



• [Home](#)

• [See our](#)

[courses](#)

• [Courses](#)

• [Who are we?](#)

• [Student Login](#)

• [Contact us](#)

• [Contact us](#)

• [Property Development](#)

• [Bookkeeping](#)

• [Specialist Realtor](#)

• **Publications**

• [Sectional Title Survival Manual](#)

• [Paddocks Press Newsletter](#)

• **Software**

• [Searchable Act](#)

• [Sectional Titles Online](#)

Looking Back at 2009 - a Sectional Title Retrospective

[Print](#) [Send to a Friend](#)

As we approach the end of 2009 it is interesting to look back and consider what issues have arisen in the Sectional Title industry over the past 12 months. Here are some:



When will the provisions in the Sectional Titles Amendment Bill 2009

become law?

It could be at any time. The Bill was published for public comment and the inputs received have probably been analysed by now and some of them translated into amendments. The revised Bill will be published again when it is introduced to Parliament, but there is no way of knowing exactly when that will happen.

Are owners in arrears with levies protected by the consumer protection provisions in the National Credit Act?

Good question! Whereas the general view has been that the raising of levies, even if payable in

Previous Editions



Click on a link below to download previous editions:

[November 2009 Edition](#)

[October 2009 Edition](#)

[September 2009 Edition](#)

[August 2009 Edition](#)

[July 2009 Edition](#)

[June 2009 Edition](#)

[May 2009 Edition](#)

[April 2009 Edition](#)

[March 2009 Edition](#)

[February 2009 Edition](#)

[January 2009 Edition](#)

[December 2008 Edition](#)

[November 2008 Edition](#)

[October 2008 Edition](#)

[September 2008 Edition](#)

[August 2008 Edition](#)

[July 2008 Edition](#)

- **Other**

installments, is not the granting of credit, there do seem to be indications that in some circumstances an owner debtor could force the body corporate to 're-schedule' the debt.

- Free advice

- Meet the Team

The mischief, of course, is that other owners then have to find the cash to pay body corporate debts if they are to avoid very substantial penalties imposed by its creditors, and if the levy collection process is delayed for a substantial number of owners, the scheme could face commercial insolvency.

Contact Us

- Name:

During the recent Information Sessions it was asked whether the CSOS could not also deal with levy claims by body corporates against defaulting owners as this is apparently the most pressing problem, particularly for inner-city and low-cost housing schemes... Interesting!

- Email:

Are Managing Agents 'debt collectors' for the purposes of the Debt Collectors Act?

Well, the National Association of Managing Agents (NAMA) has a number of legal opinions saying that they are, so they need to register as such and open a separate trust account for this purpose and they are limited to the prescribed charges for various debt collection activities. And the National Credit Regulator's arbitrator agrees with this view, having found a number of managing agents guilty of contravening the NCA because they charged higher amounts for their services.

- Phone:

- Message:

The NAMA suggests that registration as a debt collector is not too onerous a task and the hassle of registration may be offset by the profits that can be earned from this activity. It has offered to advise its members how best to handle this process. But the issue is not entirely clear yet. Perhaps developments during 2010 will bring us the required certainty.

- Preferred method of contact:

Email Phone

Should the CSOS regulate Managing Agents?

The NAMA thinks so and have made this comment at all the Information Sessions held for the STSM (Sectional Title Scheme Management) and the CSOS (Community Scheme Ombud Service) Bills.

This indicates the level of frustration in the industry at the fact that neither the Estate Agency Affairs Act nor the regulations under it have been amended to regulate the full scope of managing agency activities or to adopt the Code of Conduct developed by the NAMA for managing agents.

While the estate agency profession is moving towards a proper system of professional examinations designed to ensure that those who offer property brokerage and leasing services are properly qualified,

[June 2008 Edition](#)

[May 2008 Edition](#)

[April 2008 Edition](#)

[March 2008 Edition](#)

[February 2008 Edition](#)

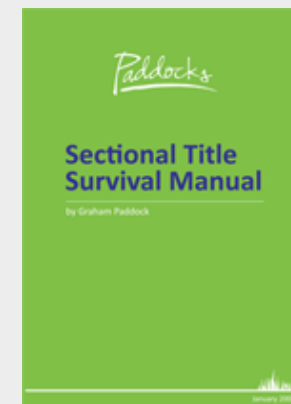
[January 2008 Edition](#)

[December 2007 Edition](#)

[August 2007 Edition](#)

[June 2007 Edition](#)

[May 2007 Edition](#)



South Africa's **leading sectional title guide**. Now only **R265** including postage and packaging to anywhere in South Africa.

