

STRENGTHEN TIES BUILD BONDS

Understanding
Sectional Title

THE FIRM

Established in 1900, STBB is a firm of approximately 90 business-minded lawyers practising from 11 offices throughout South Africa.

By understanding our clients' needs and objectives, we strive to deliver cost-effective legal solutions for all business and personal matters. We are committed to developing close working relationships with our clients, enabling us to succeed consistently on their behalf.



WHAT IS A SECTIONAL TITLE UNIT?

A sectional title unit consists of a part of a building or a separate building on a piece of land that has been converted into a sectional title scheme. The owner's ownership of the unit includes ownership of an undivided share in the common property. All the sections together with the common property comprise "the scheme".

WHAT IS THE COMMON PROPERTY?

This comprises the areas which are owned and used by all owners, for example the grounds, driveways, roads, recreation facilities, corridors, entrance areas and exterior of the building, and which are not sections.

WHAT ARE EXCLUSIVE USE AREAS?

Parts of the common property, for example a parking bay or garden area, may be set apart for the exclusive use by an owner of a section, in terms of the registered sectional plan or in terms of the scheme's rules.

Different legal consequences flow from these two types of exclusive use areas. Practically, however, the rights that the owner has in respect of the exclusive use area are the same.

IS OWNERSHIP CONFERRED UNDER SECTIONAL TITLE?

Yes, once transfer is registered in the deeds office, the title holder is owner of the unit. A title deed is issued upon registration of transfer of the sectional title unit, as proof of ownership. A notarial deed of cession is a title deed that is issued to the holder of exclusive use areas that are delineated on the registered sectional plan.

WHAT IS THE DIFFERENCE BETWEEN A SHARE BLOCK SCHEME AND A SECTIONAL TITLE SCHEME?

A share block scheme involves the selling of shares in a share block company which owns a building, coupled with an agreement that entitles the share-owner to occupy a portion of the building. These shares cannot be mortgaged and the transfer of the right to occupy is effected by the registration of a share transfer with the Companies and Intellectual Property Commission (CIPC), as opposed to registration in the deeds office.

WHAT IS A REGISTERED REAL RIGHT OF EXTENSION?

A developer can, when building a sectional title scheme, reserve to himself the right to extend the scheme by the addition of units and/or buildings at a later stage. This is referred to as a right to extend. The plans of such a

proposed extension must be drawn up and approved at the time that the scheme is first opened and registered. If the right of extension is not exercised or reserved, the right to extend the scheme vests in the body corporate. Any prospective purchaser must be made aware of the existence of a reserved right of extension in the agreement of sale, failing which he or she is entitled to resile from the contract.

WHO OR WHAT CONTROLS THE SCHEME?

The body corporate is responsible for the control, administration and management of the scheme.

WHO OR WHAT IS THE BODY CORPORATE?

All the owners of sections in the scheme automatically constitute the body corporate. At an annual general meeting of all the owners, trustees are elected to act on behalf of the body corporate and to carry out the day-to-day running of the scheme. In many instances and especially with bigger schemes, the trustees utilise the services of a managing agent to assist them. Ultimately, however, the control lies with owners who make decisions on the administration of the scheme at a general meeting.

WHAT ARE LEVIES?

Levies comprise all the anticipated costs of the running of the scheme and usually include:

- Rates and taxes payable to the local authority by the scheme if the units are not separately rated;
- Water;
- Electricity and repair costs relating to any electrical installation on the common property;
- Insurance in respect of buildings in the Scheme;
- Managing agent fees;
- Annual audit fees; and
- Security and maintenance costs.

One of the main functions of the trustees is to determine a monthly levy for each unit.

HOW IS THE AMOUNT OF LEVY DETERMINED?

The trustees calculate the total annual budget required for the proper running and maintenance of the scheme. The budget will be made up from various expenses, such as the items mentioned in the previous paragraph. The annual total is divided into monthly instalments which in turn are collectively paid by the individual owners. The levy payable by any one owner is calculated with reference to the floor area of a given section, in relation to the total floor area of all the sections in the scheme. This is referred to as a section's participation quota.

Thus:

- Total annual budget divided by 12 = required monthly budget for the Scheme.
- Floor area of owner's section divided by the total floor area for all sections $\times 100$ = percentage of monthly budget payable by the owner.

WHAT ARE SPECIAL LEVIES?

If insufficient funds are available for maintenance and/ or improvements, or unforeseen, necessary expenses become payable, a special levy may be raised by the body corporate at a general meeting. Owners of sections will then be liable to make a further contribution towards levies. This special levy may or may not be payable in

instalments. The questions of liability for and disclosure of an existing or possible special levy should be dealt with in the deed of sale since the owner at the time the levy was raised is the one who is liable for payment thereof.

In terms of legislative changes introduced in October 2016, all schemes are required to maintain a so-called reserve fund, which should have enough funds to cover the cost of additional maintenance and repair, should the need arise. It is anticipated that the need to impose special levies will decline.

WHAT ARE MANAGEMENT RULES?

The Sectional Titles Schemes Management Act contains provisions regarding the management of the scheme, for example how trustees are elected, what the obligations of the trustees are, what the voting procedure is at general meetings, and so forth. These provisions are referred to as management rules. It is also possible for the body corporate, by unanimous resolution, to amend, substitute, add to or repeal the management rules from time to time. Copies of the management rules that apply to any scheme can be obtained from the trustees of the body corporate (or managing agent) or from the Community Schemes Ombud Service.

WHAT ARE CONDUCT RULES?

Each scheme has a set of conduct rules to regulate the conduct of owners in the scheme regarding the keeping of pets, refuse removal, etc. It is possible for the body corporate, by special resolution (75% majority), to amend, substitute, add to or repeal the conduct or rules from time to time.

WHAT ARE THE DUTIES OF AN OWNER OF A SECTIONAL TITLE UNIT?

An owner must:

- Permit any person authorised in writing by the body corporate, at all reasonable hours and on notice (except in the case of emergency, when no notice is required), to enter his or her section or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and which are capable of being used in connection with the enjoyment of any other section or common property or for the purposes of ensuring that the provisions of the Act and the rules are observed;

- Pay the monthly levy to the body corporate;
- Carry out all work that may be ordered by any competent public or local authority in respect of his or her section and pay all charges, expenses and assessments that maybe payable in respect of his or her section;
- Maintain his or her section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition;
- Use and enjoy the common property in such a manner so as not unreasonably to interfere with the use and enjoyment thereof by other owners or other persons lawfully on the premises;
- Not use his or her section or exclusive area (or permit it to be used) in a manner or for purposes that will cause a nuisance to any occupier of a section;
- Notify the body corporate immediately of any change of ownership in his or her section and any mortgaging

or other dealing in connection with his or her section;

- Ensure that the section is used for what it was intended, for example residential or business;
- Acquaint himself or herself with the content of the Management and Conduct Rules and abide thereby.

HOW IS OWNERSHIP OF A SECTIONAL TITLE UNIT TRANSFERRED?

With some minor differences, the procedure to transfer and/or register a bond over sectional title property is similar to the procedure in respect of conventional property. Please consult our pamphlet on conveyancing and transfers in this regard.

CAN A UNIT BE EXTENDED, CONSOLIDATED AND/OR SUBDIVIDED?

Yes, but only after:

- The approval of the body corporate;
- The approval of the local authority;
- A sectional plan of subdivision/extension/consolidation has been drawn by a land surveyor and approved by the surveyor general;
- An application to the Deeds Office to register the extension/subdivision/consolidation has been made; and
- Consent of bondholder.

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