

MCSectionalTitleGuide



M.C. VAN DER BERG INC
INC
ATTORNEYS, CONVEYANCERS & NOTARIES

Your Property Attorneys

Your Property Attorney

The *MCSectionalTitleGuide* is provided to you, our prospective client, free of charge.

It is your right as the Seller to appoint M.C. van der Berg Incorporated to look after your interests. **Contact us on 012 660 6000 or email us at info@mcvdberg.co.za for a free consultation to discuss the transfer of your property.**

Your Estate Agent

Agency name	
Agent name	
Contact number	
e-mail address	

Emergency Numbers

Description	Name	Contact number
Managing Agent		
Caretaker		
Home Owners Association		
Chairperson		
Security Gate		
Police		
Doctor		
Dentist		
Hospital		
Ambulance		
Fire/Rescue/Emergencies		
Locksmiths		
Veterinarian		
Neighbour		
Neighbour		
Neighbour		
Neighbour		
Neighbour		

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Legal indemnity - M.C. van der Berg Inc. has compiled this *MCSectionalTitleGuide* in an attempt to provide general legal advice regarding the sale of sectional title property. It must not be construed as being specific advice applicable to your transaction. Furthermore, it does not bind us, the banks or any other party. Changes in legislation, procedures and processes are frequent and readers are advised to contact us to ensure they obtain advice that is correct and up-to-date.

1. Introduction

M.C. van der Berg Inc. provides our *MCSectionalTitleGuide* free of charge with the purpose of introducing our firm and supplying important information to you, the prospective seller. This guide will also assist estate agencies to comply with their obligations in terms of the Consumer Protection Act (CPA).


 Because we know you are probably busy, we have taken the opportunity to highlight certain aspects that we know require your immediate attention when dealing with sectional titles. ***You should therefore take note in particular of all the aspects marked with*** 


The *MCSectionalTitleGuide* contains all the information you need before you accept an offer to purchase. It further contains basic legalese relating to the relevant principles, legislation and management of a sectional title scheme. The information relating to the process after you have accepted the offer to purchase is contained in another guide known as *MCQuickGuide*. Once you have instructed us to attend to the transfer of your property, we'll forward the *MCQuickGuide* to you. Both the *MCSectionalTitleGuide* and *MCQuickGuide* are available on our website at www.mcvdberg.co.za for your convenience.


 ***Please read through our MCSectionalTitleGuide, as this is a compilation of the most important stumbling blocks you may encounter in the legal process that lies ahead.*** We trust that you will find the information contained in this guide useful. Our hope is that sharing our expertise and information will result in a mutually beneficial business relationship. We shall gladly assist you through the labyrinth of laws, rules, regulations and contractual requirements that accompany the sale of a sectional title property.


 ***If you are considering selling your property, remember it is your right to appoint the transferring attorney. Contact us at info@mcvdberg.co.za or 012 660 6000.***

2. M.C. van der Berg Incorporated – An Introduction

 ***M.C. van der Berg Inc. Attorneys, Conveyancers and Notaries is a well-established law firm specialising in property law since 1999.*** While our head office is in Centurion, we also have an office at Midstream, Pretoria East and Pretoria North. Our company conducts business in the greater Pretoria, Centurion, Ekurhuleni, Midrand, Johannesburg and surrounding areas.

 ***The primary focus of our practice is giving legal advice pertaining to property law, drafting agreements, handling property transfers as well as registering new bonds and cancelling existing ones.***

 ***We also attend to the registration of trusts, estate planning, drafting of wills, winding up deceased estates, registration of ante nuptial contracts and other notarial services.***

 ***M.C. van der Berg Inc. undertakes to handle the expedited and hassle-free transfer of your property and keep you informed with relevant and contextualised feedback on a regular basis.*** We believe that our unique and efficient feedback system is one of the aspects that differentiate us from others. You will not be kept in the dark and we shall keep you informed when important milestones in your transaction are reached.

 ***We offer a free consultation to discuss your transaction.***

 ***For more information on M.C. van der Berg Inc. please visit us at www.mcvdberg.co.za.***

3. Historical background

Before 1986, acquiring immovable property in South Africa was primarily defined by the Survey Act. This entailed that immovable property was a physical piece of land that had to be demarcated on a general plan or diagram and then approved in the Surveyor General's office. In other words, one could only become the owner of an erf, farm or plot, which is known as a full title or conventional property ownership.

The Sectional Titles Act was born when the need arose to give ownership of a structure that was not on ground level. This refers to owning properties such as a flat on the 3rd floor of an apartment block, part of a building or even a structure constructed together with other structures on a single erf.

The Sectional Titles Act introduced a three-dimensional property concept in respect of land and the buildings thereon. Today, different acts regulate sectional title schemes.