[Click here to order](#)



managing agents have apparently been left out in the cold.

It is thought that the CSOS will better understand the managing agency profession and be able to regulate it. It is argued that it could also easily develop the capacity to hear cases against managing agents accused of professional misconduct, this being a species of dispute resolution procedure for which it is designed.

We await the Ministry of Human Settlements decision in this regard with interest.

When will the CSOS come into operation and where will its offices be situated?

In a Personal Finance article published on 5 December 2009 the Department of Human Settlements' spokesperson, Chris Vick, is quoted as saying that the Department hopes to introduce the CSOS Bill in Parliament by the end of June 2010. The suggestion is made that the service could be up and running by early 2011.

While nothing is certain as yet, the service is likely to have a head office in Pretoria, a first pilot regional office in Gauteng and then two further regional offices in the Western Cape and Kwa-Zulu/Natal.

How and when will the Department of Human Settlements make sectional title tenure more suitable for housing delivery?

Probably in 2011. As readers know, the STSM Bill deals only with moving the current provisions relevant to governance of sectional title schemes to another statute under the oversight of the Department of Human Settlements. But it is clear that the Department understands that some work on the legislation is required to make sectional titles better suited to the housing delivery process.

While there are a number of approaches to dealing with this issue, my guess is that the ones that will receive priority are first making the legislation more understandable to the public, particularly by having the provisions re-written in plain English and without complex concepts where these are considered unnecessary. And the second priority may well be providing a framework of rules for low-cost housing developments.

[Back to Paddocks Press - December 2009 Edition](#)

Phone: +27 (0)21 674 7818 | **Fax:** +27 (0)21 671 2596 | **Email:** info@paddocks.co.za

Douglas Murray House, 18 Protea Rd Claremont 7700, Cape Town | PO Box 24058, Claremont, 7735, South Africa



• [Home](#)

• [See our](#)

[courses](#)

• [Courses](#)

• [Who are we?](#)

• [Student Login](#)

• [Contact us](#)

• [Property Development](#)

• [Bookkeeping](#)

• [Specialist Realtor](#)

• [Publications](#)

• [Sectional Title Survival Manual](#)

• [Paddocks Press Newsletter](#)

• [Software](#)

• [Searchable Act](#)

• [Sectional Titles Online](#)

Extracts from the Law of Sectional Title Meetings Course notes



Print



Send to a Friend

By the Paddocks Training Team

The role of Managing Agents in sectional title meetings

1. Have the scheme's governance documents available

Managing agents perform a paralegal role in bringing professional expertise and support for the operations of the trustees and owners in meetings. In order to give good advice, they need to have available certain basic information so that they can apply their expertise to the specifics of the scheme concerned. This information includes:

2. Understand the scheme's finances

The trustees will almost certainly be relying on your understanding of the scheme's financial affairs and your advice in this regard. Even if you do not handle the bookkeeping aspects of a scheme, you should have the latest management report and most recent financial statements available whenever you give the trustees financial advice.

3. Be Mr/Ms FixitAll, not Mr/Mrs KnowitAll

Be careful not to be seen to give financial, engineering or legal advice. Because of your experience in running sectional title schemes, it is appropriate for you to have opinions and to voice them. But you need to qualify those opinions in order to avoid liability in the event that the results of actions taken on

Previous Editions



Click on a link below to download previous editions:

[November 2009 Edition](#)

[October 2009 Edition](#)

[September 2009 Edition](#)

[August 2009 Edition](#)

[July 2009 Edition](#)

[June 2009 Edition](#)

[May 2009 Edition](#)

[April 2009 Edition](#)

[March 2009 Edition](#)

[February 2009 Edition](#)

[January 2009 Edition](#)

[December 2008 Edition](#)

[November 2008 Edition](#)

[October 2008 Edition](#)

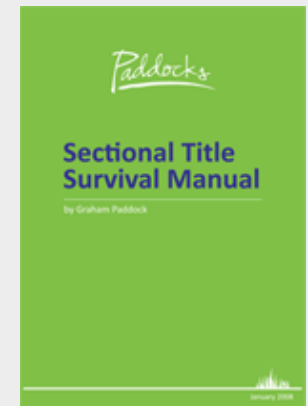
[September 2008 Edition](#)

