



PRESS

TRUSTEES RESPONSIBILITIES REGARDING SECTIONAL TITLE INSURANCE

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By Mike Addison



In this article we explain how trustees can ensure they are fulfilling their statutory obligations regarding sectional title insurance.

The first thing newly elected trustees should do is to vote for a chairperson and the second thing is to check their complex's insurance. How so?

Well, the Sectional Titles Act provides that a body corporate shall be managed and controlled via management and conduct rules, either as prescribed by regulation or as amended by the body corporate itself. The Sectional Titles Act is very clear on the four statutory functions of a

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body corporate in respect of insurance.

Simply put, the functions are to:

1. Insure the building or buildings to their replacement value against fire and other risks as may be prescribed, and to keep the building or buildings insured to their replacement value;
2. Insure against any other risks that the owners determine by special resolution;
3. Use any insurance policy payout received by the trustees as a result of damage to the building or buildings to rebuild and/or repair the building or buildings as far as it is possible to do so; and
4. Pay the premiums on any insurance policy that the trustees have taken out.

Here's what to do:

The prescribed management rules (PMRs), particularly PMR 29, set out in more detail how insurance should be controlled, managed and administered. In my experience, this is an area that trustees often overlook, because everyone assumes "it is taken care of".

The buck always stops with the trustees, so let's take a closer look at what your new trustees can and should do, or what you should do as a trustee:

1. Find out when the buildings were last valued or how the present insurance amounts were determined.
2. Obtain a full copy of your present insurance policy and schedule of replacement values.
3. Do a rough "back-of-the-cigarette box" estimation as follows: take the total square metreage of the sections (from the sectional plan/participation quota schedule) and multiply it by an average building rate per square metre. (see page 2 for an example) It may be a good idea to use as many as three different building rates per square metre when estimating your replacement value. Then compare your calculations with your current sum insured.
4. If you seem to be underinsured, increase your cover to at least your estimated amount, and also arrange for a professional valuer to value your buildings – this should be done every two or three years. ...to page 2

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from page 1...

5. Check your policy document to ensure that the cover described matches that set out in the PMRs or your body corporate’s rules. Check whether:

- * The premiums are up to date.
- * The address stated in the policy matches the street address of the buildings.

* The policy is a body corporate policy, such as those issued by Corporate Sure, CIA or FPA (which are underwriting managers that specialise in sectional title). A body corporate policy is preferable to a traditional commercial policy, where the body corporate relies on the insurance broker to arrange the necessary amendments and to ensure that the policy complies with the PMRs.

If the policy is not a sectional title/body corporate policy, the trustees will need to compare the cover provided with PMR 29.

* The schedule of replacement costs, as agreed to at your recent annual general meeting (AGM), matches those reflected in the policy.

* You have sufficient public liability cover. It should be a minimum of R10 million. It is also advisable that trustees’ indemnity extension is in place. Trustees’ indemnity is not a requirement, but an inexpensive extension that covers the body corporate against mistakes a trustee may make and for which he or she could be found liable.

* There is accidental damage cover for accidents not covered under the standard wording in the insurance policy.

* All-risks cover is in place for items that

Example of how to estimate your buildings replacement value

| Property description | Square metres | Rate/square metre | Amount |
|--|---------------|-------------------|------------|
| Residential sections | 1 000 | R5 500 | R5 500 000 |
| Garage sections | 200 | R2 200 | R440 000 |
| Sub-total | | | R5 940 000 |
| Add 10% to 15% or so for the common area | | | R594 000 |
| Sub-total | | | R6 534 000 |
| Add 12% for professional fees | | | R784 080 |
| Add 14% VAT | | | R1 024 531 |
| Add 5% for removal of debris | | | R417 131 |
| Roughly estimated replacement cost | | | R8 759 742 |

Above: Example of an estimation of replacement value.

are at risk of theft, such as air-conditioning units, aerials and mounted security cameras. You need to be specific about listing the items on the outside of the building, in corridors or elsewhere that are at risk of being stolen without the thieves first having to break in. Although all-risks cover is not prescribed, it is better to have this cover than to neglect it.

