprint**. A document that when followed meticulously by constructors will result in a **physical** structure that closely resembles the pictures of the proposed development, that we saw in the weekend property newspapers. This is **not the case**, and one can be forgiven for thinking that a **building plan**, and a **sectional title plan** are similar. A building plan is prepared by an architect and is detailed to the extent that it facilitates the construction of a structure. These plans are **submitted to a municipality for approval prior** to the construction of a building. The municipal experts consider the building

plans and will approve them if they conform to all the building regulations (and other regulations) that exist at the time. This process has nothing to do with the procedure of registering, forming, or initiating a Sectional Title Scheme.

Sectional Plans **are only prepared** when a structure has been **constructed** to the extent that distances between walls, and other aspects of the final structure are **capable of being measured**. Only then can a Sectional Plan be prepared by a Land Surveyor or Architect. On the right is an example of a component of a full set of building plans.



The **Surveyor General** approves Sectional Plans. These plans are submitted by the developer and simply show the basic physical details of the buildings to the extent that they can be separated, measured, and identified by

Sectional Title ownership categories that make logical sense with regard to space utilization, allocation of space, and their capability to be individually sectioned off, and owned, or shared in a Sectional Title scheme.

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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.

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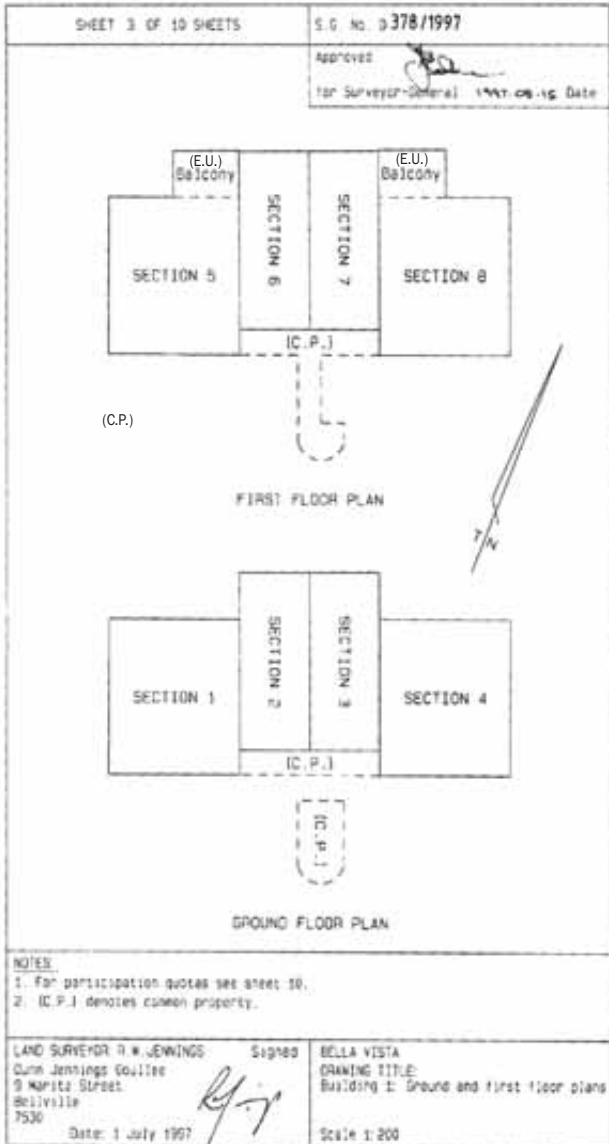
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This is what a Sectional Plan looks like.



I am sure you will agree that sectional plans are useless to an electrician, plumber, carpenter or bricklayer. The Sectional Plan only shows physical space allocations that are subdivided into **Sections** i.e. Areas owned by individuals, **Exclusive use areas** i.e. Areas which owners can use for their own use yet exclude other members from using such areas, even though they form part of the common property, **Common Property** comprises of areas which are communally owned by all members in undivided shares in accordance with the size of their sections, and thus relate directly to their participation quota, and voting powers.

On the last page of a Sectional Plan is a schedule of floor areas, that when equated into the total floor area, become ones **participation quota** (i.e. ones percentage share of the whole).