[August 2008 Edition](#)

[July 2008 Edition](#)

<ul style="list-style-type: none"> • Other 	<p>your advice prove unsatisfactory.</p>
<ul style="list-style-type: none"> • Free advice 	<p>Say “I am no expert on... but in my view you should think about...” and “My initial views are ... but you</p>
<ul style="list-style-type: none"> • Meet the Team 	<p>may want to get some professional advice on this issue.” You may know that the trustees or owners will</p>
<p>Contact Us</p>	
<ul style="list-style-type: none"> • Name: 	<p>Nobody ever became less popular by saying “I am no lawyer, but ...”.</p>
<ul style="list-style-type: none"> • Email: 	<p><u>Student Feedback</u></p>
<ul style="list-style-type: none"> • Phone: 	<p>Bridget Bakker, Managing Agent.</p>
<ul style="list-style-type: none"> • Message: 	<p><i>“I am a managing agent and was not very clear on the procedure of meetings. I feel confident that I know far more now and that I have the notes as backup. Due to the in-depth course content, I feel confident that I could answer most questions asked of trustees about procedures of meetings.”</i></p>
<ul style="list-style-type: none"> • Preferred method of contact: 	<p>Val Thompson, Trustee.</p>
<ul style="list-style-type: none"> • Email 	<p><i>“I am most appreciative of the in-depth approach that the Law of Meetings has afforded me. In future meetings won't pass in a lurching blur but will be very firmly on track and structured.”</i></p>
<ul style="list-style-type: none"> • Phone 	<p>Click here for for more student feedback.</p>
<ul style="list-style-type: none"> • 	<p>The next presentation is due to start on the 15th of March 2010. For further information on the course please click here.</p>
<ul style="list-style-type: none"> • 	<p>Back to Paddocks Press - December 2009 Edition</p>

- [June 2008 Edition](#)
- [May 2008 Edition](#)
- [April 2008 Edition](#)
- [March 2008 Edition](#)
- [February 2008 Edition](#)
- [January 2008 Edition](#)
- [December 2007 Edition](#)
- [August 2007 Edition](#)
- [June 2007 Edition](#)
- [May 2007 Edition](#)



South Africa's **leading sectional title guide**. Now only **R265** including postage and packaging to anywhere in South Africa.

[Click here to order](#)



Phone: +27 (0)21 674 7818 | Fax: +27 (0)21 671 2596 | Email: info@paddocks.co.za

Douglas Murray House, 18 Protea Rd Claremont 7700, Cape Town | PO Box 24058, Claremont, 7735, South Africa



• [Home](#)

• [See our](#)

[courses](#)

• [Courses](#)

• [Who are we?](#)

• [Student Login](#)

• [Contact us](#)

• [Property Development](#)

• [Bookkeeping](#)

• [Specialist Realtor](#)

• [Publications](#)

• [Sectional Title Survival Manual](#)

• [Paddocks Press Newsletter](#)

• [Software](#)

• [Searchable Act](#)

• [Sectional Titles Online](#)

Distinguishing between "improvements" and "maintenance and repair" in sectional title schemes

[Print](#) [Send to a Friend](#)

By **Jennifer Paddock**



In terms of **section 37(1)(j) of the Sectional Titles Act 95 of 1986** ("the Act"), the body corporate is obliged to maintain and repair the common property and the trustees do not need the permission of the owners in general meeting before they decide to do so. However, they are not entitled to effect improvements to the common property without first consulting owners. In terms of prescribed management rule ("**PMR**") **33(1)**, a unanimous resolution must be obtained before a luxurious improvement to the common property can be effected (or removed). In terms of **PMR 33(2)**, a special resolution is required to authorize a non-luxurious improvement (or its removal) should any owner request a special general meeting to discuss the trustees' proposal.

