

Paddocks Press

SECTIONAL TITLE NEWS FOR EVERYONE

WHAT IS PADDOCKS PRESS?

An ad-hoc **free** digital newsletter published to educate and update the sectional title community.

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Mike Addison
Addsure

SECTIONAL TITLE TAKES OFF IN BOTSWANA

By Prof Graham Paddock

Botswana's Sectional Titles Act of 1999 was followed by the Sectional Title Regulations in 2002. But it was only in December 2005 that the model rules were prescribed by the Minister for Lands and Housing and it became possible for a developer to open a sectional title register.

Now the first sectional title registers have been opened at the Deeds Registry in Gaborone. Four of the earliest registers were opened by the Botswana Housing Corporation (BHC) which is in the process of converting its rental stock to

sectional title and disposing of the units and exclusive use rights to its citizen tenants.

Paddocks recently completed a one-week training course for the BHC. The ten members of the BHC Sectional Title Task Team included representatives from the Estates Management, Property Development, Legal and Support Services divisions, many of whom had already completed the Paddocks / University of Cape Town Sectional Title Scheme Management Certificate Course and therefore had a working knowledge of the subject. The delegates were taken through a

comprehensive programme which focused on each of their roles in the development of schemes in Botswana and dealt with the applicable Botswana law.

The Botswana legislation is based on the South African law as it was in 1997 but includes a number of significant changes. The Botswana regulations and prescribed rules have been substantially reworked and are significantly shorter than their South African equivalents. There are, for example, only 37 prescribed management rules as compared to the 71 ...to page 2

INSURANCE CLAIM : OWNER OR THIRD PARTY CAUSES DAMAGE

A very common situation is where someone inadvertently causes damage to the insured's property.

Some examples are:

- 1) A truck rolls down a hill and collides with building / wall causing damage
- 2) A visitor or owner reverses their car into a fence, garage door etc.

3) Someone collides with a gate, gatepost and/or gate motor

4) A car does not stop in time and collides with gate boom, entrance security structures

5) A vehicle leaks oil or petrol onto a tarred area or a workman spills paint, glue or another substance onto other areas of the common property.

How do you as managing agent or as trustee manage this situation?

A. Firstly, record all details of the incident, parties involved, motor vehicle details etc. – treat this as a normal accident scene recording the date, time, visibility, names, contact details, witnesses details etc. ...to page 3

**SECTIONAL TITLE TAKES OFF IN BOTSWANA
... CONTINUED**

from page 1 ...currently prescribed under the South African regulations.

It is expected that in coming years sectional title will play an important role in the delivery of residential, retail, industrial and commercial property in Botswana. Sectional title has also been identified as suitable for resort developments.

The BHC training course, held at Kelvin Grove Club in Cape Town, covered a variety of subjects including pre-sales activities, residential tenants' pre-emptive rights, scheme contracts, sectional plans, scheme rules, opening the register, sales, transfers / cessions of rights, handover to the body corporate and managing agency. In addition to lectures and workshops run by Prof. Graham Paddock, delegates listened to talks by various other subject

experts, visited schemes and attended scheme meetings.

Mr. Clint Riddin of Clint Riddin Associates dealt in detail with finances and accounting, Mr. Chris Farley of Trafalgar Property Management unpacked the practicalities of scheme take-on and management and Mr. Jerry Margolius explained the intricacies of sectional title valuations. A number of enjoyable social events were held, including an introductory cocktail party at the Clock Tower in the Waterfront and a dinner at the Vineyard Hotel in Claremont.

Paddocks offers the UCT Sectional Title Scheme Management and Specialist Realtor courses to Botswana delegates. These courses include an additional module with the Botswana legislation and supporting materials. ■



Above: The BHC task training team were welcome to Cape Town with cocktail party in the Clock Tower at the V & A Waterfront.



Above: BHC delegates and the Paddocks Team at Paddocks offices

“The course was very interesting and closed the practical gap.