So, the Sectional Plan is a document that is used for the purpose of acknowledging and recording those parts (sections and exclusive use areas) of a building which are owned, and by whom - and is also the **legal document**, that if a dispute arises, will determine who owns what. **It's the blueprint of property rights** in a complex. It is not possible for trustees to manage a complex if they do not have a copy of the Sectional Plan. Each time a Section is extended or subdivided, **an amended** Sectional Plan needs to be registered as the participation quotas will alter. Sectional plans can be obtained from the local Surveyor General's office or if one resides in the Western Cape, Bodies Corporate News can obtain plans on your behalf for a small handling fee.

Unanimous Resolution

This is a resolution passed unanimously at a properly constituted general meeting of the Body Corporate, provided that **special notice and quorum requirements** are complied with. Because of the unanimity required, votes are counted as **one owner one vote**. Participation Quotas are not relevant as far as the counting of the votes are concerned.

However, the quotas do come into play in determining whether a **quorum** is present. For

this purpose **80% of all owners** must either be present, or represented by a proxy at the meeting, and their presence must be counted both in number of owners and as percentage of the participation quota.

In addition, **30 days notice** must be given of the meeting with **details** of the unanimous resolution sought. A unique aspect is that if any owner **abstains** from voting, it is counted as a **vote in favour**.

Body Corporate Meeting

All the organs of the body were having a body corporate meeting, trying to decide who was the most suitable chairman.

"I should be in charge," said the **brain**, "because I run all the body's systems, so without me nothing would happen".

"I should be in charge," said the **blood**, "because I circulate oxygen all over so without me you'd all waste away."

"I should be in charge," said the **stomach**, "because I process food and give all of you energy."

"I should be in charge," said the **legs**, "because I carry the body wherever it needs to go."

"I should be in charge," said the

eyes, "because I allow the body to see where it goes."

"I should be in charge," said the **rectum**, "Because I'm responsible for waste removal."

All the other body parts laughed at the rectum and insulted him, so in a huff, he shut down tight.

Within a few days... the brain had a terrible headache, the stomach was bloated, the legs got wobbly, the eyes got watery, and the blood was toxic. They all decided that the rectum should be the boss.

The Moral of the story? The ass hole is usually in charge !!



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ASK THE EDITOR

Try to
Rob will answer your questions

Numerous requests for information are received. Regrettably we can only answer several in this regular column.

I would like your input on two matters.

Q1 Trees in the garden units have grown so high that the roots are causing some walls to break away/cracking. Is it the responsibility of the Body Corporate or the respective owners to have these trees removed and the walls repaired or replaced within their registered exclusive use gardens.

Q2 Water from the down pipes of a unit above the garden unit is causing flooding in the garden unit due to heavy rains. Again is it the responsibility of the Body Corporate or the owner of the

garden unit to make arrangements to lead the water away into say a false drain.

A1 An owner is responsible to maintain his own exclusive use area. We refer to the Solidatus Case, Management Rule 70(B) and Section 44(1)C.

A2 Water drainage is always a problem when there are very heavy cloud bursts - that's life. Is the drainage a problem, under normal rainy conditions? If so, then the Body Corporate should attend to the matter as the Body Corporate is responsible for the down pipes and general drainage, however we need to consider a second scenario. We assume that the original builder had, or should have considered, and allowed for, adequate drainage from the gutter outwards. If the owner of the exclusive use right has re-landscaped areas of his garden and upset the original water drainage pattern, then the owner of the exclusive use right must attend to the problem.

Q I am the owner of a section in a small block of flats. I am one of three trustees and we have no major problems. We have for many years run our affairs very informally. The trustees have from time to time framed and amended House Rules to suit the requirements of the block, and enforced these where necessary, but these have never been officially registered.

Are the Rules that were registered with the Registrar of Deeds on registration of the Sectional Title plan in 1984 automatically amended and updated by the current Management and Conduct Rules? We want to avoid the expense of registering our existing Rules unless essential.

A As from June 1988 schemes governed by the old schedule 1 and 2 rules of the old Act automatically relinquished these and became subject to the rules contained in annexure 8 & 9 of the new Act. There was a proviso if the old rules were amended, so a visit to your local deeds registry is important. Nonetheless, you are definitely subject to annexure 8 & 9 rules as no amendments to schedule 1 & 2 rules can conflict with annexure 8 & 9 rules. You need to compare these legal rules with your old house rules, then perhaps

consider amendments. If by special resolution members agree to amend the conduct rules (annexure 9) then you will lodge these amended rules at the deeds office and they will become your new set of legal rules. You do not pay to register rules, though it will cost you if you want to have them drafted professionally.

