

Sectional Title Schemes

Property Power



Examples of properties that may be sectional title units are flats, townhouses, semi-detached houses, duet houses, holiday apartments, shops or office blocks. In the case of sectional title units, different people each own a portion of a building or buildings. It is not a requirement that the buildings be physically joined together, so a sectional title scheme can comprise of freestanding units on a property.

Common Property and Exclusive Use Area

All owners jointly own the land itself as well as all the common property. Common property comprises areas like staircases, lifts, corridors, communal washrooms, driveways, roads, recreation facilities, entrance areas, the exterior of the buildings and so on. Exclusive use areas are for example carports, staff quarters or storerooms, which are used solely by the individuals entitled to use them (or in some instances these areas are rented from the Body Corporate).

The Body Corporate

The Body Corporate is responsible for the control, administration and management of the scheme. All the owners of the units in the scheme form the Body Corporate. At an annual general meeting of all the owners, trustees are elected to carry out the day to day running of the scheme. The duties of trustees are:

- Ensuring levies are collected on time;
- Arranging regular annual general meetings (AGMs);
- Running the sectional title scheme efficiently;
- Controlling, managing and administering the common property areas and the body corporate assets and affairs;
- Making sure owners and tenants comply with the schemes rules and the provisions of the Sectional Titles Act 95 of 1986; • Making sure that the schemes buildings and assets are insured to replacement value;
- Raising special levies when unforeseen expenses occur;
- Making sure the common property is maintained and repaired where necessary.

Not all trustees have to be owners. One can become a trustee by being elected at an annual general meeting. You have the right to make yourself available to be a trustee.

Rules and Regulations

The scheme is managed by two sets of rules, set up by the Body Corporate/Developer:

- Management Rules - These are provisions regarding the management of the scheme, i.e. how trustees are elected, their obligations, the voting procedure at annual general meetings, etc.
- Conduct Rules - More commonly known as 'House Rules', these regulate the conduct of the owners and tenants, i.e. rules regarding driving speed within the property, the number of [pets allowed](#), etc. The Body Corporate can, by a special resolution (75% majority vote), amend, add or delete any conduct rules.

Levies

Every owner makes a monthly monetary contribution to a fund for the general expenses of the scheme, generally referred to as the levy. The levy may include:

- Rates and taxes payable to local authority by the scheme, although individual owners are responsible to pay their own rates and taxes,
- Water,
- Electricity costs of the common areas,
- Insurance replacement costs of buildings,
- Provision for anticipated maintenance expenditure,
- Managing agent fee,
- Annual audit fee,
- Complex security,
- Common property garden service, etc.

The amount payable by each owner is calculated by a formula called the 'participation quota'. Basically it is calculated by dividing the percentage of the floor area of that owners' section by the total floor area of all the sections in the scheme.

Sectional title owners may also have to pay a "*Special Levy*" to cover a certain Body Corporate project such as fitting new electric gates and fencing or installing a pool or tennis courts, etc.

Paying your monthly levy is not an option, it is an obligation by law, and failing to pay the levy could result in legal action against the owner. The whole sectional title scheme could lose value if some of the owners don't pay their levies. Remember that this is a team effort and everyone loses if someone doesn't pull his weight. Make sure that the majority of the units are owned, and not rented. In most cases owners take better care of their properties than tenants.

There is no provision in the Sectional Titles Act or the prescribed rules and regulations of any development that gives an owner the right to withhold duly raised levies to set-off a debt believed to be owed to him by the body corporate. This matter will have to be adjudicated by an arbitrator or a judge. The legally correct way for an owner to deal with this situation is to continue paying levies and attempt to recover the money that he believes is owed to him through the legal channels of arbitration or litigation. If an owner does withhold his levies, he is subject to various "sanctions" in terms of what may be prescribed in the rules and regulations, such as:

- trustees of the Body Corporate may be entitled to set a rate of interest to be applied to overdue amounts, so withholding levies could end up costing an owner substantially more than just the levy amounts in the long run;
- prescribed management rules may provide that an owner is not entitled to vote if any contributions payable by him in respect of his section have not been duly paid.

Always take the levy and/or any [special levies](#) into account when budgeting for your new sectional title property to avoid financial difficulty.

Building Alterations

A unit can be subdivided or extended as long as the owner has the [approval of the Body Corporate](#) and the Local Authority, and goes through the necessary legal chain of events like getting the sectional plan for subdivision/extension drawn up and getting the building plans drawn up, and applies to the Deeds Office to register the alteration.

When looking at purchasing a unit in a sectional title scheme... It is in your best interest to insist that the estate agent furnishes you with the following information:

- The rules governing the scheme.
- The names of the trustees of the body corporate and managing agents.
- The amount of the levy payable in respect of the unit and whether any increase is anticipated.

- The extent to which the body corporate has made provision for future maintenance to the scheme.
- Financial statements of the Body Corporate.

Be aware of the fact that there might be a large area of open land within the scheme, on which the developer or body corporate may have the right to extend the scheme by way of building more units. If this is the case, it must be recorded as a clause in every contract of sale of each unit in that scheme that the developer or body corporate has a real right to extend the scheme. If this clause does not appear in each contract of sale of the existing units, the contract is voidable at the option of the buyer.

This article originally appeared in Property Power 11th Edition Magazine.