It can be difficult to distinguish between maintenance and repairs on the one hand, and improvements on the other. In a situation where the trustees are unsure of the nature of the proposed work they will be uncertain whether the particular expense requires the owners' permission or not. Take for example the issue of replacement. If a scheme's building has old wooden window frames which are clearly in need of replacement, would replacing them with longer lasting and less maintenance-intense aluminium frames be considered an improvement to the common property or could it be considered

Previous Editions



Click on a link below to download previous editions:

- [November 2009 Edition](#)
- [October 2009 Edition](#)
- [September 2009 Edition](#)
- [August 2009 Edition](#)
- [July 2009 Edition](#)
- [June 2009 Edition](#)
- [May 2009 Edition](#)
- [April 2009 Edition](#)
- [March 2009 Edition](#)
- [February 2009 Edition](#)
- [January 2009 Edition](#)
- [December 2008 Edition](#)
- [November 2008 Edition](#)
- [October 2008 Edition](#)
- [September 2008 Edition](#)
- [August 2008 Edition](#)
- [July 2008 Edition](#)

• **Other**

• Free advice

• Meet the Team

Contact Us

• Name:

• Email:

• Phone:

• Message:

• Preferred method of contact:

Email Phone

maintenance and repair? Professor CG van der Merwe in his work Sectional Titles, Shareblocks and Time-Sharing (LexisNexis) speaks about 'non-recurring costly items' which can only, with difficulty, be categorised as either maintenance and repair or improvements. The replacement of wooden window frames with aluminium ones seems to be such an item. You may think that maintenance and repair does not include replacement and therefore such work must be considered to be an improvement to the common property. But this is not necessarily true. The Act envisages replacement when necessary as part of the body corporate's duty to maintain and repair pipes, wires, cables and ducts; so is it really a stretch to say that maintenance and repair can include replacement? You may then argue that because the window frames are being replaced with a higher quality and more expensive material that this is an improvement. But this is not necessarily the case. **The trustees may have taken a long-term attitude towards the maintenance and repair** of the window frames by replacing the wooden frames with aluminium ones. Such replacement would prevent the window frames from having to be replaced and constantly maintained in the foreseeable future, so this attitude could in fact be a cost-saving one.

Professor CG van der Merwe states that "*rapid technological advance and new building designs and materials may widen the traditional concept of maintenance*". He asks the question "Is the replacement of a defective lift by a more modern type an improvement or does it fall under maintenance of the common property?". In van der Merwe's view "*the problem of distinguishing between these two concepts becomes even more involved if it is regarded as a question of fact which is to be resolved in each instance by reference to the characteristics and nature of the scheme and the social and economic position of the occupants*".

So how does one distinguish between an item that is considered to be an improvement and one that is considered maintenance and repair? In our view one must consider the utility and the cost of the item. An item would be maintained or repaired if the work done results in the item having the same utility as it had before it was fixed/replaced and if the cost of the work/replacement is roughly the same as it has been in the past taking inflation into account. An item would have been improved if the trustees decide to significantly increase the utility of the item despite the fact that it is possible to fix/replace the item with material that has the same utility.

In some instances the case is clear cut, for example modernising a perfectly functional foyer area purely because the residents feel it is out-dated. This is clearly an example of an improvement to the

[June 2008 Edition](#)

[May 2008 Edition](#)

[April 2008 Edition](#)

[March 2008 Edition](#)

[February 2008 Edition](#)

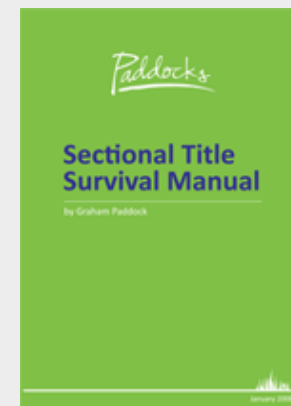
[January 2008 Edition](#)

[December 2007 Edition](#)

[August 2007 Edition](#)

[June 2007 Edition](#)

[May 2007 Edition](#)



South Africa's **leading sectional title guide**. Now only **R265** including postage and packaging to anywhere in South Africa.

[Click here to order](#)



common property because the foyer works and does not require attention. However, there are often times when it is not so clear. The attitudes of investor-owners often differ vastly from resident-owners and the owners will argue one way or the other to further their differing agendas. Because the Act and prescribed rules do not guide us on how to distinguish between maintenance and repairs and improvements, owners use their own value judgments to try and resolve the matter.

When disputes arise in this regard the owners may face a deadlock situation as the cost of resolving the dispute is likely to far outweigh the cost of maintaining, repairing or improving the item in question. A practical way which would allow the trustees to move forward in this situation is for the owners in general meeting to give to them a direction in terms of **section 39(1) of the Act** by majority vote as to how to treat the proposed work. However, this would not necessarily resolve the issue and an owner who disagreed with the direction could still initiate arbitration proceedings if s/he felt it necessary.