Q I own a duplex in a small block. Each unit has a garden that is separated by an outside dividing wall.

Recently my neighbour constructed an additional room onto her back garden using the garden walls on both sides to support the roof. The overhang of the roof overlaps onto my side of the wall by +/- 20 cm and is at a height that affects my view. She has also placed windows on the dividing wall, within one metre of my bedroom window, which can affect my privacy. The above construction went ahead without plans from the municipality or without approval from the body corporate. After a year this matter has not been resolved. Is there anything that I can do about the above?

A Wow! Your neighbour is in blatant contravention of the rules. You have provided little information for me to work with, e.g. is the land upon which your neighbour added the extra room common property or is it an exclusive use area? You say the matter is unresolved. What have your trustees done to try and resolve the situation? Is the construction of a permanent nature or not? (Is there a foundation and front entrance constructed with brick and cement?) The trustees should have been aware of the illegal structure and stopped its progress by obtaining a court interdict - what happened? If the trustees failed to see the extension, they should have given the culprit 30 days to demolish the structure once they were aware of its existence. If this action failed, the trustees should have approached a legal professional to take the matter to court. If the Body Corporate does not have the finances, then a special levy should be raised to finance the legal action. Action must be taken to avoid other owners building illegal structures.

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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.

Unscrambling eggs

"A new owner has just obtained a copy of our Sectional Title plan and discovered that we have been using incorrect participation quotas", said a trustee. "One of the trustees said that they were adjusted several years ago to make them 'more fair', but the new owner has stirred it up among other owners who are demanding that we revert to the proper participation quotas. What should we do?"

Unless the 'adjustments' were done by nominating values under section 32(4) of the Sectional Titles Act, you will have to revert to the participation quotas shown on the approved sectional plan. Please check the rules as filed with the Registrar of Deeds.

Nominated values, which were discussed in previous articles, allow a

body corporate to allocate values to take the place of participation quotas for the calculation of levies and votes. The nomination is made by amending the rules and requires the written consent of all owners adversely affected by the changes.

If this scheme is not subject to values set under section 32(4), the body corporate must immediately revert to the correct participation quotas. A further difficulty may face the body corporate. Owners, who as a result of the illegal calculations of levies have been over-charged, may even demand refunds.

As section 37(1)(d) of the Act and management rule 31(1) require levies and special levies to be calculated according to participation quotas or nominated values, these owners will

have a very strong case. Neither the Act nor the rules allow any discretion in the method used to determine levies.

There are many similar cases on record. Bodies corporate have raised special levies for improvements and repairs by



charging owners equal amounts; others have repaired common property and charged the owners affected by the repairs instead of allocating costs among all the owners. Trustees sometimes adjust the calculation method to allow for extensions that have been carried out to sections without a corresponding amendment of the sectional plan and in contravention to section 24 of the Act. All of these contravene the Act and rules and cannot be condoned.

Difficult though these problems may be, they are insignificant compared to others that have been reported. Recently, I have heard of two separate bodies corporate that are being run as one and of a scheme comprising two buildings that are running as two separate bodies corporate. In both cases, they have been running that way since establishment. Negatively affected owners are now forcing the trustees to correct the problems. Here are three examples,

Continued on next page

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The Bodies Corp News Editor is unfortunately compelled to limit the time spent on the Help line as this activity seriously impacts on his prime function, i.e. the production of Bodies Corporate News.

The general public will no longer be able to use this facility.

ACKNOWLEDGMENT
 THIS PUBLICATION ACKNOWLEDGES CONTRIBUTIONS MADE TO THE SECTIONAL TITLE CAUSE BY TERTIUS MAREE, GRAHAM PADDOCK, MARINA CONSTAS, ALASTAIR LOMAS-WALKER, AND THE LATE BOB GOULD. THEIR PUBLISHED WORK PROVIDES US WITH ADDITIONAL INSIGHT.

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“Mews 1” and “Mews 2” are on adjacent stands of similar size and rateable value. They are established as separate sectional schemes but the fence between the two was never erected and they are run as one. The former comprises forty units; the latter has twenty. Quite illegally, the total areas of all the sections were combined at inception and so-called participation quotas were calculated. Neither the Registrar of Deeds nor the Surveyor General has any record of any sort of application having been made to tie the schemes together.