4. Legislation governing sectional titles

Three acts lie at the centre of establishing and managing sectional titles schemes. It is important to understand which act relates to which issue in sectional titles.

4.1 Legislation governing sectional titles

The purpose of the STA is to regulate the procedures and processes when:

- 1) a developer establishes a sectional title development;
- 2) sections in sectional title schemes are created in the deeds office;
- 3) exclusive use areas are created in the deeds office;
- 4) buildings and land are divided into sections and common property;
- 5) separate ownership is acquired and transferred in sections coupled with joint ownership in common property;
- 6) a sectional title unit is subdivided; and/or
- 7) a sectional title unit is extended.



The STA thus deals with all survey and registration matters regarding sectional titles schemes.

4.2 Sectional Titles Schemes Management Act 8 of 2011 (STSMA)

The STSMA provides for all the management and regulatory matters of sectional title schemes once it is established. These matters include:

- 1) the establishment of the body corporate to manage the sectional title scheme;
- 2) registration of the conduct and management rules;

- 3) regulating the procedures of sectional title scheme management;
- 4) the requirements for amendment of the rules;
- 5) how meetings must be conducted; and
- 6) how resolutions are taken.



The STSMA thus deals with the management of sectional title schemes.

4.3 Community Schemes Ombud Services Act 9 of 2011 (CSOSA)

The CSOSA regulates specific aspects in all community schemes, including sectional title schemes. Some of the aspects this act makes provision for are:

- 1) establishing an Ombud service, which accommodates dispute resolution mechanisms for various role players in community schemes such as the body corporate, its members and occupiers as well as managing agents;
- 2) acting as the custodian of all scheme governance documentation in order to preserve and provide such documents to members of the public, and
- 3) regulating certain other administrative functions in all community schemes.

5. Property terms – understanding the nature of property

Forms of ownership – South African property law provides for two different forms of ownership in immovable property. It is important to distinguish between these two forms.

- i) Full title (conventional) property ownership – In this case, an owner owns the entire erf and all the improvements on it, including the house, garage, plants, pool, tennis court, lapa etc. Full ownership therefore vests in the owner of the property. The boundaries of the erf are indicated on a general plan or diagram approved by the Surveyor General.
- ii) Sectional title property ownership – In this case, full ownership of the section vests in the owner of such section. The remainder of the buildings and land forms the ‘common property’ and is co-owned by all the owners in the scheme in undivided shares. The boundaries of each section are the centre lines of the walls, floors and ceilings of the section as indicated on the sectional plan.

The following definitions lay the foundation for the concept of sectional titles namely:

Section – This means a structure indicated as such on a sectional plan and identified by a specific number allocated to it, in other words the house and possibly also the garage. It can also consist of non-adjacent parts of a building in the scheme or be a single separate building in a scheme.

In the case of a sectional title scheme the owner thus only becomes the sole owner of the *section* and not, as in the case of full title ownership, also of the land around and adjacent to the section.

Common property – This refers to the land included in the sectional scheme as well as parts of the building or buildings which do not form part of a ‘section’. All communal roads, gardens, pools, walkways, braai areas, staircases etc. are thus common property.

Undivided share in the common property – This refers to an undivided share in the common property apportioned to that section in accordance with the participation quota of that section. In other words, the owners of sections in a scheme are joint owners of the common property in undivided shares according to the participation quota of the section which they own.

Unit – Strictly speaking, the word ‘unit’ refers to the combination of the ‘section’ and the ‘undivided share in the common property’ apportioned to that section in accordance with the participation quota of the section. In broad terms, people often use the term ‘unit’ to refer to their section.

Exclusive use area (EUA) – This refers to a defined part of the common property reserved or set aside for the exclusive use by a particular owner of a section, to which he/she has the sole rights.

In some instances, the developer (at the establishment of the sectional title development) or the body corporate (at a later stage) allocates specific areas of the common property for the exclusive use of a particular owner. Examples include gardens, parking, garages, store rooms etc.

In terms of the STA and the STSMA, this EUA can vest in the owner of a section in two different ways, namely:

- i) The EUA can formally be registered in the name of the owner of the section in terms of section 27(a) of the STA. In this case, the EUA will be demarcated on the sectional plan and will be ceded to the owner in the deeds office by way of a notarial deed.
- ii) The EUA can also be reserved for the use of a specific owner of a section in terms of section 10(7) of the STSMA. In this case, the EUA will not formally be registered against the owner’s name but allocated in terms of the sectional title scheme’s rules with a sketch plan demarcating the specific area.

Although the legal nature of the two rights differs, the effect of both is that a certain part of the common property (the EUA) is allocated for the sole use of a particular sectional title owner.

Sectional title plans – This refers to the plans drafted by a surveyor and registered at the Surveyor General’s office. They indicate the boundaries of each section, the exclusive use areas (EUA) (where applicable) as well as the details of the participation quotas.

