

Paddocks Press

SECTIONAL TITLE NEWS FOR EVERYONE

WHAT IS PADDOCKS PRESS?

An ad-hoc **free** digital newsletter published to educate and update the sectional title community.

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Brian Addison—
Addsure

GIVE YOUR VIEWS ON MULTI-TIERED SECTIONAL TITLE BODIES CORPORATE

The National Association of Managing Agents (NAMA) is inviting comments on a proposal made by Mr. Richard Abrahamse to the Sectional Titles Regulations Board to amend the Act so as to overcome problems being experienced with 'multi-use' or 'mixed schemes'.

There are two basic elements to the proposal:

1. that areas of 'limited common property' should be capable of being defined on a sectional plan and linked to specified sections, to the effect that use and enjoyment of those areas would be limited to occupiers of the linked sections; and
2. that a 'subsidiary body corporate' should manage each area of limited common property for the benefit of and at

the expense of the owners of linked sections.

This proposals are modelled on a system which works successfully in Singapore, a jurisdiction which is directly comparable to South Africa.

The Memorandum put to the Sectional Titles Regulations Board and containing the details of the amendments suggested to the ... *to page 2 ...*

MOUNTAIN OR HILLSIDE ROCKFALLS - DO INSURANCE COMPANIES COVER THIS RISK?

Buildings that are developed on land with steep gradients could be exposed to the risk of rock falls, whether it be a multitude of small rocks or large single boulders. There are many buildings situated on the slopes of Signal Hill, Lion's Head, Devil's Peak, Table Mountain chain of the Cape Peninsula.

We approached the three insurance companies with whom we place cover for buildings in the sectional title environment and provide their responses to our query in regard to rock-fall cover as follows:

CORPORATE-SURE (Underwriters for Santam)

It would need to be established what caused the rock/rocks to dislodge and roll down the slope. If the cause is established to be one of the standard insured perils as defined in the policy wording (Storm, wind, rain, hail etc.), the situation will be treated on it's own merits and the claim would be entertained.

If no exact cause for dislodgement can be established, a claim could be allowed under the Accidental Damage cover section of the policy, with a

complimentary limit of indemnity as specified in the policy (currently R100 000). This is of course subject to existing terms and conditions and to the various aspects of the incident (Any incident arising from a terror bomb blast for example is not covered).

If the insured client has elected the 'subsidence & landslip' extension to their cover, then this event would in all probability be covered, even if the landslip originated from a neighbouring property. Cover is subject to the recommendations ... *to page 3 ...*

PHOTO SEQUENCE OF ROCKFALL DAMAGE

... from page 1 ...Act is set out below.

Comments must be made by completing the online form accessible at Sectional Titles Online (<http://www.sto.co.za/survey>) before close of business on Tuesday 31st June 2007.

Once the comments have been received and analysed, NAMA will arrange for a further meeting of the Board to take the matter further.

Extract from Minutes of meeting of Sectional Titles Regulation Board held in Pretoria on 22 and 23 May 2007

6.5.1. Mr Richard Abrahamse proposes that Act No. 95 of 1986 and the regulations thereto be amended to provide for multi-tiered management structures for certain types of sectional titles schemes linked to the introduction of the concept of limited common property for the exclusive use of some but not all owners of sections. See Annexure H in this regard.

Resolution:

A meeting will be arranged (by NAMA) to discuss the matter further. Prof van der Merwe will also be invited to attend such meeting. Annexure H will form part of the proposals for the amendment to the Act and will be discussed at such meeting.



View of the road surface damage from a boulder that tumbled down the mountainside



View of the insured premises from where the boulder came to rest. The arrow indicates where the vehicle stood.



View of the boulder that causes the damaged to the insured premises.



View of the area where the rock hit for the third time. Note the effect of structural cracking



View of the vehicle that was flattened by the boulder after it crashed through the shade net carport.



View of cracking on one of the support columns. This area is directly below where the vehicle was destroyed.

* Photos courtesy of Corporate Sure

... MOUNTAIN OR HILLSIDE ROCKFALLS - DO INSURANCE COMPANIES COVER THIS RISK?

