

Managing property properly

Who is responsible for water leaks?

By Phatshoane Henney Group

Maintenance of a sectional title scheme can appear straightforward, but the reality is that disputes arise frequently regarding maintenance issues relating to sectional title units. This is often the result of the complex relationship of close quarter living and the shared form of ownership represented by sectional titles. Making things even more complicated is the silence of the Sectional Titles Act on many of the minor issues encountered daily in sectional title schemes. So how do you approach the maintenance issues in a sectional title scheme?

Dave owns a flat on the second floor of a sectional title scheme. There is a water leak coming from flat A above him, causing damp problems in his flat and the owner of flat A does not repair the leak. This scenario creates a flurry of questions:

- Should Dave, the owner of flat A or the body corporate repair the leak?
- Can they enter flat A, or should the owner grant them permission first?
- If the owner of flat A refuses to do the repairs or to grant access, what are they to do to stop the leak and further damage occurring?

What does the law say regarding the responsibility of parties in this scenario? Section 44(1)(a) and (c) of the Sectional Titles Act read with management rules 68-70 of the Sectional Titles Act provides that an owner must repair and maintain his section in a state of good repair. The owner must also allow a person who is authorized in writing by the body corporate to enter his section at a reasonable time and after notice was given (except in case of emergency when no notice is required) to enter the property. This will happen with the purpose to inspect, maintain, repair, or renew the pipes, wires cables, and ducts capable of being used in connection with the enjoyment of any other section or the common property.

Section 37 of the Sectional Titles Act requires the body corporate to maintain and repair the common property. Therefore, if the leak originates from the shower in flat A above, it will be the responsibility of the owner of flat A to repair the damage.

Due to the fact that the leak is caused by flat A's shower base, and therefore forms part of his section and not the common property, it is the responsibility of the owner of the section causing the damage and the leak to repair it.

If such an owner does not repair the leak within a reasonable time as to stop further damage, the owner suffering the damage can ask the body corporate to step in and repair the leak using the same procedure as in the instance where the leak is caused by pipes forming part of the common property. The body corporate can then recover the cost of repairs from the defaulting owner.

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