1. Check on who is the body corporate’s appointed insurance broker, obtain a letter of introduction, check that the broker is licensed (keep a copy on file of his or her Financial Advisory and Intermediary Services Act licence), and ask the broker for his or her last written advice and comparative quotations.

2. Check whether your insurance adviser has a good understanding of and is experienced in sectional title insurance matters.

3. Check whether the insurance adviser has professional indemnity cover. An insurance adviser or broker who dispenses insurance advice and who carries out the body corporate’s instructions in insuring the buildings can make a mistake or advise incorrectly, resulting in a loss.

There is no statutory requirement that forces brokers to take out professional indemnity cover. However, they are obliged to disclose whether or not they hold such cover. Trustees should find out whether their broker has professional indemnity cover and should, in the interests of all the owners, deal only with a broker who can confirm that this cover is in place.

Fidelity cover is another aspect of insurance that should be considered. This is additional cover against the loss of money or property stolen by an employee.

Thus, your sectional title policy may provide you with, say, R20 000 or R50 000 in cover. This essentially covers the body corporate should a trustee or employee be found to have stolen money and/or other property belonging to the insured or for which they are responsible. Under normal circumstances, the managing agent is not considered to be an employee.

The body corporate also needs to check it is covered by the Fidelity Fund of the Estate Agents Affairs Board (EAAB) by ensuring that all ...to page 4

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from page 3...the body corporate's dealings with its managing agents, including any banking and signing arrangements, are in order and in line with legislation.

If in doubt, contact the National Association of Managing Agents or a specialist sectional title legal consultant for further information. Additional cover may be needed – the PMRs suggest that the amount of cover, if any, should be determined by the owners.

If the body corporate manages its own accounts, the body corporate needs to decide how much cover it needs to take out to protect itself against dishonesty and the theft of body corporate money by the trustees or employees.

If the body corporate is managed by a managing agent, the body corporate's money should be held in trust and is thus covered by the EAAB's fidelity guarantee. This issue was recently highlighted by the liquidation of a well-known Cape Town-based managing agent. It is alleged that large sums of money were misappropriated.

Trustees should also check that the professionals with whom they deal have appropriate professional indemnity cover. This will include your insurance broker (alluded to above), property valuer, auditor, attorney and managing agent.

Professional indemnity cover is designed to protect professionals against losses that result from being found

negligent or responsible for such losses – for example, an error or bad advice. Thus, if the body corporate deals with professionals who have this cover, they are themselves better protected.

Although it may be assumed that a professional has indemnity cover, it is advisable that the question be asked and noted. It is encouraging that, to an increasing extent, more and more managing agents are taking out professional indemnity cover, and that trustees are starting to make such cover a prerequisite before they will employ a managing agent. Any professional engaged by the body corporate should confirm that this cover is in place.

Trustees should also confirm that a contractor who works on the common property has appropriate contractors' all-risks cover before any work begins. If, for example, a cash-strapped contractor drops a tin of paint on someone's car, causing thousands of rands in damage, who will pay if this cover is not in place? Definitely not the building's policy.

Trustees should ensure that a formal procedure and/or set of rules is in place – of which all owners should be aware – as far as contract work in and about their sections is concerned.

Bodies corporate should be aware of the requirements of the Occupational Health and Safety Act when engaging contractors to undertake work around the buildings, particularly the common property. Trustees and managing

agents who do not heed this legislation could be criminally liable if the statutory requirements have not been met properly and a worker is hurt or fatally injured on-site.

Update the schedule

Remember the schedule of replacement costs I mentioned earlier? Once you have had the buildings re-valued, see to it that a fresh schedule is prepared if the valuation differs from the previous one. Your managing agent should be able to help you with this. Some specialist insurance advisers are geared to assist you here, but take care: it is not the insurance company's place to prepare such a schedule – it is between you and your managing agent to get this done properly and to keep it up to date.

It should not be a simple photocopy of the insurance company's schedule. Instead, the insurance policy should be updated to reflect the body corporate's schedule of replacement values. Let each owner have a copy of this schedule, and have it explained, presented and approved at the next AGM.

