



Introduction to
Sectional Titles
by Prof. Paddock



Contents

1. What is sectional title?
2. What is sectional title ownership?
3. Is sectional title only for flats and houses?
4. As a sectional title buyer, what will I own?
5. What is the sectional plan?
6. What is common property?
7. What is a participation quota?
8. What is a unit?
9. What is an exclusive use area?
10. Are sectional title schemes the same as share block schemes?
11. Does a unit owner have the same rights as an ordinary house owner?
12. What is the body corporate of a sectional titles scheme?
13. Who controls the body corporate?
14. Who approves the scheme's annual budget?
15. What are levies?
16. What should I check when buying sectional title property?
17. How do I pay rates on my sectional property?
18. Can I let or sell my sectional property as I wish?
19. What does the body corporate insurance cover?
20. Must the scheme have reserves for future expenses?
21. Who is liable for levies?
22. How long does a particular levy last, and can I be asked for extra money?



23. What does my levy include?
24. Will the managing agent or supervisor do minor repairs in my section?
25. What should I do if the body corporate does not repair and maintain the common property?
26. What are the managing agent's duties?
27. What can owners do if they don't like the way trustees are running the scheme?
28. Does each owner take a turn being a trustee?
29. What are the duties of the trustees?
30. How do trustees make decisions?
31. What do you need to have and do to be a good trustee?
32. What are the difficulties trustees can face?
33. What can trustees and owners do to protect their rights and understand their duties?

Introduction to Sectional Titles

1. What is sectional title?

A title system in which 'sections' of buildings are created for separate ownership. A 'sectional plan' is registered and available at the Surveyor-General's Office for each sectional title development. All the parts of the land and the buildings that are not labelled as sections (or parts of sections) on the sectional plan are 'common property'. The common property is owned jointly by all the people who own sections. The sectional plan for a scheme may also show 'exclusive use areas'. These are defined parts of the common property set aside for 'exclusive use' by particular owners, for example as a garden area or parking bay. The entire development is referred to as a sectional title 'scheme'.

2. What is sectional title ownership?

It is ownership registered at a Deeds Registry. The Deeds Registry records ownership of 'units' in a scheme. Each unit is a particular section, that could be a flat or a garage, and a share in the common property. The Deeds Registry records also show any registered 'exclusive use rights'.

3. Is sectional title only for flats and houses?

No, while most sectional title schemes provide permanent accommodation, there are schemes that consist of offices, shops, mini-factories and holiday flats. Any type of land and buildings put to any use can be 'sectionalised', so schemes can include high-rise buildings, low-rise clustered structures or entirely separate buildings.

4. As a sectional title buyer, what will I own?

You will own one or more units. These will include one or more numbered sections (such as a townhouse and a garage) and shares in the common property. The boundaries of each section are the centre lines of the walls, floors and ceilings that surround it. But the section may also include open balconies, patios and other adjoining spaces. Check the registered sectional plan to see exactly what parts of the land and buildings fall within your section. Each unit, which is the thing that you will buy, sell and bond, includes a particular section and its share in the scheme's common property. In addition, you may also have 'exclusive use rights' to one or more parts of the common property.

5. What is the sectional plan?

The sectional plan is an approved survey document showing the boundaries of all sections in the scheme, any registered exclusive use areas and the details of the participation quotas.

6. What is common property?

The common property in a scheme is those parts of the land and buildings that are not contained within any section according to the registered sectional plan. For example, the common property usually includes all the land, the foundations, roofs, passages, parking bays, lifts, garden areas, swimming pool and any other facilities.

7. What is a participation quota?

A participation quota is the 'share' in the common property allocated to each section. The sectional plan includes a 'Participation Quota Schedule' that allocates a particular share to each section. Generally, the participation quota for each section is determined by the following calculation:

$$\text{Floor Area of Section X } 100 / \text{Total Floor Areas of all Sections.}$$

So, for example, if a sectional plan shows that the measured floor area of section number 1 is 94 square metres and the total floor areas of all sections is 1853 square metres, the participation quota for section 1 would be calculated as: $94 \times 100 / 1853 = 5,0728\%$.

The participation quota allocated to a section is usually used to calculate an owner's share of the scheme's common expenses and the value of each owner's vote.

8. What is a unit?

A unit is a section plus its allocated share in the common property.

9. What is an exclusive use area?

An exclusive use area is a defined part of the common property set aside for exclusive use by a particular owner. You may buy and become entitled to 'exclusive use rights' that allow you the sole rights to use a part of the common property, such as a parking bay, carport or garden area.

10. Are sectional title schemes the same as share block schemes?

No, share block schemes do not give participants registered ownership of property. In share block schemes each shareholder enters into a 'use agreement' with the company that allows him or her the exclusive right to use a part of the land and buildings owned by the company.

