Creating a home owners' association
By Anton Kelly

Most new residential properties in South Africa are developed either as a sectional title scheme or as a home owners' association. Complexes, gated villages and cluster developments are names most commonly used to refer to these types of developments. They can be quite small, consisting of as few as eight or nine dwellings, perhaps in a single block, or they can be very large with hundreds of houses and incorporate golf courses, tennis clubs and the like. When people want to own their piece of land but want to live in a community development, the home owners' association is the answer.

How is a home owners' association (HOA) created? There are three main steps.

Step 1

Firstly, the properties that are to be managed by the association must be created. This usually involves the subdivision of a large parcel of land into the separate lots or erven that will be individually owned. One or some of these individual parcels of land will be owned by the association and will be "communal property": the entrance and interior roads, and perhaps gardens in the simpler developments. One of the conditions of the subdivision approval will be that the new township be managed by an HOA.

Step 2

Secondly, the HOA must be created as a legal entity independent of its members. This condition will allow it to own the communal property and do everything necessary to manage the development as the owners of the individual properties change from time to time. This legal entity is usually established in one of two ways: either as a non-profit company in terms of section 21 of the Companies Act, or as a common law association.

The non-profit HOA company is constituted and registered like any other non-profit company; there are no special requirements for its registration simply because it will serve as the management body of an HOA. Common law HOAs are established when two or more people formally agree that it be established. There are no registration formalities; its terms are laid out in its constitution, which is signed by its founding members.

Step 3

The third part of the process is the transfer of the individual properties from the developer to the new owners and the registration of the title deed conditions that are necessary to bind those owners to the HOA. These conditions make the owners members of the HOA and they are therefore liable for levies and must also obey the rules of the association.

Anton Kelly is one of the Course Conveners of the Paddocks Home Owners' Association Management course. The next course starts 21 February 2011. For more information please contact Kate: kate@paddocks.co.za or go to www.paddocks.co.za

Home Owners' Association Management course:
http://www.paddocks.co.za/hoa-management.