We couldn't ask for a more interactive course delivery!” Mr. Ronald Dintsi, the Senior Estates Manager



Above: Whale spotting on Boyes Drive before a sit visit to a well-known scheme in Muizenberg.



Above: Enjoying a tea break between lectures at Kelvin Grove Club

INSURANCE CLAIM : OWNER OR THIRD PARTY CAUSES DAMAGE . . . CONTINUED

from page 1...

B. Report the incident within 48 hours to the local SAPS so that there is a written statement on record for future reference; a case number should be obtained and noted.

C. Obtain a quote to repair the damage as quickly as possible so that the person who caused the damage can have an opportunity to pay the reasonable cost of repairs straight away. Send a written demand for the amount to be settled within as specified and reasonable period of time, failing which the matter will be handed over (example below).

D. After the period has expired and the amount has not been settled or covered by the person's insurance company, then submit a claim to the body corporate's insurer with a copy of your letter to the third party seeking settlement for damages caused.

E. The body corporate's insurer should receive this claim within 30 days of the event. So make sure that steps b, c and d take place straight away and that the date for payment is well within the 30 day period.

F. The managing agent / trustee will need to manage the claim through to finality. If the claim is larger, an assessor will be appointed and the body corporate's representative will need to liaise with him/her. The body corporate's insurance broker should process the claim by submitting the claim, and assisting the body corporate should the outcome after assessment be unsatisfactory.

The lazy way is to simply submit a claim. But in my opinion this is not enough to serve the best interests of the body corporate.

If the body corporate submits a claim, it affects the claims ratio and future premium negotiations. The fewer the number of claims and the lower the value of any claims, the higher the likelihood of receiving a better/lower premium rate and a lower excess structure in future. Many schemes have a high rate of claims such as cars hitting security booms. If one simply claims in each instance, the insurer will probably exclude this risk after the third event! Therefore, if the loss can be settled directly by the "transgressor" or recovered from his/her own motor policy, the body corporate is much better off.

The only time settlement is not an option is where the body corporate is

unable to find out who caused the damage or loss or to locate the person. Then a claim should be submitted immediately. A SAPS report of the incident will also be helpful and may even result in the transgressor being found – you never know!

Common sense and community spirit are also important. In terms of the Act and prescribed management rules, the trustees are obliged to insure against this sort of event. Owners also need to be responsible – if they, their visitors or their tenants cause damage, they should come forward and assist in the matter.

An example of a letter of demand, referred to in C. above, is set out below. ■

BODY CORPORATE LETTERHEAD / MANAGING AGENT LETTERHEAD

The Secretary
XYZ Widgets (Pty) Ltd
PO Box 29
Smashville
7441

Dear Sir / Madam

LETTER OF DEMAND:

INCIDENT – MOTOR VEHICLE CITI GOLF REGISTRATION CA 12345 COLLIDES WITH GATE

We refer to an incident which occurred yesterday (12th January 2007) at ABC Mews, First Avenue, Down Town where your driver, Mr Joe Bloggs, drove the abovementioned vehicle through our gate, apparently as a result of brake failure / not stopping in time.

A copy of a quote for the repair of the gate from supplier GATEFIX CC for R8,765-00 is enclosed for your attention.

The body corporate hereby demands from your company, within ten days of the date of this letter, either:

- (a) payment of the sum of R8,765; or
- (b) confirmation from your insurer that this amount will be paid within 30 days, failing which the body corporate will do all things necessary recover the repair costs and all legal costs and other expenses from you.

We reserve all our rights in this matter.

Yours faithfully

A Managing Agent

BACK TO BASICS

by Judith van der Walt

Does your Body Corporate need a managing agent?



Judith van der Walt

The Sectional Titles Act allows the trustees of the body corporate to appoint a managing agent to assist them with the control and management of the scheme and to provide them with the necessary administrative support, especially in respect of the financial rights and obligations of the Body Corporate. However, the trustees are not compelled to appoint a managing agent unless a majority of the owners or bondholders over 25% of the units instruct them to do so. If the trustees do not appoint a managing agent, they will personally have to perform all the tasks which a managing agent usually carries out.

