Q&A with Jennifer Paddock - 2010 02
By Jennifer Paddock

Non-owner as chairperson?

Q1: Hi Jennifer - I'd like to know if - by law - the chairperson of the Body Corporate has to be an owner, or can s/he be a Tenant.

A2: Neither the Sectional Titles Act of 1986 nor the prescribed rules specifically require the chairperson of a body corporate to be an owner in the scheme. However, the chairperson has to be chosen from the scheme's trustees and according to prescribed management rule 5 the majority of trustees must be owners or spouses of owners. Therefore the chairperson may be a non-owner trustee but the majority of the trustees must be owners or spouses of owners.

Pipe problems

Q2: Hi. My sectional title units consist of two sections converted into one. My scullery was previously a bathroom that was converted by the previous owners. I have been living here for about 3+ years. The problem is that the water that was going out from my scullery has been leaking into the flat below and dampening the walls to the section next to mine. After many visits from plumbers etc, one plumber managed to sort out the problem. He said that there was a blocked pipe therefore the water wasn't going through and because of the previous renovation, the other end of the pipe was not sealed hence it started leaking out that way because it could go through the block. Please advise if I am responsible for the damage seeing as the blocked pipe was an outlet pipe & the renovations were done before I bought the place.

Is the body corporate not responsible for the pipes in the walls? Please help me.

A2: The law relating to pipes in sectional title schemes is as follows:

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

I suggest you find out whether the pipe forms part of the common property, in which case it is the body corporate's responsibility, or whether it forms part of your section. If it forms part of your section and only serves your section then you are responsible for it but if it forms part of your section and serves more than one section then the body corporate is responsible for it.

If you do find that the pipe forms part of your section and only serves your section, the fact that the previous owners effected the renovations does not mean that you are not responsible to repair the pipe. When you purchase a property you 'inherit' any defects in it from the previous owner. You may have a contractual claim against the previous owners for any money you spend on rectifying the defect but the chances are that the legal costs of pursuing such a claim may well outweigh the amount of the claim.

Unnecessary special levies?

Q3: Hi. We received a letter informing us of a special levy for 6 months starting from the end of February 2010. The reason for this is because they want to paint our complex. There is no paintwork required. They did the painting of the gutters etc last year in November 2009. Is this allowed? The trustees did not circulate the quotes and the letter informed us they have been looking for contractors for the past 6 months.

A3: In terms of prescribed management rule 31(4) the trustees may from time to time raise special levies without consulting owners when it is necessary and when the expense has not been budgeted for. Painting of the scheme's building is an expense which is usually considered to be maintenance of the common property and this expense is usually budgeted for under the maintenance item of the annual budget. If painting of the building was included in the last annual budget and you believe that repainting the building is not necessary then you may want to inform the trustees that you believe they have irregularly raised the special levy. If they disagree with you then your recourse is not to withhold payment of the levy as this may ultimately end up costing you more in terms of interest and legal fees, but you can consider initiating arbitration against the body corporate. However, before you declare a dispute in this regard I suggest you obtain legal advice from an attorney who is well versed in sectional title matters. You may find that the legal costs involved in arbitration outweigh the costs of the special levy.

Jennifer Paddock is a sectional title expert and teacher at Paddocks. Feel free to visit the website at www.paddocks.co.za for a schedule of training courses, or for free sectional title advice go to www.sto.co.za

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