

A circular inset image showing a low-angle view of several modern skyscrapers against a dramatic sunset sky. The buildings are illuminated with warm orange and yellow light, and their glass facades reflect the sky. One prominent building on the right has a curved facade and is topped with a construction crane.

MODULE 2

PART 1

“SECTIONAL TITLE LIVING EXPLAINED”



THINKING OUT OF THE BOX (OR PENTHOUSE)

“NEVER DO BY PROXY WHICH YOU CAN DO
YOURSELF”

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WHAT IS IT?

Sectional living can be traced back to ancient times when families or communities shared their living space for protection and their communal benefit.

In South Africa the history of communal living **with** the accompanying desire to own your own unit can be traced back to the late 1960's and early 1970's.

Initially share blocks, in which a building belongs to a management company and each occupier of a unit purchases a share in the management company, thereby receiving indirect ownership of his/her unit, was the more popular approach.

This became so popular that the Share Blocks Control Act No.59 of 1980 was drafted to regulate this arrangement. Very few examples survived today, and they are mostly found on the coastal areas of KwaZulu Natal.



THE VARIOUS ACTS

The first Sectional Titles Act 66 of 1971 failed to gain momentum initially, but as the years progressed and more and more people moved to the larger cities sectional title living became more and more acceptable and in some cases desirable.

In 1986 the 1971 act was scrapped in its entirety and replaced with the Sectional Titles Act 95 of 1986. This act was amended over the years and the next milestone was the introduction of the Sectional Titles Schemes Management Act 8 of 2011 (STSMA) (operational since 7 October 2016) with accompanying Regulations and Prescribed Management Rules.

The Community Schemes Ombud Service Act 9 of 2011 (CSOS) (operational since 7 October 2016) introduced a “referee” to resolve disputes and assist all consumers living in community schemes. Community schemes are defined as “any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings”, it then lists examples such as sectional title schemes. This act is also applicable to other schemes such as Home Owner Associations and retirement facilities to name but two.

It’s important to understand that normal Municipal By- Laws and the common law are also applicable when you live in a sectional title complex. Sectional title properties are just regulated by additional laws as oppose to freehold properties for example.

Many other acts may also be applicable depending on the relevant scenario. Ranging from the Constitution of South Africa 1996 (operational since 4 February 1997) in as far as it deals with property rights, to the Municipal Property Rates Act 6 of 2004 which regulates how the units in the sectional scheme is billed for rates and taxes by the local authority in whose municipal borders the scheme falls.

When determining arrear interest, a Body Corporate is bound by the maximum percentage prescribed by the National Credit Act 34 of 2005. For this presentation it will suffice to refer to the above legislation but keep in mind that you maybe facing a situation in your complex where even more acts may be applicable.

Don’t let this put you off however, as these comprehensive legislative guidelines make a well managed sectional title complex a sound investment with many safeguards against mismanagement.

SHOW ME THE WAY!

Lets start with a new development. You drive by a bustling building site and see a great artist impression of your dream home. Right on the spot you know this is a sign, or is it? Lets look at what you should know before signing on the dotted line:

- As with any large investment, start by doing a proper due diligence on the developer. Buying from a reputable company with a proven track record is always a good principle. If it is a small developer make sure you meet their directors on site and get a feeling of who they are, what they do and what your “gut” feeling tells you. Invite an advisor along if you are not good with these type of negotiations.
- Remember that the developer and builder are in many instances not the same company. This is especially true with larger developments. Ask the developer for the building contractor’s details and also do your due diligence on them. It is true that the developer will stand in for the quality of workmanship of the builder, but if they appointed a unreliable builder this may lead to frustration and delays even if they do make good in the end.
- Ask specifically under whose name the new complex will be enrolled at the NHBRC (National Home Builders Registration Council). The NHBRC is a legal body that provides the consumer with a 5 year limited warranty on any new building. In some cases the building is enrolled under the builders name and not that of the developer. If this is the case the reputation and credibility of the building company is very important.
- Do a price comparison for the area. Look at what is available in the market around your site of interest and do a price comparison. Also work out the price per square meter and verify this against the average price per square meter for the suburb you are buying into. This can be done online, or the sales agents of the developer or your attorney can obtain these stats for you.
- Never assume that the price is non negotiable. This is especially true in smaller developments. If you don’t ask you will never know.
- Ask and know the proposed levies for the unit (both levies – see later) and the expected municipal valuation and accompanying charges.