[Back to Paddocks Press - December 2009 Edition](#)

Phone: +27 (0)21 674 7818 | Fax: +27 (0)21 671 2596 | Email: info@paddocks.co.za

Douglas Murray House, 18 Protea Rd Claremont 7700, Cape Town | PO Box 24058, Claremont, 7735, South Africa



• [Home](#)

• [See our](#)

[courses](#)

• [Courses](#)

• [Who are we?](#)

• [Student Login](#)

• [Contact us](#)

• [Property Development](#)

• [Bookkeeping](#)

• [Specialist Realtor](#)

• **Publications**

• [Sectional Title Survival Manual](#)

• [Paddocks Press Newsletter](#)

• **Software**

• [Searchable Act](#)

• [Sectional Titles Online](#)

Sealants and goalies – One and the same



Print



Send to a Friend

By Rob Paddock



In this article for Paddocks Press, we will be looking at sealants. If sealants were to be personified, they would most certainly be the goalie of a winning team on the soccer field - the ultimate defender. The main purpose of using sealants on the building envelope of your sectional title scheme is to fill joints and gaps between different building materials and to form a seal that keeps air infiltration and water penetration at bay.

Unlike the striker in a big game (which one might personify as a fresh coat of paint in maintenance terms) goalies receive very little glory when compared to other players. However, should they fail to do their job due to poor performance or a lack of fitness, the team will most certainly suffer a great defeat, even if the teams star performers are still scoring goals.

Whilst sealants might seem like a small detail on the outside of your schemes building, they can contribute to the development of large problems if they fail and allow moisture to get into the walls.

What are sealants?

Sealants are glue-like materials capable of being shaped or formed, and are generally used between different components of the building envelope. Sealants can provide seals around windows, doors and other types of penetrations such as pipes and chimneys. Sealants generally contain inert filler material

Previous Editions



Click on a link below to download previous editions:

[November 2009 Edition](#)

[October 2009 Edition](#)

[September 2009 Edition](#)

[August 2009 Edition](#)

[July 2009 Edition](#)

[June 2009 Edition](#)

[May 2009 Edition](#)

[April 2009 Edition](#)

[March 2009 Edition](#)

[February 2009 Edition](#)

[January 2009 Edition](#)

[December 2008 Edition](#)

[November 2008 Edition](#)

[October 2008 Edition](#)

[September 2008 Edition](#)

[August 2008 Edition](#)

[July 2008 Edition](#)

• **Other**

• Free advice

• Meet the Team

Contact Us

• Name:

• Email:

• Phone:

• Message:

• Preferred method of contact:

Email Phone

•

and are usually formulated with an elastomer to give the required flexibility and elongation. They usually have a paste consistency to allow filling of gaps between substrates. Low shrinkage after application is often required. They quickly cure and transform into a flexible semi-solid material that reduces the flow of water, air and dust.

Sealants can allow for slight movement of different parts of the building envelope caused by changing temperatures, strong winds or humidity. Most building materials joined by sealants will expand when getting warmer or wetter, and shrink when cooling off or drying out. Sealants help to ensure that the building envelope functions properly in these changing conditions. To perform such duties, sealants must be able to:

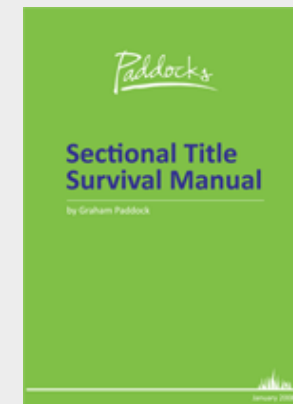
1. **resist** exposure to water, sunlight and temperature variations;
2. **bond** to surfaces with sufficient strength; and
3. **accommodate** movement of building materials.

Types of sealants

With so many products to choose from, selecting the right building sealant may seem like a daunting task. Applying the correct sealant in the wrong manner, or selecting the wrong building sealant can have serious consequences. The following table is by no means an exhaustive list of sealants available, but will give you an idea of the most popular types of sealants and their specific applications:

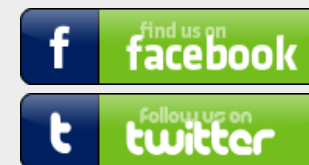
Sealant type	Features	Generally used
Silicone	<ul style="list-style-type: none"> • Life expectancy 10 - 50 years • Normally used in wet locations • Strong and flexible over wide temperature range • Can sustain high movement in the joint • Adheres to a broad variety of materials, but picks up dust easily • Poor resistance to tearing or abrasion 	Around windows, dryer ducts, pipes

- [June 2008 Edition](#)
- [May 2008 Edition](#)
- [April 2008 Edition](#)
- [March 2008 Edition](#)
- [February 2008 Edition](#)
- [January 2008 Edition](#)
- [December 2007 Edition](#)
- [August 2007 Edition](#)
- [June 2007 Edition](#)
- [May 2007 Edition](#)



South Africa's **leading sectional title guide**. Now only **R265** including postage and packaging to anywhere in South Africa.