Phase development – The developer or body corporate may reserve the right to extend the development by adding more units.

6. Participation quota (PQ)

The participation quota (PQ) is an expression of the floor size of any specific section in relation to the combined floor sizes of all the sections. The total participations quotas of all the sections add up to 100%. The following is an example of a participation quota table and its calculations:

SECTION	FLOOR AREA	CALCULATION OF PQ %	PQ %
1	48m ²	(48m ² ÷ 308) x 100	15.5844%
2	69m ²	(69m ² ÷ 308) x 100	22.4026%
3	69m ²	(69m ² ÷ 308) x 100	22.4026%
4	74m ²	(74m ² ÷ 308) x 100	24.0260%
5	48m ²	(48m ² ÷ 308) x 100	15.5844%
TOTAL	308m²		100%

The surveyor calculates the PQ, which appears on the sectional title plans in the PQ schedule (as indicated above). Various aspects of the management of a sectional scheme depend on the participation quota.

The PQ is used to determine the following:

- 1) The size of the owner's undivided share in the common property;
- 2) The value of the vote of an owner of a section (in the case where the vote is reckoned by value);
- 3) The amount of the owner's levy; and
- 4) The amount for which a particular owner can be held liable to pay a judgement debt of the body corporate.

7. Regulating and managing sectional title schemes

The STSMA regulates and prescribes various management aspects of sectional title schemes.

7.1 Body Corporate

The owners of all the sections together are collectively known as the body corporate. In terms of the STSMA, the body corporate has certain powers and obligations, for example having to meet at least once a year at an annual general meeting (AGM). At body corporate meetings, sectional title owners cast votes to decide on matters relevant to the sectional title scheme such as appointing trustees and a managing agent.

7.1.1 Purpose and functions of the body corporate

The main purpose of the body corporate is to enforce the rules and to control, administer and manage the common property for the benefit of all owners. In addition, it has to perform the functions entrusted to it in terms of the STSMA to:

- 1) appoint trustees and clarify the duties of these trustees;
- 2) establish and maintain a levy fund. This firstly consists of an administrative fund to cover all repair and maintenance costs, insurance premiums as well as management and audit administration fees. Secondly, the provision of a reserve fund ensures funding for future maintenance and repair costs;

- 3) determine the amounts that owners need to pay, based on the participation quota or nominated value. The funds are deposited into an account that the body corporate opens and operates itself;
- 4) insure the buildings and keep them insured for the replacement value thereof against fire and such risks as the owners may determine by special resolution; and
- 5) do repairs on a day-to-day basis and schedule maintenance on the common property to keep it in a good state of repair.

7.1.2 Powers of the body corporate (Sections 4 and 5 of the STSMA)

The STSMA contains what is called the ‘normal powers’ and ‘additional powers’ of the body corporate.

The ‘normal powers’ stipulated in Section 4 of the STSMA include:

- 1) appointing agents (such as a managing agents) and employees (gardeners, security guards);
- 2) purchasing or, selling, hiring or letting units if it becomes necessary;
- 3) purchasing or hiring immovable property for the use of owners for their enjoyment or protection (e.g. additional parking, parks. etc.);
- 4) establishing and maintaining the scheme’s common property lawns, gardens and recreation facilities for the benefit and use of all the residents;
- 5) borrowing money, it requires to perform its functions or exercise its powers;
- 6) securing the repayment of borrowed monies;
- 7) investing any monies paid into the scheme’s reserve and administrative fund to repair and maintain the common property;
- 8) entering into an agreement with any owner or occupier of a section to provide amenities or services by the body corporate to such section or to the owner or occupier thereof. This includes the right to let a portion of the common property to any such owner or occupier by means of a lease.

In addition to its normal powers, the body corporate MAY use its ‘additional powers’ stipulated in Section 5 of the STSMA (with the necessary consent(s)) to:

- 1) alienate or let the common property;
- 2) alienate, exercise or cede the right of the developer to extend the scheme by adding more sections;
- 3) extend the period by which the developer can extend the scheme;
- 4) purchase land to extend the common property;
- 5) request the delineation and cession of exclusive use rights (parking bays, carports) to particular owners;
- 6) cancel exclusive use rights;

- 7) allow servitudes to be registered in favour of, or over the common property (right of way, thoroughfare etc.).

Aside from its normal powers, the body corporate MUST (with the necessary application and consent) use its 'additional powers' stipulated in Section 5 of the STSMA to:

- 8) approve the extension of a section's boundaries or floor area.

7.1.3 Decisions taken by the body corporate

Decisions taken by the body corporate are made by way of resolutions, passed at body corporate meetings.

The body corporate must at least meet annually which meeting is called the annual general meeting (AGM). It is also possible to call other general meetings (special general meetings).