BUYING NEW: THE BENEFITS

Lets now look at some of the benefits of buying into a new development:

- In a new development (specially a larger one) the chances are very likely that your seller the developer is registered for vat. This means that transfer duty will not be applicable and the advertised price will include vat. This has cash flow implications. With property taxes, either transfer duty or vat is payable never both. Buying from a vat registered developer will therefor not require that you pay transfer duty over and above the purchase price.
- The price of many new developments also includes all of, or a portion of the attorneys fees. As stated above this will mean that you will not be required to pay additional legal fees over and above the asking price. Please note that this is not the case in all new developments and you should ask the marketing person what exactly is included in the sale price.
- New buildings comes with various guarantees and warrantees. As mentioned above the NHBRC provides a limited 5 year warranty, the Engineer that signed off the foundations, slab and roof will be professionally insured should any of those proof defective and he/she assumes liability for the integrity thereof. The developer will offer a guarantee on workmanship and even if he does not then the Consumer Protection Act 68 of 2008 (CPA) will be applicable and force him to make good on defective workmanship.
- All new appliances like geysers, stoves, hobs etc. will come with their respective warranties.
- In terms of the newest municipal by laws the new property should be energy efficient with emphasis on heating, cooling, LED lightning and alternative energy sources.
- There is a certain kind of satisfaction being the first owner of a product.
- You will be able to participate in the Body Corporate activities right from the outset. Later more about this.
- Banks are sometimes agreeable to 100% bonds for buyers in a large new development from a reputable developer. Remember the one great advantage when buying new is that the property must be fully completed with all accompanying paper work in place before your bond will be paid to the developer. If you buy cash insist that payment takes place on completion only and once a final inspection of the unit and paper work has been conducted. Ask your attorney to help if you feel uncertain.

PRE-LOVED: A CHANCE TO SCORE BIG?

What if you are interested in an existing unit? Maybe even an old “do me upper” – what should you look out for?

- Well the same logic, discussed above, about a proper price comparison for the area stays relevant. Do your homework on the asking price.
- With an existing property your chances of a negotiated discounted price is much higher than when buying in a new development.
- Older complexes can sometimes have a charm all their own and units tend to be larger in size than in new developments.
- A well run body corporate that has been functioning for many years have smoothed out most “hiccups”. With new complexes body corporates may well take a while before finding their feet.
- Always ask for the newest audited financial statements of the body corporate, a copy of the complex’s municipal account, its rules and a copy of its insurance policy. REMEMBER that as a new buyer you are buying into the positive and the negative of the body corporate. If there are large outstanding municipal bills for services for example, you will become liable - even for the historic debt, once you are an owner. Likewise if the complex is financially sound you will share in the positive cash flow and your unit and the common property may benefit from maintenance and beautification to the complex.
- Please remember that when buying an existing unit from a once off seller the CPA will not be applicable and “voetstoots” or “as is” will apply. Look carefully at the condition of the unit and the complex before making your offer.
- Ask your agent or attorney for a proper transfer and bond costs quote so that you know the cash flow that will be required over and above the sale price.
- Ask and know the existing levies for the unit (both levies – see later) and the current municipal valuation and accompanying rates and refuse charges.

UNIT, SECTION, EXCLUSIVE USE, COMMON PROPERTY? HELP I AM CONFUSED!

A sectional title property consists of a section and an undivided share in the common property as an absolute minimum. This is then called a unit. The most basic product you will purchase when buying property in a complex is therefore a unit. To confuse the matter further some developers choose to show garages, store rooms etc. as sections on the sectional plan. These sections are then referred to as utility sections as opposed to primary sections (i.e the actual living space). These definitions were introduced by the STSMA (see slide 5).

An exclusive use area is part of the common property (see below) which is allocated to the owner of a unit for his/her exclusive use. These can again be - garages, store rooms, gardens etc. If it was not shown as an utility section then it must be shown on the sectional plan as an exclusive use area OR it must be allocated to a specific unit in the management rules. Gardens for example can't be shown as utility sections and has to be shown on the sectional plan or allocated in the rules. Exclusive uses can either be registered with their own deeds called notarial deeds or it can be allocated to a unit in terms of the management rules of the complex. You have to be an owner of a unit to be able to own an exclusive use area and you can even sell these areas to other owners.

Common property is everything left after the sections have been sold off. Remember that exclusive use areas remain common property but it is set aside for the exclusive use of a unit. Examples of common property are communal gardens, pools, clubhouses and internal roads. A section's undivided share in the common property is calculated by determining the section's square meters as a percentage of the total square meters of all the sections in the scheme.

Confused? Don't be. Let's unpack this in clear language. When you buy a unit you will receive a space to live in and you will be an owner of a part of all communal spaces. This means you can enjoy these spaces, but your levy (see later) will also be used to maintain these areas. If your garage, storeroom, servants room, balcony or roof terrace are part of your unit you will not receive any additional sections or deeds, but you must ask if your garden is an exclusive use area and then ask for proof that it is allocated to your unit.

If your unit does not include anything besides the living space then ask for proof that all other "property" sold with it, again including any applicable garden area, are correctly allocated to your unit. If you feel uncertain ask your attorney or agent to help.