[Click here to order](#)



Polysulfide	<ul style="list-style-type: none">• Life expectancy 5 - 20 years• Good adhesion to steel, aluminium and glass• Can sustain medium movement in the joint• Should be sheltered from sunlight	In windows, especially sealed insulating glass units
Latex	<ul style="list-style-type: none">• Life expectancy 5 - 25 years• Only used indoors	Interior trim (should be replaced if found in exterior applications)

When choosing a sealant, make sure it has at least the following four characteristics:

1. Stability over a wide temperature range

Once fully cured, high-quality sealants perform across a range of temperatures. Select a sealant that functions reliably at temperatures outside your average temperature range to accommodate unexpected temperature changes.

2. Weather resistance and chemical stability

UV rays, radiation and weather can cause low-quality sealants to crack, disintegrate and become brittle, compromising the seal over time. Look for sealants with good resistance to these and other erosive factors. Also, some organic sealants react to atmospheric pollutants or chemicals much like iron reacts with water to produce rust. Use a sealant that does not readily degrade after prolonged contact with common elements and industrial chemicals.

3. Good bond strength

Good sealants provide durable adhesion to a variety of building materials, including glass, ceramics, wood, masonry, and many metals and plastics. A variety of factors contribute to the bond strength of individual sealants, including chemical composition, cure type and substrate penetration.

4. Low flammability

In fire conditions, some sealants are more burn resistant than others. Silicone sealants, in particular, are especially fire resistant.

Some sealants are not compatible with other sealants or with certain building materials and will react to form messy by-products. These reactions can be unpredictable and may impair the intended function of some building components. When changing a sealant type to another, special care must be taken to remove all of the old sealant residue to ensure a good bond.

Why do sealants need to be maintained?

Sealants typically last anywhere between 2 and 50 years depending on the type of product used and the sealants exposure to weather and movement. The bond between the sealant and the substrate can fail, the sealant itself can fail, or the substrate can break. To be effective, sealants rely on both their bond to the building components and their inherent flexibility. Sealants must therefore be replaced when either fails.

Although the use of sealant is inevitable on most buildings, good design tries to minimize the amount of sealant used. So, if you see sealant on your building, you should expect that it is there for a good reason and needs to be maintained.

A relatively small investment in maintaining the sealant will help to prevent damage at a particular location in your building envelope including possible damage to the wall itself. In my next article for Paddocks Press, we will look at how the maintenance of your building's sealants should be performed.

[Back to Paddocks Press - December 2009 Edition](#)

Phone: +27 (0)21 674 7818 | Fax: +27 (0)21 671 2596 | Email: info@paddocks.co.za

Douglas Murray House, 18 Protea Rd Claremont 7700, Cape Town | PO Box 24058, Claremont, 7735, South Africa



• [Home](#)

• [See our](#)

[courses](#)

• [Courses](#)

• [Who are we?](#)

• [Student Login](#)

• [Contact us](#)

• [Contact us](#)

• [Property Development](#)

• [Bookkeeping](#)

• [Specialist Realtor](#)

• [Publications](#)

• [Sectional Title Survival Manual](#)

• [Paddocks Press Newsletter](#)

• [Software](#)

• [Searchable Act](#)

• [Sectional Titles Online](#)

Guide to printing Paddocks Press

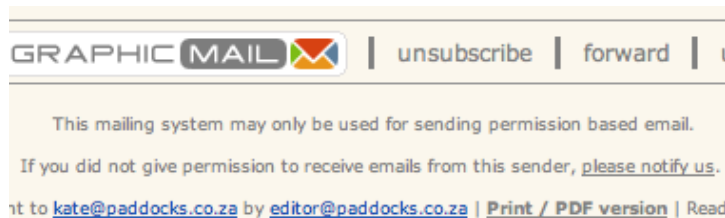
[Print](#) [Send to a Friend](#)

By the Paddocks Training Team

The format of the Paddocks Press Newsletter has recently been updated. We now offer a digital format of the newsletter and rather than a PDF document. Should you wish to PDF or print the newsletter, here are instructions to print each edition:

1. You can print a copy of the newsletter as you see it in your inbox or online:

Please scroll to the end of the page and click **Print / PDF version**. Alternatively, if you are viewing the newsletter online then select **File** then Print.