It is always a good idea to send all owners and occupiers of units the details of insurance claims procedures and of whom to contact in case of an emergency (for example, a hotline phone number in the event of a geyser or hot-water cylinder bursting).

You can learn more about these and other important aspects of insurance at www.addsure.co.za, www.pima.co.za and www.sto.co.za ■

BUILDING MAINTENANCE

BY ROB PADDOCK (Rob the Builder)

Condensation



The condensation of water vapour leads to dampness, and as we all know, dampness is nothing but bad news. In this article I will be outlining the condensation process in distinctly non-scientific terms, and will provide a few tips on how to prevent condensation from happening in the first place.

The amount of water vapour that air can contain will depend on the specific temperature of the air. For instance, the reason dew appears on grass in the mornings, is that the drop in air temperature overnight causes some of the moisture in the air to condense on the grass as water droplets. During the day, as the air temperature rises, the dew evaporates back into the air. So as we can see, the warmer the air temperature, the more water vapour it can contain.

Everyday activities inside a building such as breathing, cooking, showering and so on will create water vapour inside a building. The water vapour inside a building starts to move outwards as its concentration increases. If the temperature of the air outside the building is lower than the inside, the difference in moisture content is deposited as condensation on the cooler surfaces. This is why your bathroom mirror fogs up when you have a shower.

The following is a few examples of when and where condensation problems can occur:

Winter + air pressure + moisture

In winter, the water vapour in the air within a building is under slight pressure. This pressure is enough to cause the air to move outwards in all directions. If the construction material is permeable (and most building materials and many paints are) water vapour will penetrate upwards and sideways into the construction fabric, just as easily as downwards. Pockets of air in the material will be humidified as the water vapour reaches them. They then create little pockets of moisture in the construction fabric.

Wall cavities + decrease in temperature

The temperature of air in the cavities in external walls decreases towards the outside. This reduction in temperature may lower the ability of the air to contain water vapour to the point that some of it may be deposited as water on the cold surfaces of the structure.

Domestic flat roofs + winter water vapour

Some types of domestic flat roofs speed up condensation in winter. Water vapour is able to enter the roof space, but as the waterproof roof membrane is also a vapour barrier, the vapour cannot escape to the outside air. So it either lodges within the roof deck or condenses under the roof sheeting and drips from it.

Ceilings near wall cavities + cold air

Watermarks may occur on ceilings close to and usually parallel to brick cavity walls where eave soffits are ventilated. Concentrations of condensation like

this are most likely when moist air in the structure and cold air from the outside meet in a confined space. As the moist air is chilled, its ability to contain water vapour is reduced, and the surplus moisture condenses on the coldest nearby surfaces. If this continues for long enough, water may drip from these surfaces.

No simple statement can be made to cover all the circumstances in which damaging condensation is likely to occur. The variety in climatic conditions and the type of construction involved will ultimately determine the problem, and how best to combat it. Generally, your first port of call should be to ensure that there is adequate ventilation in your building as well as your cavity walls. Extractor fans are very effective in areas such as kitchens and bathrooms. In other areas, if condensation is a problem, your best and cheapest bet is simply to leave your windows open as much as possible. This will allow water vapour to escape before condensation takes place.

One should also look at vapour barriers, which come in the form of special paints, polythene sheeting, metallic foils and bitmastic felts. These should be placed on the "warm" side of the construction. In the case where the ground provides a source of unwanted moisture, a vapour barrier should be laid over the ground. Alternatively, it may be interposed between a concrete slab floor and its concrete topping. ■

SECTIONAL TITLE DEVELOPMENT COURSE

2009 has been a busy year for Paddocks. The first Sectional Title Bookkeeping course was completed in February and the second presentation of the UCT Sectional Title Development Course was presented in at the of March.

This 3-day course was presented by Prof. Graham Paddock in conjunction with Clint Riddin and was held at the Idle Winds Conference Centre in Johannesburg. Where 25 students attended the course .

Pickle this brain:

"Let's have a brain preservation mechanism because he's a walking book on Sectional Title Laws and a lot of people still have to benefit." - student comment

The next presentation will be held in Cape Town and will be held early 2010.



