



CLIVE'S CORNER

Spring is definitely in the air! For me this is the best news ever as the past winter was really one of the coldest winters I can remember.

This is my favourite time of the year - the leaves of the trees are turning green, the fruit trees are blossoming

and the first rains will soon be pouring down on the earth.

The rainy season does, unfortunately, also have a downside, especially if you haven't maintained your property as well as you should have!

In this edition's main article we discuss a balcony dilemma - you love sitting on your balcony on hot summer evenings, but as soon as it leaks it does not belong to any one!

Please read this article and know your facts.

It will also soon be warm enough so enjoy our pools again. The City of Joburg is planning to introduce a new by-law regarding swimming pools. Read more on page 2 and make sure your pool is safe this summer.

Enjoy the read and the South Africa sun!

Clive

TALK TO US!

Your feedback and comments are valuable to us. Please write to me at cliveg@compeg.com should you have any comments, suggestions or questions. Please note: Letters and information will be included in this publication at the discretion of the editor.

Disclaimer

Any views and opinions expressed in our newsletter are not necessarily those of Compeg and Landsec, nor its directors and staff.

LEAKING BALCONIES – Not all created equal

Sectional title living often sees people living above and below each other. This means that when there is a leak in a first floor or higher section, the section below can be damaged. Balconies pose a particular difficulty in this regard as their waterproofing often seems to fail and the section below suffers damage as a result.

It seems like the situation should be simple... if your section suffers damage as a result of the failure of the owner above to maintain his waterproofing, he should ensure that the balcony is properly waterproofed and pay for the costs of repairing the damage to your section, right?

Well, unfortunately it's not that easy as balconies are not all created equal. In this article we examine three different balcony situations/classifications and explain in each case who is liable for what.

>>THE BALCONIES FORM PART OF THE OWNERS' SECTIONS

Because of the "median line" concept that applies to sectional boundaries, each owner owns his section to the midpoint of its floors, walls and ceilings. The sectional plan for a scheme shows each section and you can tell whether the balcony is or is not included in the section by checking what areas are enclosed within the solid line that delineates the boundary of the section.

>>No common property

In the situation where the sectional plan shows that the balconies form part of the sections, which can happen even where there are open balconies, the balcony floors are part of the sections. So the higher owner will own and be responsible for his balcony floor, to the midpoint of that floor, while the underside of the balcony (in this case your ceiling) forms part of your section and is your responsibility. Here there is no common property between your section and the one above and therefore *the body corporate is not obliged to involve itself in dealing with any complaints relating to the leaking balcony or initiate and oversee any repairs in this regard.*



Each owner is obliged in terms of section 44(1)(c) of the Sectional Titles Act 95 of 1986 ("the Act") to repair and maintain his section in a state of good repair. Therefore if the waterproofing membrane of the higher owner's balcony has failed, that owner is obliged to repair it. Similarly, if your ceiling is damp and damaged as a result of the failed waterproofing, it is your responsibility as owner of the lower section to repair it.

>>Claim compensation

The law of delict allows a person who has suffered loss as a direct result of another's acts or omissions to claim compensation from that person. In this situation, if you could prove that your ceiling was damp as a direct result of the above owner's failure to adequately repair and maintain the waterproofing membrane forming part of his section, you would be entitled to reclaim the reasonable costs of repairing the damp in your section from him. Clearly it would make sense to first compel the higher owner to repair their balcony floor so that the repairs to your balcony ceiling will not be ruined by further water penetration.

Continued on pg 2

LEAKING BALCONIES – Continued

>>THE BALCONIES ARE COMMON PROPERTY SUBJECT TO EXCLUSIVE USE RIGHTS

The balcony above yours is, according to the sectional plan, part of the common property but the owner of the flat that gives access to the balcony has exclusive use rights to the balcony. In this situation one has to distinguish between the operational and financial responsibility for maintaining and repairing the balcony. The body corporate is responsible for maintaining and repairing all of the common property in terms of section 37(1)(j) of the Act, but the owner entitled to exclusive use of an area of common property is responsible to pay the maintenance and repair costs associated with that area.

