Q&A with the Prof
By Prof Graham Paddock

Proof that body corporate is under administration

Q1. In terms of section 46 of the Sectional Titles Act, where a body corporate has been placed under administration what is the name of the document or court order that is filed at the court? Is it Body Corporate Administration Orders? I need to request the relevant documents, but I require the name of the document.

Are there any other databases that are accessible where we are able to identify all Bodies Corporate that are under administration?

A1. There is no special name for the document: it is simply an Order of the High Court issued like all other Orders, signed and sealed by the Registrar.

No, there is no central register of sectional title bodies corporate under administration, although there probably will be one once the Community Scheme Ombud Service is established and operational.

Deposits for renovations and moving in

Q2. We have just been informed that the trustees decided that, in future, a deposit of R5,000 will be required for all renovations and a deposit of R5,000 will be required for anyone who wants to move in or out of our block. The building manager will determine how much of this deposit will be returned.

Can the trustees create these rules without them being discussed at a body corporate AGM? How are we to know that the building manager won't just decide he does not like the person and will therefore penalise them for whatever he feels?

A2. The trustees are not entitled to simply make a provision of this sort.

While it is possible for a body corporate to make a management or conduct rule that requires a deposit to serve as security against damages that might be caused to the common property during renovations within sections or on exclusive use areas, a rule of the sort would have to be reasonable and apply equally to the owners of all sections in accordance with the requirements of section 35 of the Act. A provision that the supervisor will determine how much of the deposit will be returned seems, at first glance, to be completely unreasonable.

Changing Managing Agent

Q3. I am a trustee in a small block. We have decided to cancel the contract of our MA because we cannot work with him any longer. Our last trustee meeting was on 5 September and we have still not received the minutes of that meeting. We have sent him two letters to remind him of this but he has ignored them. He does not return calls or reply to emails; he is always busy.

Our financial year ends on 31 August, so we are due to have an AGM with a budget of income and expenses for the next financial year. We want to terminate his contract with a two-month notice period. Is this advisable? Can we expect our MA to prepare our budget and our AGM? Thank you for your advice in advance.

A3. If the majority of the trustees feel that they can no longer work with the current managing agent, they must do something about that situation. If your current managing agent is a one-man show, then you probably have no choice but to terminate the contract and find another. On the other hand, if your current managing agent is a large organisation that could possibly assign another portfolio manager to your scheme, it would make sense for you to investigate this possibility before terminating the contract. Very often, the agent’s work over previous years and his or her knowledge of the scheme are valuable and it can take time for a new managing agent to build a similar understanding of the scheme.

If you decide that the scheme does need a new managing agent, the process of calling for proposals from prospective replacement managing agents is one that should be handled carefully. I suggest that

you start by listing the services you expect the managing agent to perform and then talking to three independent managing agencies who operate in your area and ask them to make written proposals for the work, bearing in mind that they may have to take over at a time when the body corporate books have not been written up and that there might be some resistance from the current managing agent.

Professor Graham Paddock is an authority on sectional title law and practice. He is one of the Course Conveners of the University of Cape Town (Law@Work) Sectional Title Scheme Management course. Late registrations will be accepted. Please contact Kate: kate@paddocks.co.za or see www.paddocks.co.za.

UCT (Law@Work) Sectional Title Scheme Management course: http://www.paddocks.co.za/uct-sectional-title-scheme-management