The efficient collection of levies is arguably the body corporate's most important function. If levies are not collected, the body corporate's expenses cannot be paid, such as water accounts, insurance premiums and salaries to the body corporate's employees. Levies are normally paid monthly and every owner receives a monthly levy statement indicating the payments made and amounts currently due to the Body Corporate. The

administration surrounding calculation and collection of levies is intensive and might be a compelling enough reason to appoint a managing agent.

Another very time-consuming administrative function is preparation for the Annual General Meeting ("AGM"). Every owner has to receive, among others, the agenda of the meeting, a copy of the minutes of the previous year's AGM, the scheme's audited financials, insurance schedules reflecting the replacement value of each section, a trustees' report and various other documents. These documents have to be sent to the owners either 14 or 30 days prior to the AGM.

Trustees should consider various factors in deciding whether they need the assistance of a managing agent in administering their scheme or whether they are able to do the work themselves. Perhaps the most important factor is the size of the scheme. If the scheme consists of only two or three units, the owners will probably decide amongst each other that they will share the responsibilities of managing and running scheme and that it is not financially worth it to appoint a third party to assist them. But the bigger the scheme, the more sense it makes to appoint a managing agent. It is difficult to believe that an unpaid trustee will volunteer to do all the scheme's bookkeeping, send out 100

levy statements every month and then follow up each account to ensure that it is paid. There are large schemes in which the trustees attend to their own administration with great success, but usually special arrangements are required to pay the trustees. Medium to large schemes which are self-managed by unpaid trustees are the exception to the rule.

Managing agents are becoming increasingly well trained in all sectional title matters and an experienced professional can provide a wide range of additional services such as assisting with dispute resolution in the scheme, project managing maintenance and repairs, attending trustee and owner meetings, and handling all financial and secretarial matters.

Managing agents are paid a monthly fee per unit in the scheme and will usually charge a specific fee to attend meetings as well. Most managing agents will be prepared to tailor their services and charges to suit a scheme's needs, but in the end the trustees must decide what, if any, assistance they need to make sure their scheme is properly run.

Judith van der Walt is an attorney at Paddocks and specialises in sectional title consulting and conveyancing. Judith is available for consultation from R900 per hour. ■

Advertise on Sectional Titles Online

Contact Robyn on 021 674 7818 or robyn@paddocks.co.za

www.sfo.co.za

Q & A WITH THE PROFESSOR



Prof Graham Paddock

Maintenance of Exclusive Use Out-buildings and Equal Levies

Q1: Our body corporate had our meeting on Saturday. There was a question about maintenance; who pays for maintenance of outbuildings and garages where unit owners have exclusive rights? Please note that there is no participation quota and everyone pays the same levy.

A1: The Sectional Titles Act, 1986, specifically requires that any amounts spent by a body corporate on maintenance of an area of common property which is subject to exclusive use rights must be recovered from the owner who holds those rights.

There is no sectional title scheme that does not have a participation quota schedule as the last page of its sectional plan. All schemes also have management and conduct rules and it is possible that in your scheme there is a rule which states that all owners will pay equal levies. But this is a very unusual situation and you should get a copy of your scheme's rules from the Deeds Registry to check whether this is in fact the case. If there is no special rule in this regard, all communal

expenses must be recovered from owners in accordance with their participation quotas.

In many schemes trustees have at some stage decided that it would be much fairer for everybody to pay the same amount each month, either overall or for a particular expense, and they have managed the scheme accordingly. But there are very few schemes in which this is in fact the legal position. A failure to collect the correct amounts from owners can cause very serious and expensive disputes when those who have been over-charged demand to be compensated.

Share of Profits due to Body Corporate

Q2: How can a body corporate justify taking a 10% "enhancement levy" from the profits of the sale of my unit? And I see that this amount is based on the gross profits. Surely the 10% should be calculated after all transactional expenses have been deducted?

A2: Such contributions, normally to a "levy stabilisation fund" can only be recovered in terms of a specific condition which, in schemes where it applies, is normally reserved by the developer or made under the rules of the scheme and operates in favour of the body corporate.