In a sectional titles scheme, you own your unit, you do not have only a contractual right to use it. A shareholder in a share block scheme cannot bond his or her shares, whereas the owner of a sectional title unit can get a home loan from a bank secured by a bond over a unit and any registered exclusive use rights.

11. Does a unit owner have the same rights as an ordinary house owner?

No. Sectional title ownership involves communal living. To regulate the shared living environment in a sectional title scheme there are provisions in the law and the scheme's 'rules' that place restrictions on your lifestyle. Other differences are:

- You have to pay a share of scheme expenses and are responsible for a share of scheme debts - if you fail to make these payments you will face legal debt recovery proceedings.
- In using your section and the common property, you have to take into account the rights of other owners and occupiers of sections - i.e. you have to use your property reasonably and must not interfere with the rights of others to use their property.
- You have to repair and maintain your sections and keep your exclusive use areas neat and clean. The body corporate has to maintain all the common property.

12. What is the body corporate of a sectional titles scheme?

A scheme's 'body corporate' is an association of all the unit owners. It represents owners, administers the scheme and manages the common property.

13. Who controls the body corporate?

All owners of units are members of the body corporate. They elect trustees to conduct day-to-day business. Often the trustees employ a managing agent to assist them. The trustees must manage the scheme in accordance with any instruction given or restriction imposed by owners at a general meeting.

14. Who approves the scheme's annual budget?

The owners of units in the scheme approve the budget at the body corporate's annual general meeting. The trustees propose a budget for the next financial year and the owners approve this, with or without changes - so the owners make the final decision on the scheme budget.

15. What are levies?

The 'levy' is the contribution, usually paid in monthly instalments, that each section owner pays to the body corporate to meet the scheme's common expenses. An owner entitled to exclusive use rights must also pay any costs attributable to the upkeep and repair of that area. Liability for levies arises when the trustees take a decision 'levying' owners with their contributions.

16. What should I check when buying sectional title property?

- The sectional plan, to determine your section boundaries, the scheme boundaries and to make sure that any section you are buying has not been irregularly "extended".
- Who owns or has exclusive use rights to parking, garden, storage areas, etc. Make sure that you are obtaining rights to any area you expect to be able to use exclusively, such as a parking bay or garden area.
- The participation quota of the section(s). This will usually determine the amount of the levies you pay and the value of your vote.
- The scheme rules. Read these and look particularly for any rules that change your liability for levies or create exclusive use rights.
- The current monthly levies and what expenses are included in the operating budget.
- The condition of all the scheme's common property, to assess the need for repairs and maintenance which could require further levies.
- The most recent set of financial statements - look particularly to see if there are reserves for maintenance and unexpected expenses.
- Whether the body corporate owes money, is involved in litigation or has judgments against it. Make sure you know if you are 'buying into' scheme debt.
- The amount and type of insurances.

17. How do I pay rates on my sectional property?

The municipality bills each owner for rates based on the market value of that unit. The body corporate usually pays the municipality for water, electricity and refuse removal services. Any amounts the body corporate has to pay the municipality, it recovers from owners as part of the levies.

18. Can I let or sell my sectional property as I wish?

Generally, you can. But you must check the rules of the scheme to make sure that there is no restriction on letting or selling.

It is not unusual for scheme rules to restrict short-term or 'holiday' letting, and some 'retirement' schemes require that on the sale of a unit a share of the profit is paid to the body corporate to subsidise levies. You will not be able to transfer your property to a buyer until you have paid all amounts due to the body corporate.

19. What does the body corporate insurance cover?

The body corporate must insure the building(s) and common facilities to their full replacement value. It also insures any movable items owned by the body corporate. The body corporate may also take out other types of insurance. Owners should insure their own furniture, fittings and personal effects.

20. Must the scheme have reserves for future expenses?

In practice, no. The owners in a scheme are obliged to include in their approved budget what they consider to be a reasonable provision for future maintenance and repairs, but in practice many schemes do not build up reserve funds. When buying into a scheme you need to assess the likely cost of maintenance and repairs and see what, if any, money has been set aside for these purposes.

21. Who is liable for levies?

The person who is the registered owner of the unit on the day the trustees levy a contribution on owners is responsible to pay that levy to the body corporate. A buyer takes over responsibility for levies from the time he or she takes transfer of the unit, although the sale contract may provide that he or she pays the levy from an earlier date, e.g. the date he or she moves into the scheme.

22. How long does a particular levy last, and can I be asked for extra money?

Ordinary levies are based on a budget approved for a twelve month financial year, so you can expect them to be revised each year.

But if the body corporate encounters a necessary and unbudgeted expense, the trustees can raise a 'special levy' and all owners will be liable for their shares of the additional amount.