2. You can print each individual article:

At the top of the article you will see an icon **Print** indicated below. Please select this and print each article.

Previous Editions



Click on a link below to download previous editions:

[November 2009 Edition](#)

[October 2009 Edition](#)

[September 2009 Edition](#)

[August 2009 Edition](#)

[July 2009 Edition](#)

[June 2009 Edition](#)

[May 2009 Edition](#)

[April 2009 Edition](#)

[March 2009 Edition](#)

[February 2009 Edition](#)

[January 2009 Edition](#)

[December 2008 Edition](#)

[November 2008 Edition](#)

[October 2008 Edition](#)

[September 2008 Edition](#)

[August 2008 Edition](#)

[July 2008 Edition](#)

• **Other**

• Free advice

• Meet the Team

Contact Us

• Name:

• Email:

• Phone:

• Message:

• Preferred method of contact:

Email Phone

•

Chairpersons in Sectional Title Schemes

 [Print](#)  [Send to a Friend](#)

By Jennifer Paddock

The links of the newsletter will remain active on the Paddocks website indefinitely and will remain for your reference.

[Back to Paddocks Press - December 2009 Edition](#)

[June 2008 Edition](#)

[May 2008 Edition](#)

[April 2008 Edition](#)

[March 2008 Edition](#)

[February 2008 Edition](#)

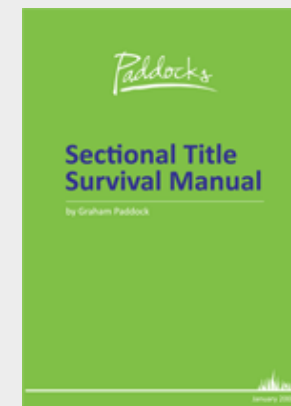
[January 2008 Edition](#)

[December 2007 Edition](#)

[August 2007 Edition](#)

[June 2007 Edition](#)

[May 2007 Edition](#)



South Africa's **leading sectional title guide**. Now only **R265** including postage and packaging to anywhere in South Africa.

[Click here to order](#)



Phone: +27 (0)21 674 7818 | **Fax:** +27 (0)21 671 2596 | **Email:** info@paddocks.co.za

Douglas Murray House, 18 Protea Rd Claremont 7700, Cape Town | PO Box 24058, Claremont, 7735, South Africa



• [Home](#)

• [See our](#)

[courses](#)

• [Courses](#)

• [Who are we?](#)

• [Student Login](#)

nt

• [Contact us](#)

• [Property Development](#)

• [Bookkeeping](#)

• [Specialist Realtor](#)

• **Publications**

• [Sectional Title Survival Manual](#)

• [Paddocks Press Newsletter](#)

• **Software**

• [Searchable Act](#)

• [Sectional Titles Online](#)

Q&A with Jennifer Paddock - 2009 12



[Print](#)



[Send to a Friend](#)

By Jennifer Paddock



Ownership of walled gardens

Q1: Are walled gardens owned by unit owners or do they form part of the common property? I own a semi-detached townhouse in a complex of 65 units and have a front garden and back garden. The complex has 2 full time gardeners who only mow lawns once a week. For the rest I obviously buy my own plants and shrubs and maintain my gardens. Are these private gardens common property? The complex has a lot of other common property. My concern is others rights to my private property.

A1: Garden areas in sectional title schemes are generally common property, which is owned by all owners in undivided shares. Whether or not the garden areas are subject to exclusive use rights is something you can determine by inspecting both the schemes rules and the sectional plan. When inspecting the scheme's rules you will be looking for rules made in terms of section 27A of the Sectional

Previous Editions



Click on a link below to download previous editions:

[November 2009 Edition](#)

[October 2009 Edition](#)

[September 2009 Edition](#)

[August 2009 Edition](#)

[July 2009 Edition](#)

[June 2009 Edition](#)

[May 2009 Edition](#)

[April 2009 Edition](#)

[March 2009 Edition](#)

[February 2009 Edition](#)

[January 2009 Edition](#)

[December 2008 Edition](#)

[November 2008 Edition](#)