Mews 2 has a section 25 right of extension registered under which the developer may return and extend the scheme by constructing another twenty sections. Until then, the rates and taxes components of the common property costs must be shared by the twenty existing owners while their neighbours in Mews 1 share the costs among forty owners. Independent budgets will show

that security and other common property costs will also be higher in Mews 2. Correctly calculated, the present levies in Mews 2 should be a lot higher than in Mews 1.

A high-rise block of flats and a development of townhouses in separate buildings are built on the same stand and registered as a single scheme. The developer chose to run the flats and townhouses as separate developments. If the developer had established the development as two separate schemes, it would have been lauded as a sensible decision. By not doing so, the developer created a situation that is almost impossible to resolve.

Even more bizarre is the Sectional Title body corporate and a Home

Owners' Association that are being run as a single entity. Sectional and freehold ownership have very little in common and cannot run as one. Anybody want to unscramble this one?

A trustee of another scheme has already warned me that I will be in serious trouble for making their scheme unmanageable. I've said it before shooting the messenger is a national sport! If you don't get an article next week, please send flowers!

Ladies, please ignore the next sentence it is for men only! “There are two ways that a man can argue with a woman, but neither of them works.” (Thank you, Ti)

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Ticking timebombs in many complexes

This article by Bhavna Sooka, Bongani Mthembu and Sherlissa Peters appeared in the Daily News on the 2nd of May 2006.

Lifts in many of Durban and Pietermaritzburg's residential apartment buildings are ticking timebombs waiting for tragedy to strike.

A snap survey in the two cities revealed that there are many faulty lifts and residents report that lifts regularly break down with people stuck in them. The situation is so serious that the eThekweni Municipality is considering taking harsh action against building owners who fail to address the issue.

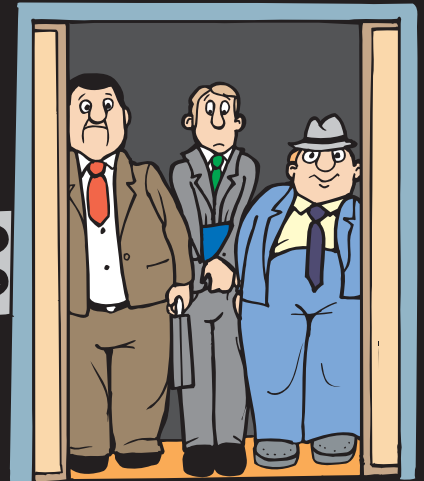
According to law, all lifts need a log book and must be inspected at least once a month by a registered lift engineer. The situation was highlighted when a man fell to his death from a lift at John Ross House on Durban's Victoria Embankment last week. The tragedy was the second in the building in just over two years. Residents said last weekend that the pleas for the machinery to be

upgraded had fallen on deaf ears. The lifts are apparently nearly 30 years old, said a staff member who refused to give his name. A lift company official who also wanted to remain anonymous, said many lifts in the city need to be replaced.

It costs between R400 000 and R500 000 to replace a lift - a cost that many building owners and bodies corporate find prohibitive.

eThekweni Infrastructure Committee chairman Nigel Gumede said the council was aware of the problem and warned that council would soon take strict measures against those responsible for lift repairs. Sayed Iqbal Mohamed, chairman of the Organisation of Civic Rights, said that the problem of unserviced and defective lifts in and around the city centre was a huge concern. "In one instance I know in Overport, a physically challenged person has to be carried up and down seven floors on a daily basis because the lifts in the building are not working. A number of buildings have lifts that are not functioning at all and need to be serviced," he said.

Mohamed said the maintenance costs for lifts were usually built into rental costs. "Part of the rent should be used for the maintenance and upkeep of buildings. And this happens in some instances. Certain landlords, however, don't use the money to maintain the lifts in their buildings," he said. He said tenants were often afraid to voice their concerns as they feared eviction if they



"caused waves".

In Pietermaritzburg, the state of lifts has also come under fire from residents living in apartment complexes in the downtown central business district.

Rowena Pillay, who has lived in a large flat complex in Peter Kerchoff (Chapel) Street for the past three years, said that she says a prayer every time she enters the lift. Another resident in the complex, who declined to be named, said that lift maintenance in the building was non-existent. "A few years ago a neighbour and two of his children were stuck in the lift for two hours. The lift plunged four floors and then stopped between floors where they were stuck for another hour. Luckily, they all got out of it alright," said the resident. He said the complex management repaired the lift then, but it has not been serviced since then and the alarm bell in the elevator had not functioned since he moved in 12 years ago. The chairman of the complex refused to comment.