Above: UCT Sectional Title Development Students. **Below:** Students enjoying the Course Dinner held on the first night of the course.



UCT Guest House Management Certificate Course

The Certificate course in Guest House Management is presented in conjunction with the University of Cape Town. This course is available to students throughout South Africa.

The course in a nutshell:

- 10-week part-time course presented via the internet, which covers all aspects of guest house establishment and management in South Africa
- ideal for existing and prospective guest house managers and owners
- highly practical with several assignments completed during the course
- continuous assistance, monitoring and guidance is provided by the Course Convenor and Course Coordinator
- includes additional modules on short-term letting and preparing for the 2010 Soccer World Cup.

Please contact Deborah at deborah@getsmarter.co.za for further details or visit www.getsmarter.co.za.



SHORT - TERM LETTING IN SECTIONAL TITLE SCHEMES



By Jennifer Paddock

There are residential sectional titles schemes situated in prime positions all around South Africa. Within these schemes are sections so stunning that they knock the socks off some of South Africa's hotel rooms. With art-deco style lofts in city centres and luxurious seaside apartments with views of the ocean that go on forever, it is no wonder the light bulb has lit up in many owners' heads saying "hey! I could make more money renting this place out to tourists than I could doing anything else with it!". So they get themselves a rental agent, holiday letting agent or even get entrepreneurial and start a short term letting operation themselves.

However, there are numerous problems associated short term letting in a scheme where many of the owners are permanent residents. Come summer holidays, there are suddenly unfamiliar faces in the holiday spirit cruising in and out of the scheme. This is not to say that short term letting operations should not be allowed, owners will inevitably have different requirements from their units, and investor owners will be looking to maximize the return on their investment. However, it is important to recognize the obvious tensions between short term holiday makers, and long term residents. Short term letting operations should be managed closely, and must be

operated in line with the schemes rules in order to avoid the holiday makers causing a nuisance to other residents.

In order to rent out your unit on a short term basis you will need to ensure that there are no restrictions against short-term letting applicable to your scheme. If the prescribed management and conduct rules made under the regulations to the Sectional Titles Act 95 of 1986 ("the Act") apply to your scheme in their prescribed form then there is no rule restricting short-term letting applicable to your scheme. In the absence of a title deed condition restricting this activity you can be fairly confident that there is no restriction on short term letting full stop. If however the developer or body corporate has amended the prescribed rules there could be a rule restricting short-term letting so be sure to check the rules filed in the scheme's file held at the Deeds Registry to be sure.

If on the other hand you are an owner opposed to short term letting and there is no relevant rule or title deed condition restricting short term lets in your scheme, you may consider chatting to fellow and like-minded owners and to the trustees to start the process of adopting a rule to this effect. Such a rule is considered to be a substantial detraction from an owner's ownership rights and therefore one needs to be able to show that the adoption of this rule is a reasonable reaction to a real nuisance. The Act also requires that all rules must be reasonable and must apply equally to all owners of units put to substantially the same purpose. Therefore your rule needs to be carefully drafted so as to take these requirements into account.

Once the rule is drafted, preferably by an

attorney, it must be adopted in accordance with the strict procedures laid down by the Act and it will only become enforceable once it is filed in the schemes file held at the relevant Deeds Registry. Remember also that these rules may be challenged by an owner who has been engaged in the short-term letting business and therefore the rule and adoption procedures need to be squeaky clean if it is to stand up to the scrutiny of an arbitrator or a judge. ■

Jennifer is a specialist sectional title consultant at Paddocks. Her hourly rate is R1,000 per hour and she can be contacted at 021 674 7818.

If you are interested in learning more about short term letting and operating a small hospitality establishment, the **University of Cape Town**, in conjunction with Getsmarter are pleased to offer the 10-week part-time distance learning Certificate course in **Guest House Management**.