The condition must be in a public document which is available for inspection by all persons who consider purchasing a unit and thus binding themselves to make this payment.

There is no requirement in law as to how the amount payable to the body corporate is to be calculated, i.e.

whether transaction costs should be included or excluded. Whatever is provided in the condition will apply to all owners.

Excess Payments in regard to Hot-water Cylinders

Q3: I paid a R500 excess when the geyser burst; the managing agents then billed me for an additional excess of another R500. I believe I should have been told upfront that the excess was R1000 and not R500. In any event should the levy not cover this?

A3: Prescribed Management Rule 68(1) (vii) provides that an owner "shall maintain the hot water installation which serves his section, or, where such installation serves more than one section, the owners concerned shall maintain such installation pro-rata, notwithstanding that such appliance is situated in part of the common property and is insured in terms of the policy taken out by the body corporate."

This provision places the responsibility for maintenance on the owners served by a hot water cylinder, and relieves the body corporate of the operational and financial responsibility in this regard. In theory, the owners concerned could each take out insurance to cover their risk in this regard, but this is not practical. Insurance for the cylinders comes as a standard feature of the body corporate's building insurance, so all owners pay via the levy.

Most insurance policies include an "excess" or "first payment" provision in terms of which the insured party must contribute a specified amount in the event of certain claims. When such a provision applies ...to page 7

PADDOCKS CELEBRATES ITS FIRST BIRTHDAY



By Sam Paddock

Paddocks is a little over one year old now and what a year it has been!

Half way through last year my father and I decided to work together on a new growth and expansion strategy for the business. After a successful rebranding, **"Paddocks"** was born and since then the business has gone from strength to strength.

I would like to report on some of the more noteworthy events of the past year:

Sectional Title Conference

In September 2006 we hosted the very first three-day sectional title conference at Stellenbosch University, attracting over 70 people from across the country. The conference, entitled Third Generation Sectional Titles, was attended by representatives of the Department of Land Affairs, Department of Housing, the National Association of Managing Agents and other industry role players. It proved to be a wonderful opportunity for members of the industry to put their heads together and learn about the upcoming legislative changes.

Training

There have been several exciting developments within our Training division.

During the course of 2006, we trained over 300 students on our six-month UCT Sectional Title Scheme Management certificate course. 2007 saw a further 350 students enroll for this course, which we believe has been firmly established as the benchmark course for the industry.

We currently have five historically disadvantaged students on scholarships spon-

sored by Paddocks and UCT.

After identifying a need for estate agents to learn about the sales of sectional title property, we introduced the UCT Sectional Title Specialist Realtor certificate course in April 2007. During this year the course attracted a student group of over 260 people from throughout South Africa, achieving a pass rate of over 94%.

In an attempt to assist trustees of sectional title schemes we also launched the UCT Sectional Title Trustee Certificate Course together with accredited facilitators throughout South Africa. We now have training facilitators in all the main centres.

More recently we have branched out into developer training and ran a 5 day intensive contact-based training course for the Botswana Housing Corporation focused on Botswana's Sectional Title laws.

Software and Publications

Sectional Titles Online (www.sto.co.za), a web-based initiative that promotes the open sharing of knowledge in the sectional title community, was launched at the beginning of 2007.

The website now boasts over 3,000 users and includes over 4,700 questions and answers, 900 library articles, 15,000 sectional plans and information on over 36,000 sectional title schemes.

And while we're on the subject of "free services for the sectional title community", Paddocks Press, an ad-hoc newsletter was launched as a regular publication in March 2007 with the intention of making sectional title expertise available to everyone. The publication currently has a readership in excess of 15,000 people.

With a brand new business management software application for managing agents in the pipeline, 2008 promises to be an exciting year for our software division.

Other News

Early in 2007 Judith van der Walt, one of our specialist sectional title Attorneys, obtained her LL.M from Stellenbosch University.

In April 2007 Graham was made an adjunct Professor by the University of Cape Town.