Voting rights come into play at body corporate meetings. Whenever a meeting is to be held where a resolution will be taken, the body corporate must give members at least 30 days prior written notice of the meeting and specify the details of the proposed resolution.

Members may be represented by proxy at these meetings, provided that the person acting as proxy does not do so for more than two members.

The members' votes can either be calculated '**by value**' or '**by number**'.

- 1) If votes are calculated **by number**, each member will only have one vote regardless the number of sections he/she owns. In these cases, the participation quota applicable to a specific unit will not affect the outcome of the vote, as each member's vote carries equal weight.
- 2) If votes are calculated **by value**, each member's vote will be calculated in one of the following ways:
 - 2.1 the total participation quota allocated to the sections registered in that member's name. In other words, the more sections you own in the particular scheme, the more weight your vote will carry. The same can be said if the participation quota allocated to your section is larger than that of other owners in the scheme; or
 - 2.2 in accordance with a rule made by the body corporate, that dictates a formula other than participation quota.

A member is not entitled to vote on ordinary resolutions if he/she fails or refuses to pay any amount due to the body corporate after a court or adjudicator has given a judgment or order for payment of that amount; or if he/she persists in breaching any of the body corporate's conduct rules after a court or an adjudicator has ordered him/her to refrain from breaching these rules. This disqualification does not apply to special or unanimous resolutions.

The chairperson must announce the outcome of each vote and it should be recorded in the minutes of the meeting.

The STSMA makes provision for two different kinds of resolutions depending on the importance of the issue at hand and to protect the members of the body corporate.

1) Unanimous resolutions

The STSMA defines a 'unanimous resolution' as a resolution passed unanimously at a meeting by all the members of the body corporate. At least 80% of all the members of the body corporate, which is calculated in both number and value of the votes, must be present. In addition, all members who cast their votes must do so in favour of the resolution or all the members of the body corporate must agree to the resolution in writing.

In other words, if a resolution is passed at a meeting, at least 80% of the members must be present and every member present at the meeting must vote in favour of the resolution.

If a resolution is passed by round robin resolution in writing, all members must vote in favour of such a resolution. There must therefore be a 100% vote in favour of the resolution.



The following aspects will require a '*unanimous resolution*':

- 1) adding to, amending or repealing management rules;
- 2) luxurious improvement to the common property (e.g. a recreational area);
- 3) alienating or letting all or part of the common property;
- 4) creating exclusive use areas (e.g. parkings, carports);
- 5) ceding registered exclusive use rights to owners;
- 6) deeming that buildings should be destroyed;
- 7) rebuilding/reinstating building structures if they have been damaged or destroyed.



Here is a practical example of a unanimous resolution: *A sectional title scheme consists of six units. Five units are 60 sq m each while the sixth one is 100 sq m. (The combined square meterage of the 6 units is thus 400 sq m). The five smaller units each have a participation quota of 15% ($60 \div 400 \times 100$) and the sixth unit of 25% ($100 \div 400 \times 100$). The combined participation quota in a sectional title scheme is always 100 (in this case $15 + 15 + 15 + 15 + 15 + 25$).*

Some owners of the sectional title scheme would like to establish a recreational area on a certain part of the common property and subsequently place it on the agenda at the AGM. The STSMA requires that in order to amend a management rule, a unanimous resolution (at least 80%, calculated in both number and value of the votes, of all the members of the body corporate must be present and all members who cast their votes must do so in favour of the resolution).

All six owners attend the AGM. The owners of the five smaller units vote in favour of the resolution, while the owner of the large unit votes against the resolution. The previously mentioned requirement stipulates that all the members who cast their votes, must do so in favour of the resolution.

Therefore, this resolution is not passed even though five of the six owners voted in favour of the resolution. This means the proposed recreational area may not be established.

Suppose one of the owners of the smaller units did not attend the AGM. The combined participation quota of the other four owners of the smaller units is 60% (as only the participation quota of the owners present at the AGM is taken into consideration) and the participation quota of the larger unit is 25%. All the owners present vote in favour of the resolution. The first requirement is met, that at least 80% calculated in both number ($5 \div 6 \times 100$) and value ($60 + 25$) must be present. The second requirement is also met, i.e. that all the owners present vote in favour of the resolution. The resolution is therefore passed and the proposed recreational area may be established.

2) Special resolutions

The STSMA defines a ‘special resolution’ as a resolution passed by at least 75%, calculated in both value and number, of the votes of the members of a body corporate who are represented at a general meeting or agreed to in writing by members of a body corporate holding at least 75%, calculated both in value and in number, of all the votes.

The quorum requirements must however, still be complied with.

- i) If there are four or less members of a body corporate, the quorum will be reached when two thirds of the total votes in value are present.
- ii) For any other scheme (i.e. a scheme with more than four members) a quorum will be reached when members holding at least one third of the total votes in value are present, on the condition that there be at least 2 persons present at such a meeting.