[October 2008 Edition](#)

[September 2008 Edition](#)

[August 2008 Edition](#)

[July 2008 Edition](#)

- **Other**

- Free advice

- Meet the Team

Contact Us

- Name:

- Email:

- Phone:

- Message:

- Preferred method of contact:

Email Phone

-

...the removal of those (and they) granting exclusive use rights in favour of the owners of particular

sections. When inspecting the sectional plan you will be looking at whether or not the garden areas are marked as exclusive use areas. If they are then the owners who benefit from those rights have exclusive use rights granted in terms of section 27 of the Act. Section 27 exclusive use rights are different to section 27A exclusive use rights in that they can be bonded.

If the garden areas are exclusive use areas then although all owners actually own the gardens in undivided shares, the usage of those gardens is limited to the holders of the exclusive use rights. If the garden areas are not exclusive use areas then they are unregulated common property, owned by all owners in undivided shares, and theoretically all owners are able to use them. The fact that the gardens are walled off means that these areas are inaccessible to other residents in the scheme and that the owner of the section next to the walled off garden area has what is called de facto or 'factual' exclusive use of the area. If this is the case this situation should be regularised so that the owners are granted de lege or legal exclusive use rights either in terms of section 27 or section 27A of the Act.

Parking problems

Q2: One owner has three cars. One is parked in his parking bay and the other two in visitors' bays. One of the cars parked in a visitor's bay is not mobile. Do the trustees have the authority to remove this car?

A2: According to municipal regulations, a certain number of visitors' parking bays must be available for visitors to each sectional title scheme. Parking an immobile vehicle in a visitor's bay is an effective breach of the municipal regulations.

Prescribed conduct rule 3(2) allows the trustees to remove or tow away a vehicle that is parked without their consent or has been abandoned on the common property, at the risk and expense of the owner of the vehicle. Based on this rule, the trustees may consider employing the services of a towing company that has a secure storage facility to remove the vehicle. However, implementing this rule is not always simple, as the trustees would most likely have to pay the towing company upfront and then attempt to recover this expense from the owner concerned. There is also the possibility that the vehicle may not be claimed.

I would suggest that before the trustees consider having this vehicle removed or towed they speak to

[June 2008 Edition](#)

[May 2008 Edition](#)

[April 2008 Edition](#)

[March 2008 Edition](#)

[February 2008 Edition](#)

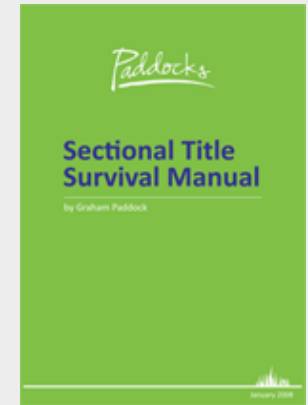
[January 2008 Edition](#)

[December 2007 Edition](#)

[August 2007 Edition](#)

[June 2007 Edition](#)

[May 2007 Edition](#)



South Africa's **leading sectional title guide**. Now only **R265** including postage and packaging to anywhere in South Africa.

[Click here to order](#)



municipal regulations. If that does not produce results then the next step would be a letter demanding that the car is removed failing which the trustees can arrange for it to be towed.

Blocked sewerage pipes

Q3: My sewerage pipe has now been blocked 3 times in the last year. I have just found out that my neighbour is on the same sewerage line in a sectional title complex. Who is responsible for payment?

A3: In terms of the provisions of the Sectional Titles Act 95 of 1986, the law relating to pipes in sectional title schemes is as follows:

1. If the pipe is part of your section it is your responsibility unless the pipe serves a number of parts of the scheme (ie. more than one section), then it is the body corporate's responsibility.
2. If the pipe is outside your section (ie. on the common property) the body corporate must maintain and repair it even if it only serves your section.

From your question it sounds as if the sewerage pipe serves your section as well as your neighbour's section and therefore I am assuming that the pipe serves more than one section. Based on the principles set out in 1 and 2 above, whether this pipe forms part of your section or it forms part of the common property, the body corporate is responsible to maintain it as it serves more than one section.

[Back to Paddocks Press - December 2009 Edition](#)

Phone: +27 (0)21 674 7818 | Fax: +27 (0)21 671 2596 | Email: info@paddocks.co.za

Douglas Murray House, 18 Protea Rd Claremont 7700, Cape Town | PO Box 24058, Claremont, 7735, South Africa