... from page 1 ... provided by a geo-technical report by a suitably qualified geo-technical engineer. Cover would be restricted to the insured buildings only and not surrounding properties. Where defective or ineffective design or construction gives rise to rock dislodgement, then any claim would be repudiated.

FIRST PROPERTY ACCEPTANCES - FPA (Underwriters for Natsure)

If the question is: If a rock suddenly rolls down a slope causing damage to a property below, which peril in the FPA policy would apply? Then our view would be:

1. If it can be attributed to a weather peril i.e. storm wind water hail snow and it can be proved that the rock moved as a direct result of that peril without any other intervening cause, then the event would be covered to the full extent of the sum insured on the property
2. If it can be attributed directly to fire lightning thunderbolt explosion, impact by vehicles etc, or earthquake and the rock moved as a direct result of that peril without any intervening cause, then the event would be covered to the full extent of the sum insured on the property
3. If it can be attributed to Newton's law of gravity, then the event would be covered by the section of our policy named Accidental Damage under which we limit our liability for any claim to R250 000.

In all of the above the cause and effect must be a direct train of events which brings about a result without the intervention of any other cause started and happening from a new

and independent source.

The question as to whether it would be covered by the peril subsidence and landslip would in our view not be at all simple but we can offer several pointers that might assist an insured in reaching a conclusion on the matter.

A) Subsidence can be defined as a caving in of the ground causing vertical collapse or partial collapse of the structure upon the ground that has subsided. Damage is usually reflected in structural cracks and in severe cases by the total collapse and even disappearance of structures.

B) Settlement can be defined as a mild form of a subsidence and refers to the settling down from downward pressure of a building on its' foundations - settlement is NOT an insurable peril

C) Landslip is the sideways movement of a mass of soil or land as in a landslide. It is likely that this type of occurrence could be precipitated by a storm or flood however our and most other wordings exclude damage to the property by storm wind water hail or snow caused or aggravated by subsidence or landslip.

D) Ground heave is common in areas of clay soil that drains poorly. Such soils absorb water and swell in wet seasons then shrink as they dry out. This movement is called heave and is not insurable under our policy

In our view it is highly unlikely that an occurrence of subsidence and /or landslip could be considered the proximate cause of a loss as contemplated by this article however as an insurer we have to maintain an open mind when considering the cause of loss or damage to our clients' property and

whether our policy responds thereto.

COMMERCIAL & INDUSTRIAL ACCEPTANCES - CIA (Underwriters for Compass)

It is important to establish the cause of the rock fall. The event could either be covered - for the full value of the property - under the Building Combined Section by the perils Storm, Wind, Water, Hail or Earthquake. If neither of these perils apply, it could be considered to be Accidental Damage, however the damage will be limited to the Accidental Damage sum insured of R250 000. If the cause of the rock fall is Landslip, then the loss would not be covered unless the insured has specifically insured for Subsidence & Landslip.

SO NOW WHAT?

It is important to mention that events of this nature are rare. Having said that, Corporate-Sure did pay a claim of this nature a few years ago where a rock fall occurred off Chapman's Peak at Hout Bay and a building was damaged - see pictures opposite. Attention should also be drawn to policy general conditions (Prevention of Loss) wherein insured clients are expected to take all reasonable steps and precautions to prevent accidents or losses, especially when a risk becomes obvious or known. Steps should then be taken to eliminate such danger or risk.

ADDSURE'S VIEW

Where there may be a risk of this nature, a geo-technical report should be obtained by the building owner (insured) to substantiate the danger. Cover is not suggested where no risk or danger exists. If the report confirms such danger or risk, the insured should include 'subsidence & landslip cover' on the policy regardless. We would press the insurer to pay a claim should same arise.

**YOU CAN NOW CHOOSE TO USE
A QUALIFIED SECTIONAL TITLE
ESTATE AGENT TO SELL YOUR HOME**

The University of Cape Town's Construction Economics and Management Department, together with Paddocks Learning, launched the first Sectional Title Specialist Realtor certificate course in April of 2007. This 10-week course attracted over 120 estate agents from throughout the country who were looking to better understand sectional titles in order to deliver a better service to their buyer and seller clients.