The following aspects may require a ‘special resolution’:

- 1) adding to, amending or repealing conduct rules;
- 2) extending a section;
- 3) creating exclusive use areas;
- 4) cancelling exclusive use areas;
- 5) creating servitudes that burden or benefit the land;
- 6) making rules that provide for different voting values or contribution liability;
- 7) suing the developer in respect of the scheme;
- 8) deciding that the body corporate must insure against more than the prescribed risks;
- 9) authorising remuneration for an owner-trustee;
- 10) making non-luxurious improvements to the common property;
- 11) revoking the managing agent’s appointment;
- 12) deciding to hold a special general meeting outside of the magisterial district.



A practical example of a special resolution: *A sectional title scheme consists of five units. Four units are 75 sq m each and the fifth one is 100 sq m. (The combined square meterage of the 5 units is thus 400 sq m). The four smaller units each have a participation quota of 18.75 % ($75 \div 400 \times 100$) and the fifth unit of 25% ($100 \div 400 \times 100$). The combined participation quota in a sectional title scheme is always 100 (in this case $18.75 + 18.75 + 18.75 + 18.75 + 25$).*

The current conduct rules determine that owners are not allowed to have any pets. Some of the owners want this rule to be amended and place it on the agenda at the AGM. The STSMA requires that when amending a conduct rule, a special resolution (a resolution passed by at least 75%, calculated in both value and number of the members present at a meeting), must be taken.

All five owners attend the AGM. The owners of the four smaller units vote in favour of the resolution and the owner of the large unit votes against the resolution. The combined participation quota of the four smaller units is 75%. (18.75×4). The resolution is therefore passed and the rules pertaining to pets are amended accordingly. Suppose one of the owners of the smaller units did not attend the AGM. The combined participation quota of the other three owners of the smaller units would then only have been 69% as only the participation quota of the owners represented at the AGM is taken into consideration. In such an instance, the 75% threshold would not have been reached and the rule pertaining to pets would not be amended.

This also indicates how important it is to attend AGM's.

3) Certain decisions only require a majority vote

A majority vote is normally taken on a one-section one-vote basis and decided by a show of hands.

The following matters will require a majority vote:

- 1) approving the budget;
- 2) approving insurance;
- 3) appointing an auditor or accounting officer;
- 4) determining the number of trustees;
- 5) electing trustees;
- 6) removing trustees;
- 7) removing the chairperson;
- 8) appointing an alternate chairperson to chair a general meeting when the chairperson is not present;
- 9) appointing a trustee to take the place of one who has been removed;
- 10) giving directions or restrictions to the trustees in terms of section 39(1) of the Act;
- 11) determining the body corporate's service address;
- 12) deciding to approach the court to obtain a unanimous resolution;
- 13) instructing trustees to appoint a managing agent.

ASPECT	UNANIMOUS RESOLUTION	SPECIAL RESOLUTION	MAJORITY VOTE
Luxury improvement on the common property	X		
Alienate/let common property	X		
Create EUA (parking, carports)	X		
Cede exclusive use rights to owners	X		
Destroy buildings	X		
Rebuild/reinstate buildings damaged/ destroyed	X		
Pets		X	
Refuse disposal		X	
Vehicles (parking, speeding)		X	
Damage, alterations and additions to common property		X	
Aesthetic rules of the scheme (painting, roof, gates)		X	
Advertisements and notices		X	
Littering		X	
Laundry		X	
Storage of flammable/other dangerous materials		X	
Letting of units		X	
Eradication of pests		X	
Extension of a section		X	
Suing the developer		X	
Non-luxurious improvements on common property		X	
Revoking managing agent's appointment		X	
Deciding to hold SGM outside magisterial district		X	
Approval of budget			X
Approval of insurance			X
Appointment of auditor/accounting officer			X
Determination of number of trustees			X
Election of trustees			X
Removal of trustees			X
Removal of chairperson			X
Alternative chairperson			X
Appoint trustee to replace removed person			X

A summary of the various levels of decision making in a sectional title scheme

Unanimous resolution: At least 80% calculated in both number and value of the votes, of all the members of the body corporate must be present and all members who cast their votes must do so in favour of the resolution.

Special resolution: A resolution passed by at least 75% calculated in both value and number, of the votes of the members of a body corporate who are represented at a general meeting or agreed to in writing by members of a body corporate holding at least 75%, calculated both in value and in number, of all the votes.

7.2 Trustees

The body corporate can appoint a number of people (whether or not they own sections) to oversee the day-to-day management of the sectional title scheme. In terms of the STSMA, certain powers vest in them. If a scheme consists of less than four members who are owners of sections, each member is considered to be a trustee without election to office.

The trustees have a fiduciary obligation to the body corporate. This implies that they must always act in good faith and honesty toward the body corporate when dealing with any of its matters and always act in the interest and for the benefit of the body corporate.