For more information please contact Deborah on (021) 683 3663 or via email on deborah@getsmarker.co.za

Q & A WITH THE PROFESSOR



By Prof. Graham Paddock

Inaugural Meeting

Q1. I am the first owner within a scheme and the Inaugural meeting according to the notice and agenda was due to be held today. I received email yesterday from portfolio manager to say that meeting was held yesterday in my absence. When I queried this, I was told "oops, sorry, we got our date wrong.". I find it strange that I am the only one that did not "get the date wrong". So all decisions were made by the developer himself, and the body corporate was formed without me (the only other owner). Is this legal?

A1. If you were not given proper notice, the 'meeting' was not held in accordance with the Act. Therefore it was not a valid meeting any any decisions taken at the gathering are not decisions of the body corporate.

Go back to the managing agent and demand that the meeting be properly called and held. Also look very carefully at section 36(7) of the Act and prescribed management rule 50 - both of these set out detail of what documents and financial statements the developer must bring to the first general meeting.

Permission for a possi hut

Q2. Would I need to have 100% of the owners to agree to have a possi hut

erected in my backyard? It would not in any way be visible to anyone living in the complex.

I do not hold any rights to the back yard. I was told to go around to all the owners and see if anyone objected. Out of 25 units, 2 objected. The other thing is the unit next to me changed their garage, by taking out the garage door and put in a window and on the other side put in glass doors, yet they never had to get 100% of the owners votes.

A2. You are not authorised to have the possi hut erected. I suggest that you look at the possibility of having all the backyards made subject to exclusive use rights.

If you had exclusive use rights, you would only need trustee permission for building improvements. But as things stand, you would need the consent of every owner, all of them being co-owners of the common property. The fact that some other person has done something that may not have been regular does not mean that you are entitled to act without authority.

AGM with no audited financials and Trustees elected

Q3. If an A.G.M cannot take place without an audited financial statement, but still goes ahead and new Trustees are elected, are these Trustees legal?

A3. The time to have complained about the lack of audited financials was at the AGM. And the election of trustees is not logically connected to the defect in the

notice of the AGM.

If the owners present were happy to hold the meeting and do the business, including the election of trustees, and in the absence of any other factors which suggest that the election was flawed, I suggest that you treat the election as valid.

The law expects people to help themselves insofar as they are able to do so, e.g. by protesting at the AGM and immediately declaring a dispute as to the validity of the meeting. If all the members who attend a meeting were happy to overlook a procedural irregularity, the court is unlikely to intervene by declaring some aspect of the proceedings invalid, particularly where there is no clear link between the irregularity and the business the complainer wants to annul.

Owner representatives

Q4. Can an owner authorise her daughter (also being the tenant) to get directly involved in body corporate issues (act on behalf of the owner)? The husband of the owner also emails requests.

Should they not all speak through one channel only? It would make the trustees job a lot easier.

A4. An owner can appoint a third party to represent him/her. In this case the registered owner can appoint her daughter who occupies the flat to represent her in all body corporate matters.

The proper way for this to be done is by way of a written and ...to page 8

Q & A WITH THE PROFESSOR

...continued

from page 7...signed power of attorney. The trustees are not obliged to deal with any third party (non-owner) who cannot show that they are authorised to represent the owner. And once the owner has authorised a third party representative in this manner, the trustees are entitled to expect that until the authority is withdrawn the owner will not also pepper them with communications.

If it is clear that a third party represents an owner, the trustees must deal with that person. But if there is an abuse of an owner's communication rights (calls, e-mails and letters from mother, father and daughter), the trustees are entitled to decide that they will only deal with one representative at a time and that they will only respond to any non-urgent communication after the next trustee meeting.

Are All Awards Private?

Q5. Does an Arbitration Award which has been made an order of the High Court remain private or is it considered to be common knowledge?

A5. Once an award has been made an Order of the High Court, it is a document of public record and open to inspection by any member of the public. So if you get a copy, you can cite it and pass it about. But in practice there is no way a member of the public can get hold of all the orders that incorporate sectional title awards.

This will be one of the enormous advantages of the Community Scheme Ombud Service - all the results of adjudica-

tions will be published by the Chief Ombud and relatively easily available to the public.

What does a Fidelity Fund Certificate mean?

Q6. Please explain to me what a "Fidelity Fund Certificate" means from the Estate agency board which managing agents give to potential clients.