Increased security, private communities and shared maintenance obligations are just some of the factors that have lead to sectional title properties becoming the preferred title of choice. Some statistics show that over 50% of all homeowners are now living in sectional title property. As the popularity of this property title grows, it becomes increasingly important for the professionals who sell sectional title units to have the right set of skills to carry out their responsibilities effectively. Graham Paddock says: "It is also important for the seller of a sectional title unit to be able to distinguish between qualified and unqualified estate agents when choosing an agent to sell their most important asset".

The sale of sectional title property, including units,

various types of exclusive use rights as well as whole and fractionalised future development rights in 'schemes' under the Sectional Titles Act, 1986 ('the Act') is an increasingly complex task, requiring an understanding of various parts of the Act and its regulations, various consumer protection provisions and a knowledge of the scheme management and conveyancing processes that apply to the transfer of such property.

The UCT qualification is ob-

tained through a 10 week distance learning course designed for the working individual and is delivered twice a year. During this period 2 assignments and a written exam are completed, after which all passing students receive the UCT Sectional Title Specialist Realtor Certificate.

The next course runs from August until October 2007. For more information please contact Robyn Allan at robyn@paddocks.co.za

Are you qualified?

Next course: August 2007

Contact Robyn on robyn@paddocks.co.za or visit www.paddocks.co.za to download an information pack and registration form now.



A variety of student pictures from the Cape Town, Johannesburg and Durban workshops.

THE TAXMAN COMETH



Clint Riddin

It appears to be a common misconception that bodies corporate and home owners' association are exempt from income tax and some

trustees further believe that a body corporate or home owners' association does not need to register as a taxpayer. (Whilst we refer to bodies corporate in the rest of this article, the matters discussed apply equally to home owners' associations.)

Even though levy income is exempt in terms of sections 10(1)(e)(i) and 10(1)(e)(ii) of the Income Tax Act, every body corporate is required to register as a taxpayer. The body corporate will then automatically qualify for the levy income exemption but still needs to submit provisional and annual returns. Practice note 8 issued on the 26th March 2001 by SARS sets out how bodies corporate are taxed.

Prior to 26 March 2001 SARS had only taxed a body corporate on income other than levies when the body corporate reflected a surplus in the audited financial statements. However, bodies corporate started creating deficits by effecting transfers to maintenance reserves to cover future maintenance. Whilst this is a good practice in terms of financial planning, SARS saw this as a way of avoiding tax and implemented practice note 8.

In terms of practice note 8 all income other than levies, earned by the body corporate, such as interest, including interest and penalties on late payments, as well as rentals, such as rentals from cell phone companies,

are taxable. Some bodies corporate have clubhouse and restaurant facilities, and income earned from these is also taxable. These incomes are taxable irrespective of whether or not the body corporate has incurred a deficit.

Given this, a body corporate is liable to file a return as soon as they earn any form of income not considered a levy. In effect this means that all bodies corporate should register as a taxpayer as soon as the scheme is registered. Where a body corporate has not yet registered, SARS has been shown to be understanding, and in certain cases has waived penalties, provided that the taxpayer "comes clean". The body corporate is then taxed from date of establishment.

This could have financial implications for body corporate, but the consequences of SARS catching up with the body corporate are far more severe. Firstly, the tax penalty could be as high as 200%. Secondly any request for penalties to be waived would be ignored, and thirdly, the trustees could find themselves facing criminal prosecution.

Whilst people generally do not like paying tax, it is not wise for trustees to treat the taxation of bodies corporate as they might their own tax affairs. Trustees have a fiduciary responsibility to the body corporate and any liability arising out of non-registration, or tax avoidance, could negate the indemnity afforded by the Sectional Titles Act, or any constitution in terms of a home owners' association, and could be recovered by members from the trustees in their personal capacities.

From a practical point of view, a body corporate needs to pay 2 provisional tax payments, the first determined six

months into the new financial year, the second at financial year-end. To prevent s89 quat interest, the body corporate must ensure that the provisional payments are not too low in relation to the final tax liability determined when the financial statements are prepared.