The STSMA expressly provides that the trustees must give permission for the subdivision or consolidation of sections by its owners. Additional decision-making powers of the trustees can be defined in the rules of the scheme, which stipulate which decisions trustees may take on their own.

7.3 Managing agent

A 'managing agent' is an institution specialising in the collection of levies, as well the management, administration and secretarial functions of sectional title schemes. It is not compulsory to appoint a managing agent and the body corporate or trustees can perform these functions themselves. A managing agent acts as the 'middle man' between residents of the scheme and the trustees. While the developer initially appoints the managing agent, the body corporate can replace the managing agent at the first AGM or later ones.

There are two different kinds of managing agents:

- 1) An *ordinary managing agent* generally assists the trustees in managing the scheme. They generally perform day-to-day management tasks, take primary responsibility for administrative and record keeping tasks, as well as assist in the physical management of the scheme. The body corporate may appoint an ordinary managing agent to perform specified financial, secretarial, administrative or other management services under the supervision of the trustees. A management agreement may not continue for more than three years.
- 2) An *executive managing agent* is appointed by the trustees to take over the functions of the trustees themselves in totality. A body corporate may appoint an executive managing agent by special resolution and application to the Ombud Service to perform the functions and exercise the powers that the trustees would otherwise perform and undertake.

8. Levies

In a sectional title scheme there are communal expenses that need to be shared between the owners in the scheme (members of the body corporate). The owner of a sectional title unit will thus be responsible for a share of the scheme's joint expenses and liabilities. These expenses may include refuse removal, security, insurance, garden services, upkeep of communal property such as a pool and clubhouse, maintenance, administrative expenses, salaries, legal costs etc.

The body corporate recovers these expenses via a levy from the individual owners. Unit owners therefore make this monthly levy payment to the body corporate to cover the expenditure of the sectional title scheme.

Generally, the formula for calculating levies in a sectional title scheme is:

- Annual budgeted costs X PQ of unit ÷ by 12 = monthly levy payable.
- E.g. R 240 000 X 0.0250 (PQ) ÷12 (Months) = R 500 per month.

The trustees or managing agents (as representatives of the body corporate) draw up an annual budget for the sectional title scheme and establish the levy per unit. In determining, allocating and collecting the levies, there has to be adherence to the STA, STSMA as well as CSOSA.

8.1 The Sectional Titles Schemes Management Act (STSMA)

The STSMA makes provision for three kinds of levies, namely:

- 1) **Administrative levy** - The body corporate's most important task is to establish a fund for administrative expenses. The STSMA requires that the administrative fund must be reasonably sufficient to cover the scheme's estimated annual operating costs of *inter alia*:
 - The repair, upkeep, control, management and administration of the common property;
 - The payment of municipal charges for the supply of electricity, gas, water, fuel and sanitary and other services to the building (if not paid individually by owners);
 - Any insurance premiums; and
 - The discharge of any duty or fulfilment of any other obligation of the body corporate.
- 2) **Special levy** - The STSMA provides that the trustees may, where necessary in exceptional circumstances, call for special levies. These would be for repairs that could not have reasonably been foreseen when the maintenance plan was drawn up, for urgent repairs and maintenance required to prevent damage to property or to ensure safety.
- 3) **Reserve fund levy** - The STSMA introduced the requirement of a reserve fund to limit the practice in the previous dispensation where excessive special levies were constantly raised because there was no provision for reserve funds for unforeseen expenses. This fund should cover the cost of future maintenance and repair of the common property and should not be less than 25% of the year's annual levy contribution.

The goal of a reserve fund is to ensure that there are funds for maintenance and to prevent the scheme buildings and facilities becoming dilapidated to the extent that they can no longer be used for their intended purpose.

8.2 The Community Schemes Ombud Services Act (CSOSA)

CSOSA also makes provision for a small CSOS levy, which is payable to the Community Schemes Ombud quarterly.

This amount is charged in addition to the monthly levy amounts payable by owners of units.

8.3 General issues relating to levies

- 1) The trustees will determine the levy amounts to be raised and the owners pay these levies according to their participation quota in the scheme.
- 2) The owner becomes liable for the levies that are raised from the date that the trustees of the body corporate pass a resolution to that effect.
- 3) The STSMA also provides that the body corporate may recover both normal and special levy contributions if there is difficulty in doing so. This is done in terms of the CSOSA by applying to the Ombud. An application to the Magistrate's Court or the High Court may however, still be brought to recover arrear levies.
- 4) Whenever there is a change in the levy payable, the body corporate must certify the new amount that owners need to pay in writing. In addition, it needs to specify the manner in which it is payable as well as the extent to which the owner has already paid that amount.
- 5) Where an owner is of the opinion that the levies charged are either too high or too low, he may approach the Ombud Service for an order declaring that the levies have been incorrectly determined and that it should be adjusted to the correct or reasonable amount.