Editor - I am sure that this problem is nationwide



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BODY CORPORATE OVERRULED

New rules for tenant screening

A DURBAN court has ordered the Body Corporate of a Durban block of flats to compensate a flat owner for lost rental after it deemed a prospective tenant "shady and unacceptable" and refused to allow the family to move in.

The decision this week, although only made by the Small Claims Court, has been described as "ground breaking" in South Africa, and one that will force bodies corporate to review their "screening" rules to ensure they are not contrary to the constitution.

Sagaran Govender, and his wife Therusha, sued the body corporate of Harbour View flats for the R9000 rental they lost out on in March 2005 after the then chairman of the body corporate, Piet van Oudshoorn, refused to allow a tenant to occupy a flat they own in the building.

The Govenders own and live in another flat in the building.

At the time Govender advertised the flat, he decided to rent it to a woman with two grown-up children. The family went for "screening" in accordance with the rules of the body corporate.

He was never informed of the outcome of the interview and only realised that the family had been "turned down" when he started receiving calls from other prospective tenants.

He then wrote to the body corporate, complaining about Van Oudshoorn's actions and asking for compensation of one month's rent.

According to the minutes of a trustees meeting held in January 2006, at which the issue was discussed, Van Oudshoorn had found that the tenant to be "totally unacceptable and shady" with

fraudulent references.

Efficient screening, he said, was the only way that the standards of the building could be upheld.

The body corporate denied liability, saying its rules applied to all and it had the discretion to decide if a tenant was in the best interests of the building.

Govender, on the advice of Sayed-Iqbal Mohamed, Chairman of the Organisation of Civic Rights, took the matter to court and argued that, in terms of the constitution, people had a right to adequate housing.

Ripple effect

He said bodies corporate had no right to screen tenants because a tenant's relationship was with the owner or landlord of a unit, not with the body corporate.

In law, he said, a tenant could not be denied occupation. Only if a tenant broke the house rules could a body corporate seek eviction.

The court agreed with Govender and awarded the damages claim. Commenting on the decision, Mohamed said it would have a "ripple effect" throughout the country.

"I understand the need for some measure of control. But one has to balance that against the rights of owners.

"These rights are being violated - perhaps with good intentions - by bodies corporate who take it upon themselves to make rules, change rules and then impose them on everyone else.

"This is indicative that their powers are limited - and no rules can override law and the constitution."



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Imposing fines on owners

By Tertius Maree

The imposition of penalties or fines remains one of the most controversial subjects in the sectional title context. Some say it is not legal whilst others argue that the trustees have the right to impose fines in terms of section 38(j) of the Sectional Titles Act which states that the body corporate may 'do all things reasonably necessary for the enforcement of the rules'.

The State is not the only entity that may impose penalties, it is for example possible to impose a 'private' or 'civil' penalty in a contract. Similarly, the members of a body corporate ought to be able to impose fines.

Even though it may be a tenant or guest who contravened a rule it is the owner who is ultimately held responsible in terms of Management Rule 70 which states:

'It shall be the duty of the owner to ensure compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or occupant.'

Section 35(1) of the Act states that a body corporate shall be controlled and managed by means of rules. If a body corporate makes special rules to impose fines there should be no reason why it cannot be enforced. The only proviso to the aforementioned is that the procedure must be clearly defined and must comply with the constitutional requirement of a fair administrative hearing.

The owner concerned must be invited to attend a meeting or hearing. The meeting should be arranged as quickly as reasonably possible after the alleged contravention. The notice sent to the owner should be delivered by hand or sent via registered post and should specify the alleged contravention in clear and unambiguous terms. The purpose of arranging the meeting is to enable the owner to respond to the allegation and evidence against him. Very importantly he must be afforded the right to cross-examine any witnesses. He must also be allowed to call his

own witnesses.

The trustees should then decide if the owner is guilty of the contravention or not. If guilty, they may impose a fine, duly inform the owner of their decision, the reasons therefore, and the amount of the fine.

The members of the body corporate should from time to time, by ordinary majority resolution at a general meeting, determine the amount of the initial fine and every subsequent fine.

It is very important that the trustees adhere to the procedural requirements prescribed by the rules when imposing a fine.



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