>>Approach body corporate

So if the higher balcony in this situation is leaking into your exclusive use balcony or your section and causing damp problems for you, you can approach the body corporate as the party responsible to repair and maintain it. The body corporate must carry out the repairs to the balcony and then recover the costs of doing so from the owner entitled to exclusive use of the balcony. *You could claim the costs of repairing the damp in your section from the body corporate and insist that it carries out the repairs to the balcony ceiling in your exclusive use area.*

>>Look at scheme's rules

But in this situation you should look at the scheme's rules to check whether they have been amended to provide that the owner entitled to exclusive use will actually carry out the repairs and maintenance of the balcony. If this is the case, you should approach the owner above directly and ask him to see to the repairs. If he does not comply you can request that the body corporate use its power under prescribed management rule 70 to send the owner a letter giving him 30 days to effect the repairs, failing which the body corporate can effect the repairs and reclaim the reasonable costs of doing so from the owner.

>>THE BALCONY IS UNREGULATED COMMON PROPERTY

In some schemes the balconies, although only used by the residents of the sections attached to them, form part of the common property and are not subject to any exclusive use rights whatsoever. These balconies should be treated like any other area of common property and be maintained and repaired by the body corporate which must also fund the maintenance and repairs of these balconies from the levy fund. *If a balcony forming part of the unregulated common property is leaking into your section or balcony or causes leaks or damp you should approach the body corporate in this regard.*

>>"Connect" balconies

In a situation like this you could suggest that the body corporate should legally "connect" the balconies to their adjacent sections by conferring rule-based exclusive use rights on the owners from time to time of the sections adjacent to the balconies. The reason for this recommendation is to make sure that the people who actually use the balconies will be responsible for the costs of their maintenance and repair. Such rule-based exclusive use rights can be conferred in terms of the provisions of section 27A of the Act which requires the body corporate to make appropriate rules, either management rules by unanimous resolution or conduct rules by special resolution. The rules must have a layout plan to scale attached to them clearly indicating the size of the area and the purpose for which it is to be used. These rules must be filed in the scheme's file held at the Deeds Registry before they become enforceable.

POOL BY-LAWS TO BE INTRODUCED

The City of Joburg has proposed new draft swimming pool by-laws under which all swimming pool owners will have to re-apply for permits.

On receipt of an application, a council official will inspect the applicant's pool, issue recommendations if necessary and if those requirements (such as safety nets, enclosures and alarms) are met, the required permit will be issued.

>>REQUIREMENTS

Owners will be required to **enclose their pools** with a fence or a wall in accordance with the National Building Regulations standard. This wall or fence must not be less than 1,2 meters in height, and not less than one meter measured horizontally from the waters edge.

A gate or door attached to this enclosure must contain a self-closing and self-locking device, together with an exit alarm.

Every outdoor swimming pool must be secured with a pool cover or be fitted with a **floating pool alarm device** at all times when the pool is not use. The Council may exempt an owner from complying with this section if it is satisfied with the efficiency of any other means of protection which is used.

For indoor swimming pools, a **floor glide system** in the swimming pool is required, or a floating alarm system device must be fitted.



The proposed by-laws are aimed at saving lives, especially children's lives. Fifty five people have drowned in public and private pools from September 2006 to February 2007. For every one child that dies as a result of a drowning accident, five are left with permanent irreversible damage.

LANDSEC

PROPERTY
MANAGEMENT

ARE YOU CONSIDERING LETTING OUT YOUR PROPERTY?

Landsec Property Management offers you the following services:

- We find you a qualified tenant
- We collect monthly rental income
- We pay your levy with the rental collected
- We handle all tenant queries or problems
- We inspect your property to ensure it is being well maintained
- We keep you informed at all times

For peace of mind to find the right tenant, please contact:

Jay Morar on 011 481 3432

Fax: 011 484 8460 • E-mail: info@landsec.com • www.landsec.com

2nd floor • 9 St Davids Place • Parktown • 2193

Tel: 011 481 3400 • Fax: 011 484 8460

www.compeg.com