BODY CORPORATES

A body corporate is a legal body that comprises all the owners of the various units. It derives its legal persona from the Sectional Titles Act (see slide 5) and comes into existence once the first unit in a complex is transferred to someone other than the developer. The Deeds Office then issues its founding document (a very short “one pager” called form W) and with this document the body corporate can start its affairs. If you buy a property in a complex you HAVE to be a member of the body corporate. It is not optional.

If you buy into a new complex and once the body corporate is established as explained above, the first task of the developer is to convene the first annual general meeting (AGM) of the body corporate. This is an important meeting because various significant matters need to be dealt with at this meeting. A few examples will be: - the approval of a budget for general and maintenance levies, the opening of two separate bank accounts as required by the STSMA, the opening of a municipal account, the appointment of an auditor, the confirmation and implementation of an insurance policy, the refund to the developer of any amounts that may have been spent by him after the opening of the body corporate, the hand over of key warranties and a list of suppliers to the new owners and much more. The most important matter though is the appointment of trustees and the possible appointment of a management agent.

Please look at my quote on the second page. You HAVE to partake in the meetings of your body corporate. This is a fundamental principle and can have a huge impact on the future value of your property. If you have knowledge of management, law or finances consider making yourself available as a trustee as the trustees are the people who are closely involved in the day to day management of the complex and indirectly your investment.

If you bought into an existing complex some of the above may have been decided already but remember that every year a new AGM meeting with a new budget, trustees, change of management company etc. needs to be decided on so please get involved. Remember that a body corporate is the owners as a whole and if you partake you can make a positive difference.

The prescribed management rules can be obtained on the CSOS website and there you can look at exactly what it entails to run a body corporate as well as the powers and limits applicable to the duties of trustees.

LEVIES AND MUNICIPAL CHARGES EXPLAINED

As referred to in slide 5 above the Municipality will charge the owner of each unit for rates and taxes and refuse removal. The rates and taxes are calculated based on the value of the property, as with any other property, and its exempt from vat. Refuse removal depends on the municipal area and suburb the complex is situated in and the charge attracts vat.

Levies is a term that refers to the monthly contribution that each owner of a unit and exclusive use area (if applicable) pays to run and manage the body corporate. The levies are determined yearly at the AGM and consist of insurance, general maintenance provisions, managing agent fees, auditing fees, gardener or gardening service fees etc. The right to recover levies from the owners is granted to the body corporate by the Sectional Titles Act, the STSMA and the prescribed rules and regulations issued in terms of these Acts.

The STSMA when it came into operation introduced the concept of a 10 year maintenance plan, known as “the maintenance levy” This levy is payable by every owner of a unit in the scheme and goes into a separate bank account that needs to be opened and maintained specifically for this purpose. The background to this legislation is to establish a fund to cover the future maintenance and repairs of the common property, thereby limiting the need to raise special levies for larger maintenance and repair projects.

The introduction of the CSOS (see slide 5) also made it compulsory for every complex to register with the CSOS and for the body corporate to pay a monthly levy per owner in the complex to the CSOS. This levy works on a sliding scale, with a capped maximum of R40 per month per unit.

Water, electricity and sewer related charges – All body corporates have a municipal account in its name. This is the account for sewer and water received from the local authority and where the local authority also supplies the electricity, for the electrical charges. These charges are recovered from the owners in various ways, but most complexes have sub meters that can calculate each units consumption. Sewer charges are normally billed in relation to a units participation quota. This quota is calculated by dividing the number of square meters occupied by the owner’s section by the total floor area of all sections.

Prepaid electricity is very seldom provided by Eskom or the local authority and most complexes that offers prepaid electricity make use of electricity re-sellers to provide this service. In essence these providers install prepaid meters in the complex and then charge an admin fee to manage the system monthly. This should not be confused with municipal prepaid electricity.

IN CONCLUSION

Unfortunately the field of sectional title laws and regulations warrants a myriad of these presentations. As I stated before don't let this put you off from buying into a well run complex, as the industry is well managed and regulated. Its also a way to buy a secure "lock up and go" home that suite many in todays lifestyle.

Many complexes welcome pets just make sure you ask before hand. Remember that the outside of your unit, as well as its roof, is common property so your maintenance liabilities are limited to the inside of your section. Your exclusive use areas work the same with you only being liable for the inside. Remember you need to care for and keep tidy your exclusive use garden.

Although the levies may seem complex and high, remember it covers many items that freehold property owners also need to budget for. Maintenance of the outside and roofs of the buildings being a case in point as is insurance costs.

Complexes still offer greater security than free hold property and many people enjoy the sense of community that comes with sectional ownership.

Take active part in the management of your investment and like any other investment that's nurtured and well managed it will reward you in the end.



THANK YOU!



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