The tax return is due 60 days after the financial year-end, but SARS generally grants extensions of up to a year where the tax affairs of the body corporate are up to date. It is usually not possible for the body corporate to have audited financial statements that have been approved by the trustees within 60 days, and so it would be wise to apply for the extension timeously. Trustees must ensure that they sign the financial statements in good time, to ensure that the tax return can be submitted; SARS insists on approved and signed financial statements.

We remind all trustees that in terms of section 101 of the Income Tax Act, every taxpayer must appoint a public officer. This is an important function as this person is legally responsible for the tax affairs of the body corporate, and is possibly the first person who faces arrest should any aspect of the tax matters are not in order. In practice, the public officer is usually the person you have appointed to attend to your tax affairs.

SARS continues to be successful with tax compliance initiatives and it is only a matter of time before their focus shifts to the sectional title and cluster housing industries. Trustees are urged to ensure that the body corporate is registered as a taxpayer and that all the required returns have been submitted as soon as possible. Trustees should also not assume that a body corporate is registered as a taxpayer because the financial statements reflect a tax charge; this may be the accounting treatment and does not necessarily mean that the body corporate is registered.

Q & A WITH THE PROFESSOR



Graham Paddock is a sectional title specialist attorney, author and lecturer. He is an adjunct Professor at the University of Cape Town.

Question on Management Agreements:

A month-to-month agreement for managing buildings is really not working for any of us managing agents.

It is virtually impossible to get a resolution passed by the Trustees to sign a contract for a twelve month period, which seriously affects our nerves and budget. There are so many managing agents nowadays in the field and poaching is very common. We really need some proper protection to secure our business.

Please tell me what is going to be done about this.

Answer:

Your concern is shared by many other managing agents.

At the May 2006 meeting of the Sectional Titles Regulations Board and at the suggestion of the National Association of Managing Agents it was decided to recommend to the Minister of Land Affairs that prescribed man-

agement rule be further amended to restore the automatic 'year-to-year' renewal of a managing agent's contract in the absence of a contrary decision by the body corporate. At the same time the Board addressed the issue of managing agency contracts being made difficult to cancel by the incorporation of a clause which required that resolutions of owners, for example a special resolution, was required to cancel the contract.

The Board resolved that Prescribed Management Rule 46 be amended to read as follows:

"46. (1) Notwithstanding anything to the contrary contained in rule 28, and subject to the provisions of section 39 (1) of the Act, the trustees may from time to time, and shall if required by a registered mortgagee of 25 per cent of the units or by the members of the body corporate in a general meeting, appoint in terms of a written contract a managing agent to control, manage and administer the common property and the obligations to any public or local authority by the body corporate on behalf of the unit owners, and to exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor or caretaker : Provided that a managing agent shall be appointed for an initial period of one year and thereafter such appointment shall be automatically renewed from year to year unless the body corporate notifies the managing agent to the contrary: Provided further that notice of termination of the contract may be given by the trustees in accordance with a resolution taken at a trustee meeting or as directed by an ordinary resolution of the general meeting."

Restating the aspects relevant to this query in simple terms, this means that in terms of the expected amendment:

1. When trustees appoint a managing agent, either on their own initiative or as directed by owners or bondholders, they must do so in terms of a written contract.
2. A managing agent's appointment is automatically renewed for a year at a time, but if before the automatic renewal date the body corporate tells the managing agent that there will be no renewal, the contract lapses at the end of the year-long period.
3. The trustees can at any time decide by majority vote to give the managing agent notice that the contract is terminated or will not continue after its renewal date and the owners may make such a decision by ordinary resolution.

I expect that the notice necessary to give effect to this proposed amendment will be published sometime in 2007.

The process of amending the prescribed rules involves the Board's proposed wording being checked by legal advisers within the Department of Land Affairs and, at a later stage, the text being considered by a Parliamentary Select Committee. So it is possible that the wording set out above will be changed. But it is unlikely that the principle will be amended.

Thanks to NAMA, I believe that both managing agents and schemes will soon benefit from a more stable contractual relationship.