Has this got something to do with recovering body corporate money from the EAAB when a managing agent absconds with body corporate money? Does the EAAB stand as surety for this money which then can be recovered from them - or how does this work with this certificate?

A6. The Fidelity Fund Certificate confirms that the person named is covered in terms of the insurance scheme operated by the Fidelity Fund operated by the Estate Agency Affairs Board.

The cover is against the theft or misappropriation of monies, but it does not operate as a suretyship; the Fund is an insurer of last resort. This means that the person or scheme that has lost money due to theft by a person holding a FFC can claim against the Fund, but the Fund will not pay out until all possible action (perhaps including sequestration) has been taken against the person concerned to recover the money.

Security concern

Q7. I am an owner/trustee in the complex I live in. Since I moved there I have suffered two break-ins.

I view the lack of fencing around the property as the weak point, as other complexes in our area do not suffer the same fate as ours as they have perimeter fences. My previous unit in another townhouse complex 50m away from me, which I have let out, has virtually no break ins etc, as it has high pallisade fences which are a major deterrent.

I have brought up this issue at our meeting, but the other owners are reluctant to put up a fence due to financial constraints (but they will quite happily paint the garages and units every 6 months)/ I am concerned about my family safety as my 2 year old daughter was present at the last robbery, thankfully she was not harmed. A friend was visiting me last weekend and had his vehicle broken into in the space of 15 mins. The estate agent that was showing the unit that I bought had her car stolen in broad daylight. These are just some of the issues that have arisen since me purchasing here.

Can I get consent lawfully to construct a security fence around my unit? Ours is the only complex in the street that does not have extra security.

A7. You have the right to attach security devices to your own section - see PCR 4(2). To authorise the spending of body corporate money on a non-luxurious improvement to the common property, such as the installation of a perimeter pallisade fence, see PMR 33(2), that prescribes a particular procedure. In the end you may need to convince enough owners to get a special resolution approving the expenditure. ■

Classifieds

Compeg Services

Compeg Services is a leading Sectional Title and HOA Management Company. We have been providing services for over 30 years and this has given us invaluable experience to help you with any matters regarding the management of your complex. Managing Property Properly.

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Email: info@compeg.com

Website: www.compeg.com

EY Stuart Attorneys

EY Stuart Attorneys specialise in Property and Sectional Title Law. Our services include Commercial Law, Family Law, High Court litigation, Magistrate's Court litigation, collections, evictions, conveyancing, sequestrations and liquidations.

Tel: 012 320 1079/322 2401/
322 5930

Fax: 012 322 7337/320 4434

Email: eys@eystuartinc.co.za

Sectional Titles Online

Sectional Titles Online Website aims to empower the South African Sectional Title community through the open sharing of knowledge resources.

Registration is **free of charge**.

Join the sectional title community by logging on to

www.sto.co.za.

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Trident allows you to deliver Debtor Levy Statements, Special Levy Statements and Trustee Reports by print, email (pdf) or fax. Trident helps you to keep you desk tidy. Visit our website for more details:

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Paddocks will now allow readers to advertise sectional title related products and services in the Paddocks Press Classifieds section. We will limit the number of advertisers per issue. Adverts will be limited to 40 words. Adverts will be charged at **R390** each and will also be featured on the Sectional Titles Online Website (**www.sto.co.za**) free of charge.

ABOUT PADDOCKS

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

Prof. Graham Paddock is the head of Paddocks, 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 Ombud Service.

Learning

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 Judith van der Walt and Jennifer Paddock. Paddocks Consulting deliver consulting, drafting and representation services, primarily to sectional title bodies corporate, but also to developers, owners and others involved in schemes. They consult to vari-

ous levels of central and local government and act as mediators and arbitrators of sectional titles disputes. The consulting team also offers conveyancing services.

Development

Paddocks Development leverages the firm's sectional title expertise to complete niche sectional title property developments in the Western Cape.

Publishing

Since 1983, Graham Paddock has written sectional title books, pamphlets and training manuals for trustees and managing agents. Paddocks Publishing sets, prints and pub-

lishes 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 ■