In July 2007 the City of Cape Town implemented the separate rating of sectional title units. We assisted the community with their objections to their valuations by writing articles for the press, liaising with local government officials and introducing a self-help website, which assisted over 500 people with their valuation objections.

We have recently established a niche Property Development division to work with small property developments by leveraging the firm's sectional title expertise. Watch this space!

We like doing things in style, and so for our first birthday we chartered a yacht to take the Paddocks Team around the Cape Peninsula. Pictures are included on the opposite page.

Thank you to all our customers for their support throughout the year. Special thanks to the Paddocks Press readers who have encouraged and helped grow the publication. ■



. . . Q & A CONTINUED

from page 5...to repairs to or replacement of a hot water cylinder, in my view it is correct to recover the full excess amount from the owner concerned because the rules make him or her primarily responsible for that item. That is why the levy payable by all owners should not cover this expense.

There is no doubt that the managing agent should have given you the correct excess figure in the first place. But perhaps s/he was confused as to whether or not it should be shared 50:50 between the owner and the body corporate. In any event, you cannot rely on being initially under-debited to resist a claim by

the body corporate for payment of the balance of the amount.

Temporary Structure on the Common Property

Q4: An owner wishes to put up a marquee on the common property for three days and use it for his daughter's wedding. Must the owner get permission from every other owner or just a majority vote approval by the body corporate?

A4: This owner is asking for temporary "exclusive use rights" to a portion of the common property and permission to have service providers and wedding guests use it.

All the common property is owned in undivided shares by all owners in the scheme, so owners may take the view that they should not be deprived of access to any part without their prior consent. But trustees have the power to let a portion of the common property to an owner for any period less than ten years.

So if the rights of other owners will not be unreasonably affected, the owner is prepared to pay a reasonable rental and the trustees support the idea, then a short lease including appropriate conditions may be a sensible approach. ■



Above: The Paddocks Team aboard the yacht.



Back: Anton Kelly; Sam Paddock; Prof. Graham Paddock; Willem van Zyl. **Front:** Judith van der Walt; Amy Roseveare; Mandy Paddock; Christina Maxwell; Robyn Allan; Rob Paddock.

SHARE YOUR THOUGHTS ON THE PADDOCKS BRAND

We are constantly looking for ways to improve and, in line with this, always appreciate customer feedback. Please will you complete our 2-minute online survey and share your thoughts on our Paddocks brand.

Please see www.paddocks.co.za/sharemythoughts



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WHAT IS PADDOCKS?

Paddocks is a specialist sectional title firm providing a range of products and services through its **Learning, Consulting, Development, Publishing, and Software** divisions.

Prof. Graham Paddock is the head of Paddocks and is an authority on Sectional Title law and practice and an adjunct Professor at the University of Cape Town. He is the Project Manager and one of the lead consultants to the Department of Housing in the restructuring of the Sectional Titles Act and the establishment of an Ombuds Service.

Learning

Together with the Universities

of Cape Town and Stellenbosch as well as the National Association of Managing Agents and other professional organisations, Paddocks Learning offers several sectional title certificate courses, seminars and conferences.

Consulting

Graham Paddock leads the consulting division and is assisted by Judith van der Walt. Paddocks Consulting deliver consulting, drafting and representation services, primarily to sectional title bodies corporate, but also to developers, owners and others involved in schemes. They consult to various levels of central and local govern-

ment and act as mediators and arbitrators of sectional titles disputes. The consulting team also offers conveying services.

Development

Paddocks Development leverages the firm's sectional title expertise to complete niche sectional title property developments in the Western Cape.

Publishing

Since 1983, Graham Paddock has written sectional title books, pamphlets and training manuals for trustees and managing agents. Paddocks Publishing sets, prints and publishes a range of electronic and 'hard copy'

sectional title publications by Graham and other authors which make Sectional Title expertise easily accessible to the South African population at large.

Software

Paddocks Software designs and manages the production and distribution of a variety of software tools which provide substantial efficiency gains to those involved in sectional title management and consulting.

Please see **www.paddocks.co.za** for more information