UNIVERSITY TRUSTEE TRAINING AVAILABLE NATIONALLY

The University of Cape Town, in conjunction with Paddocks Learning and accredited Facilitators throughout the country is now offering a course leading to the UCT Sectional Title Trustee Certificate.

The management of 'schemes' by Trustees under the Sectional Titles Act, 1986 ('the Act') is an increasingly complex task, requiring a specialist knowledge

This three module course, offered by an accredited Facilitator during several contact sessions, introduces students to the legal aspects of scheme management and equips them to perform a Trustee's role in the management of schemes.

The courseware has been compiled by sectional title specialist Professor Graham Paddock.

The core components of the trustee training course are:

1. Overview of Sectional Titles
2. Legal and Financial Management and
3. Physical and Administrative Management

Delivery of the course involves a number of separate contact sessions after which an exam is written.

All passing students receive a Certificate of Competence from the University of Cape Town.

For more information or to book a place on the next

Trustee Certificate course, please contact one of the accredited facilitators below:

Franz Holm (Western Cape)

Tel: 021 9790285, Email: franz@holm.co.za

James Williams (Western Cape)

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PREVIOUSLY DISADVANTAGED SCHEME MANAGERS GIVEN A STEP UP

Paddocks and the University of Cape Town offered 5 scholarships for previously disadvantaged individuals to attend the 6 month UCT Sectional Title Scheme Management certificate course, which began on the 4th of June 2007.

After careful consideration of over 30 applications, the scholarships were awarded to the following candidates:

Gaffee Vengadajellum, Viola Mbanga, Samuel Rakolle, Evah Mohole and Soloshini Panther.



Samuel Rakolle

Says Samuel Rakolle "It is a great honor to be awarded a scholarship to study for a Certificate in Sectional

Title Scheme Management at University of Cape Town through Paddocks Learning. This will provide me with an opportunity to understand the legal aspects, administration and management of a Sectional Title Scheme Practices."



Viola Mbanga

Another scholarship recipient, Viola Mbanga comments "I have been involved in the Property Industry part time for the past two years as a residential letting agent for a private property owner. I am humbled by the opportunity to learn more about Sectional Title Scheme Management." The course began on the 4th of June 2007.



Gaffee Vengadajellum



Evah Mohole



Soloshini Panther

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Published by **Paddocks Press**

021 674 7818



WHAT IS PADDOCKS?

Paddocks is a specialist sectional title firm providing a range of products and services through its **Learning, Consulting, Publishing,** and **Software** divisions.

Professor Graham Paddock is the head of Paddocks and is an authority on Sectional Title law and practice and an adjunct Professor at the University of Cape Town. He is the Project Manager and one of the lead consultants to the Department of Housing in the restructuring of the Sectional Titles Act and the establishment of an Ombuds Service.

Learning

Graham Paddock and his Associates have lectured on

sectional titles to undergraduate, postgraduate, professional and lay audiences.

Together with the Universities of Cape Town and Stellenbosch as well as the National Association of Managing Agents and other professional organisations, Paddocks Learning offers several sectional title certificate courses, seminars and conferences.

Consulting

Graham Paddock leads the consulting division and is assisted by his Associates, Terry Boxall and Judith van der Walt. Paddocks Consulting deliver consulting, drafting and representation ser-

vices, primarily to sectional title bodies corporate, but also to developers, owners and others involved in schemes. They consult to various levels of central and local government and act as mediators and arbitrators of sectional titles disputes. The consulting team also offer conveyancing services.

Publishing

Since 1983, Graham Paddock has written sectional title books, pamphlets and training manuals for trustees and managing agents. Paddocks Publishing sets, prints and publishes a range of electronic and 'hard copy' sectional title publications by Graham and other authors

which make Sectional Title expertise easily accessible to the South African population at large.

Software

Paddocks Software designs and manages the production and distribution of a variety of software tools which provide substantial efficiency gains to those involved in sectional title management and consulting.

Please see **www.paddocks.co.za** for more information or contact one of the Paddocks' Team on 021 674 7818.