

# **SECTIONAL TITLE TIME-BOMB TICKING**

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Sayed-Iqbal Mohamed analyses a serious social problem in which innocent parties may get burnt.

The recent furore over rate arrears by bodies corporate of sectional title blocks has generated much public interest. While councillors debate the pros and cons, Durban has become the main focus of attention in the country, as the council is poised to claim its dues from about 25 buildings. Should the council succeed in the sale of these buildings, several thousand people will become homeless. The most severely prejudiced would be individual owners of the sectional blocks who have paid their levies diligently.

Thus the council faces a serious human rights dilemma with social, moral and political consequences.

Delaying any action against sectional title owners, some argue, may not create a financial crisis for the city.

Fiscal discipline is necessary, the city treasurer argues, and it is bodies corporate which are required by law to collect levies, which includes individual owner's pro rata share of the rates.

The government is presently drafting the Local Government Rates Bill that will include a separate rating system for sectional title schemes. It is expected to become law by June this year, enabling councils to deal with individual sectional owners directly in respect of rates.

Presently, a body corporate is responsible by law to pay rates, which, in turn, forms part of the levies paid by individual owners. Levies include the pro rata share of rates, maintenance costs and service charges.

Sectional ownership is a kind of "communal" ownership, requiring individual and joint responsibility in a disciplined environment. Breaking the rules means disturbing the "communal" environment and eroding the confidence in an alternate option for people who want to own property.

The historical development of this form of ownership is interesting. Sectional title ownership existed more than a thousand years before Christ in ancient Oriental legal systems and to some extent in Germany, Switzerland, France and southern Netherlands under Germanic hegemony. It was unknown in Roman-Dutch law and ignored in modern European law, except for the French code of 1804.

The two world wars led to an acute housing shortage and economic crisis, bringing pressure on governments to introduce measures to protect tenants and to provide alternate types of ownership. Rent legislation in 1920 was introduced in most countries, including South Africa. From 1924 to 1965 various European countries, except for Great Britain, enacted special legislation on sectional ownership.

New South Wales followed the European trend in 1961; Canada introduced sectional ownership in 1961, Turkey in 1969 and New Zealand in 1972. In Latin America, sectional ownership was introduced in Brazil in 1928 followed by other Latin American countries and the Caribbean. Puerto Rico in 1958 set the tone for the United States to promulgate "condominium" legislation in 1961.

South Africa was influenced in the 1950s by this global development and introduced a draft Bill in 1956. The House of Assembly did not enjoy the necessary support and it was only in June 1971 that legislation was enacted and came into force in 1973. The Sectional Titles Act, 1971, was based on New South Wales Conveyancing (Strata Titles) Act. The law has undergone several amendments, the most recent in October 1997.

Sectional ownership legislation in South Africa was influenced by similar world factors - socio-economic and psychological needs. A growing housing shortage and the rising cost in the housing

market because of inflation made it difficult for people to own a free-standing house. The only options were to rent a flat or to buy "shares" in a company that owned a block of flats - the share block scheme, which in any event meant owning shares but not the flat itself.

The sectional titles law provided that, for the first time, a person could buy a flat with full ownership rights and be granted a bond through a financial institution. The sectional owners own the individual unit: flat, apartment or a section in a simplex or duplex townhouse scheme and jointly own (undivided share) the common property (e.g. lifts, parking bays, gardens, courtyards, corridors).

The owners form a body corporate, which is established when the first unit is transferred from the developer to its first owner. Trustees are elected who are responsible for exercising the powers vested in the body corporate. In most cases, trustees appoint a managing agent to assist them with managing the sectional title scheme. Management rules and conduct rules bind all owners and visitors and are crucial to the success of the scheme.

Sectional ownership has many advantages, including a wiser use of land resources, and encourages developers to build accommodation rapidly and without capital being tied up indefinitely.

Problems occur when owners are not aware of, or fail to adhere to, management and conduct rules. Owners who fail or refuse to pay their levies, for example, prejudice the rights of those who do pay diligently.

Over the past ten years or so, sectional owners in certain sectional blocks particularly in the inner cities have failed to pay levies either regularly or at all. This has resulted in services becoming non-existent (lifts shutting down and water being disconnected). Buildings have rapidly deteriorated because money is not available for maintenance and repairs.

What is needed is effective management by bodies corporate. Financial institutions need to screen prospective clients even more rigorously before making bonds available, because some owners misrepresent their income, thereby creating problems for the institution and the body corporate. Bodies corporate must act swiftly against defaulting levy payers or else face the consequences of losing the entire block, which is presently the case in Durban.

On the other hand, throwing thousands of people into the streets, will mean enormous legal costs and the council will be further burdened by the acquisition of these buildings which may lead to possible vandalism, costly renovation, writing off service charges and difficulty in selling.

The political repercussions will be worse. Making each owner directly responsible to the council for rate payment is part of the solution. Bodies corporate together with estate agents and financial institutions need to come up with a comprehensive strategy to make sure that sectional ownership continues to be a viable alternative.