



WHO IS LIABLE FOR REPAIRS IN SECTIONAL TITLE SCHEMES?

By DAVID THOMPSON, Senior Associate, Litigation

Many sectional title owners are under the impression that their body corporate is automatically responsible to arrange and pay for the repair of damage to their section if it results from some defect or failure in the common property.

MAINTENANCE DUTIES OF ROLE-PLAYERS

The basic maintenance and repair responsibilities of role players in a sectional title scheme are set out in the Sectional Titles Schemes Management Act No. 8 of 2011 (STSMA). Section 3, with the heading "Functions of the body corporate", and section 13, titled "Duties of owners", provide the essentials. These sections provide that the body corporate must maintain all the common property and keep it in a state of good and serviceable repair whilst, on the other hand, an owner must repair and maintain his or her section in a state of good repair.

WHAT IS THE 'COMMON PROPERTY' THAT THE BODY CORPORATE MUST MAINTAIN?

"Common Property", in terms of the Sectional Titles Act No. 95 of 1986 (STA) includes the land on which the building or buildings is or are situated. Apart from land, the common property also comprises all parts of the building or buildings that are not included in a section, for example, the outer shell, the roof and the foundations of the building that are intended to serve all the sectional owners. The STSMA reflects a similar definition of common property.

The question arises as to where the boundaries between a section and the common property lie. The STA provides a definite answer but it is hidden in

technical language. Without discussing the legal-technical aspects, it is sufficient for purposes of this article to state that the boundaries of a section reach to the middle of the floor, the middle of the walls and the middle of the ceiling board that separates the ceiling cavity from the rooms below.

If you own a freestanding housing unit in a sectional title scheme, the inner half of the walls will be part of the section, while the outer half of the walls are common property. Up to the middle of the ceiling board is part of the section, and the roof is common property. This is important because, as was indicated before, the owner is liable for maintenance of his part of the section, and the body corporate is responsible for maintenance of the part of the section that is common property.

Doors and windows are not always positioned exactly in the middle of a wall. Amendments introduced to the STA in 2011 determine that the median (middle) line is deemed to pass through the centre of any door/window or other structure that divides two sections or a section and the common property. This means that, where, for example, an owner's leaking shower causes damage to a section below, the owner must have his shower repaired, and where a leaking roof causes damage to sections below, the body corporate must repair the roof.

┌...boundaries of a section reach to the middle of the floor, the middle of the walls and the middle of the ceiling board that separates the ceiling cavity from the rooms below. ┐



WHO IS LIABLE FOR ENSUING DAMAGE?

Whilst the STSMA apportions the legal responsibility for maintenance and repair of the common property to the body corporate, and maintenance and repair of sections to their owners, it does not deal with a body corporate's responsibility for consequential (ensuing) damage. No automatic liability follows. Since the STSMA does not expressly deal with the question of liability to pay for consequential damage to a section that is caused by defects arising from the common property, an owner will have to look to the common law remedies if the body corporate is not willing to pay for the cost of repair. An example of this would be rising damp as a result of a defect in common property walls or floors.

The common law requirements for the recovery of damages (i.e. pure economic loss) will have to be applied in order to hold the body corporate liable for such consequential damage. An owner may therefore request the body corporate to pay for the damages

caused by defects arising out of the common property, but if the body corporate refuses to pay, the owner must then proceed to either enforce their common law rights, or consider filing an application with the Community Schemes Ombud against the body corporate for an order requiring them to have the repairs and maintenance carried out. In this regard, the Community Schemes Ombud Service Act 9 of 2011 (CSOS) finds application. Section 38 of CSOS allows an owner to approach the Ombud with an application if such person is a party to or affected materially by a dispute. A "dispute" is defined as:

"...a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly"

In terms of Section 39 of CSOS, an application made in terms of section 38 must include one or more of the following orders: *"(6) In respect of works pertaining to private areas and common areas - ... (a) an order requiring the association to have repairs and maintenance carried out"*.

DEEMED DONATIONS

INTEREST-FREE LOANS FOR TRUSTS AND THE PROPOSED OFFICIAL INTEREST RATE INCREASE

By JOHAN GREYLING, Senior Associate, Tax Law

Section 7C of the Income Tax Act No. 58 of 1962 (effective from 1 March 2017) creates a deemed donation where a trust is granted an interest-free loan or a loan at a lower rate of interest than the official rate (7.5% since 29 March 2018) by a connected person to the trust.

The effect of section 7C is that the interest foregone by the person providing the loan to the trust is deemed to be a donation to the trust and, thus, the donation attracts donations tax. One of the reasons for introducing this provision is to prevent taxpayers from avoiding estate duty by selling assets to a trust on loan account and then extinguishing the loan account by making use of their annual donations tax exemption.

This deemed donation is equal to the difference between the official rate of interest and the lower/zero rate multiplied by the amount of the loan owing from time to time. This donation is deemed a continuing annual donation made to the trust on the last day of the tax year, and is thus subject to donations tax at the rate of 20%. In most instances this tax liability will be due at the end of March.

┌ This deemed donation is equal to the difference between the official rate of interest and the lower/zero rate multiplied by the amount of the loan owing from time to time. ┐