9. Rules

Since sectional title ownership involves communal living, the shared living space needs to be regulated. For this reason, there are certain laws and scheme rules that place restrictions on a purchaser's lifestyle.

The scheme is regulated and managed by way of rules from the date on which the body corporate is established. These rules, which consist of management and conduct regulations, must provide for the regulation, management, administration, use and enjoyment of the sections and common property.

The STSMA provides a set of standard rules contained in annexure 1 and 2 of the STSMA regulations. The standard rules may only be amended with the approval of the Chief Ombud, and only to the extent as allowed in law. Any rule that the developer or body corporate makes must be reasonable and apply equally to every member, tenant and visitor.

The rules relevant to any specific sectional title scheme can be obtained from the trustees or the managing agent. The rules of a sectional title scheme must however, be filed and kept at the CSOS offices nationally and the public will have access thereto.

There are two types of rules in sectional schemes, namely:

9.1 Management rules

- 1) The management rules contain provisions regarding the management and administration of a sectional title such as the determination of levies, meetings, voting rights etc. It is contained in annexure 1 of the STSMA Regulations.

- 2) The developer can amend these rules before the body corporate is established by applying to the Chief Ombud for approval. The body corporate can also amend these rules by making a unanimous resolution after the sectional title scheme has opened.
- 3) There are only a few rules that may be amended. These include those relating to the number of trustees, the nomination, election and replacement of trustees, the reimbursement of trustees and the chairperson at general meetings.

9.2 Conduct rules

- 1) The conduct rules regulate the day-to-day conduct of the owners and occupiers. These rules can more easily be amended by way of a special resolution.
- 2) Any conduct rule which is amended may not be in conflict with any prescribed management rule.
- 3) The standard conduct rules are contained in annexure 2 of the STSMA regulations.
- 4) Conduct rules are rules which deal with the day-to-day operation of the scheme and can include rules regarding the following:
 - Pets;
 - Refuse disposal;
 - Vehicles (parking, speeding, washing and oil leaks);
 - Damage, alterations and additions to the common property;
 - Aesthetic rules of the scheme;
 - Placing of advertising signs and notices;
 - Littering;
 - Laundry;
 - Storage of flammable and other dangerous materials;
 - Letting of units; and
 - Eradication of pests.
- 5) The rules are in force from the date the body corporate is established and they bind the body corporate, the unit owners as well as any occupiers of units.
- 6) If the scheme's management or conduct rules are amended or substituted, the Chief Ombud must be notified of such a change.
- 7) If the Ombud Service approves changes to rules, it will issue a certificate confirming that the rules are reasonable and appropriate to the scheme.

10. Duties of owners

Section 13 of the STSMA stipulates the duties of owners in a scheme. These include allowing any authorised person with sufficient notice and during reasonable hours to enter his/her section for inspection and maintenance purposes. The owner must also carry out all work in respect of his/her section that a competent authority such as the municipality has ordered, which will benefit the building and the scheme as a whole.

The other duties of an owner deal with the reasonable use of his unit, taking into account the rights of his neighbours in the scheme. They are:

- 1) to fix and maintain his section in a good state of repair and keep his exclusive use areas in a neat and tidy condition;
- 2) to use and enjoy the common property in a manner that does not unreasonably interfere with his neighbours' use and enjoyment thereof;
- 3) to avoid using his unit in any manner which causes a nuisance to the occupier of any section in the scheme; and
- 4) to notify the body corporate of any change in ownership or occupancy of his section.

11. Community Schemes Ombud Services Act (CSOSA)

The Community Schemes Ombud Services was established in terms of the CSOSA to regulate the conduct of parties within community schemes in broader terms (including sectional title schemes). This service aims to ensure good governance, resolve community scheme disputes, educate those involved in sectional title schemes, homeowners' associations and other forms of community schemes and manage sectional title scheme documentation.

An aggrieved party may approach the CSOS Ombud for dispute resolution regarding any dispute between parties, after exhausting internal dispute resolution mechanisms. These mechanisms may entail discussion and negotiation with the trustees or directors. The complaint must be lodged with the CSOS Ombud by submitting the relevant form together with a prescribed fee. You can find the complaint form on the CSOS' website at www.csos.org.za.

The Ombud will first attempt to resolve the issue through conciliation and should this be unsuccessful, then refer the matter for adjudication.

Matters will initially be screened for validity and jurisdiction, after which a CSOS official will be appointed to investigate. The CSOSA prescribes a timeframe of between five and 120 days for resolving disputes, depending on the complexity of the matter.

An Ombud's ruling is enforceable in the Magistrate's Court or High Court depending on the nature and quantum of the order. It can only be appealed in court on a valid point of law.