23. What does my levy include?

Owners pay general levies calculated on the approved budget for the current financial year, normally in monthly instalments.

The budget covers scheme expenses such as:

- municipal service charges for water, sewerage and refuse removal,
- cleaning, maintenance and repair of the common property, including lighting, lifts, intercom, security, fire alarms and extinguishers, refuse management, gardening services and equipment,
- insurance premiums and valuation fees, and

- perhaps, contributions to reserve funds for future maintenance, repairs and replacement costs.

24. Will the managing agent or supervisor do minor repairs in my section?

Not usually. These persons are employed by the body corporate to assist the trustees in the administration of the scheme generally and to care for the common property, not to deal with private repairs inside sections.

25. What should I do if the body corporate does not repair and maintain the common property?

You should discuss the matter with the trustees and the managing agent. If this does not get results, you should join other owners in demanding that the trustees arrange proper maintenance.

26. What are the managing agent's duties?

Managing agents assist the trustees to run the scheme. They perform day-to-day management tasks, taking primary responsibility for administrative and record keeping requirements and assisting in the physical management of the scheme. The managing agent provides the trustees with regular financial and other management information and assists them to make decisions. They usually provide a full accounting and levy collection service, deal with the payment of body corporate debts and assist in managing maintenance and repair projects.

27. What can owners do if they don't like the way trustees are running the scheme?

They can stand for election as trustees and play a more direct role in management. Owners who together hold twenty-five percent of the value of votes in the scheme can demand a special meeting to remove one or more of the current trustees and elect others.

28. Does each owner take a turn being a trustee?

No, you have a right to make yourself available to act as a trustee, but you do not have to do so. And even if you do make yourself available, others must vote for you before you can be elected as a trustee. Trustees are not normally paid for their services. Often they appoint a managing agent to assist them.

29. What are the duties of the trustees?

- To control, manage and administer the common property and body corporate assets.
- To ensure that owners and other occupiers of sections comply with the Act and the scheme's rules.
- To ensure that arrear levies are promptly recovered.
- To manage the scheme generally.
- To call and hold regular annual general meetings and call and hold additional general meetings when necessary.
- To ensure that proper notices are given for all meetings.
- To keep secretarial and financial records and allow these to be inspected on reasonable notice.
- To act honestly and in good faith for the benefit of all owners and not only in their own interests.
- To make sure that the scheme buildings and assets are adequately insured to replacement value.
- To raise special levies when necessary unbudgeted expenses are incurred.
- To make sure that the common property and facilities are maintained and repaired.
- To supervise the activities of the managing agent, if one is employed, and any other body corporate employee or agent.

30. How do trustees make decisions?

By majority vote. If there is a deadlock in the trustee voting, the chairperson has a 'casting' vote. Owners are entitled to attend trustee meetings as observers and to speak on the issues on the agenda.

31. What do you need to have and do to be a good trustee?

- A responsible attitude to the affairs of the body corporate.
- The ability to run the scheme sensibly and, in residential schemes, at the same time to remember that you are dealing with people's homes, their domestic lives and the welfare of their families.
- To set a good example to others, for example in obeying all rules, without becoming self-important.

- Leadership and communication skills.
- A working knowledge of the management provisions in the Sectional Titles Act and the scheme's rules.
- An ability to participate in trustee and body corporate meetings, striking a balance between efficiency and social interaction.
- To be efficient in dealing with owner issues and supervising the managing agent.
- The ability to understand the scheme's financial affairs.

32. What are the difficulties trustees can face?

- They may need to make unpopular decisions. Especially when you need to collect money from owners or control their behaviour, you can encounter negative reactions.
- Applying scheme restrictions firmly and equally to owners; some may be your friends while others may be very different to you.
- Finding yourself out of your depth. Scheme management can become financially and legally complex, so trustees must sometimes rely on professional advisers to make sure that they are on the right track.
- Dealing with difficult owners, at meetings and in one-on-one confrontations.
- Finding time to prepare for and attend meetings. If a trustee does not read the paperwork or cannot attend meetings regularly they are not able to participate properly in scheme management.

33. What can trustees and owners do to protect their rights and understand their duties?

In a sectional title scheme, whether you are a trustee or an owner, you need knowledge to perform your duties and protect your interests.

- Read the Act and the scheme's rules.
- To understand how schemes operate, purchase the 'Sectional Title Survival Manual' by Prof. Graham Paddock. The 6th edition of this popular book – available in both English and Afrikaans - retails for R265 and can be ordered through Paddocks. (www.paddocks.co.za)
- To learn the detail of sectional title scheme management legalities, enrol for the University of Cape Town (Law@Work) Sectional Title Scheme Management Course, which is presented in conjunction with Paddocks. (www.paddocks.co.za)
- To get free sectional title advice, register on Sectional Titles Online. (www.sto.co.za)