12. Frequently asked questions

a) May I keep a pet?

The specific scheme rules address this issue. If pets are allowed, the rules often place a restriction on the amount and/or type of pet that is allowed. Certain schemes require that the pet owner needs to first obtain special permission from the body corporate before keeping a pet.

b) Am I allowed to make alterations to the inside of my unit?

Alterations are allowed, as long as they do not change the structural characteristics of a section.

In other words, aesthetic changes will be in order – such as painting the walls, installing new cupboards or installing wooden flooring.

c) May I extend my unit?

It is possible, but it is not a simple procedure. It involves paying a fee and following a formal act of registration in the deeds office. Before registering an extension in the deeds office, you will need to obtain the following:

- Approval by the trustees of the body corporate;
- Relevant municipal consents (approved building plans);
- An approved Surveyor General sectional plan of extension; and
- Consent by bondholders in the scheme in certain cases.

d) May I install a security gate at my front door?

This will again depend on the rules of the scheme and the aesthetic requirements set therein.

The rules might stipulate that no gates may be installed at any entrances that are visible from the road or from the communal areas, or that only certain types of gates may be installed.

e) May I change the style of the doors or windows?

Again, the scheme rules govern this issue. Generally, changing window or door styles will not be allowed to preserve the uniformity of all units in the scheme.

f) Who controls the body corporate?

All owners of units are members of the body corporate. They elect trustees to conduct the day-to-day business of the scheme. The trustees often employ managing agents to assist with this task. The trustees manage the scheme in accordance with the instructions that owners give them.

g) What can owners do if they don't like the way the trustees are managing the scheme?

Dissatisfied owners can stand for election as trustees and thus play a more direct role in the management of the scheme. Members, who together hold at least 25% of the votes calculated in value, may demand a special meeting to remove one or more of the current trustees and elect others in their place.

h) Does each owner take a turn being a trustee?

If the sectional title scheme consists of four or less units, all the owners are automatically trustees.

If the scheme consists of more than four units, the trustee must be elected to office. Any owner can make himself/herself available to act as a trustee but cannot be forced to act as such. Even if you have made yourself available, the other members in the scheme must vote in favour of your election as a trustee.

i) May I rent or sell my unit without anyone's permission?

Generally you can, but rules of the specific scheme may create restrictions on letting or selling. It is not unusual for schemes to restrict short-term or holiday letting. Some retirement schemes require that when a unit is resold a percentage of the purchase price must be paid to the body corporate for facilities provided. This payment subsidises levy payments. In such a case, you will not be able to transfer your property until such amount has been paid or provision has been made for it.

j) What happens if there isn't enough money to cover maintenance?

In the event of unforeseen costs, the body corporate can delve into the scheme's reserve fund. Once it accesses funds from the reserve fund, the reserve fund levy must be increased or re-instituted to reach the aforementioned 25% requirement.

k) What should I check before purchasing a sectional title unit?

- 1) The sectional plan – to determine the section's boundaries, the scheme's boundaries and to confirm whether the unit has not been extended without the sectional plan being rendered and the extension registered in the deeds office.
- 2) Current participation quotas, as this will influence the levies you pay and the value of your vote.
- 3) Find out whether there are any exclusive use areas and if so, who holds the rights to such areas.
- 4) Be aware of any scheme rules that change your liability for levies or create exclusive use areas.
- 5) Establish the current monthly levies and what expenses are included in the monthly operating budget.
- 6) Inspect the condition of the common property to determine the probability of further levies.
- 7) Study the most recent financial statements to determine whether there are sufficient reserves for maintenance and unexpected expenses.
- 8) Ask whether the body corporate has any outstanding debt, whether it is involved in litigation and if judgment has been taken against it.
- 9) Determine the amount and type of insurance cover and excess as well as the current replacement value allocated to the unit.

l) What is covered by the insurance?

In terms of the STSMA, the body corporate is obliged to insure the structures of all sections as well as the roofs and geysers. The instalment for the insurance is included in the levy. The bond registration attorney has to obtain an insurance certificate before bond registration can take place. Note that the costs involved for obtaining this certificate is for the purchaser's account and do not form part of the transfer and/or bond costs.

13. Message from the directors

The directors of M.C. van der Berg Inc. trust that this *MCSectionalTitleGuide* will provide you, our valued client, with essential advice and useful information.

We furthermore trust that the information contained in this guide together with our professionalism, effectiveness and knowledge will result in a trouble-free, pleasant and exceptional business experience.



We invite you to put your trust in M.C. van der Berg Inc. You are welcome to contact us if you have any queries.



Visit our website at www.mcvdberg.co.za, contact us on 012 660 6000 or send an email to info@mcdberg.co.za.

The MC-Team looks forward to meeting you over the best cup of coffee in town!

M.C. VAN DER BERG^{INC}
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