

Introduction to the Sectional Title Schemes

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Affordable Reliable Justice

Governing Legislation

- Sectional title schemes are governed by the following South African laws:
 - *The Sectional Titles Act 95 of 1986 (STA)*
 - *The Sectional Titles Schemes Management Act No. 8 of 2011 (STSMA) and its Regulations.*
 - *The Community Schemes Ombud Service Act No.9 of 2011 (CSOS) and its Regulation.*



WHAT IS SECTIONAL TITLE SCHEME / DEVELOPMENT?



Is a form of property ownership where a number of people can simultaneously own a piece of land, on which multi-level apartment blocks (flats), townhouses and other developments with shared facilities and areas are built.



It allows individual ownership of part of a property (**section**) and shared ownership of all other areas (**common property** – driveways, gardens, foyers, lifts, stairways, roofs, etc).



What does an owner own? Section

A *Section* is that part of a sectional title scheme which an owner *owns*.

In legal terms owner is said to have a *"Title"*.

Is the space between the four walls, including windows, doors, ceilings and the floor.

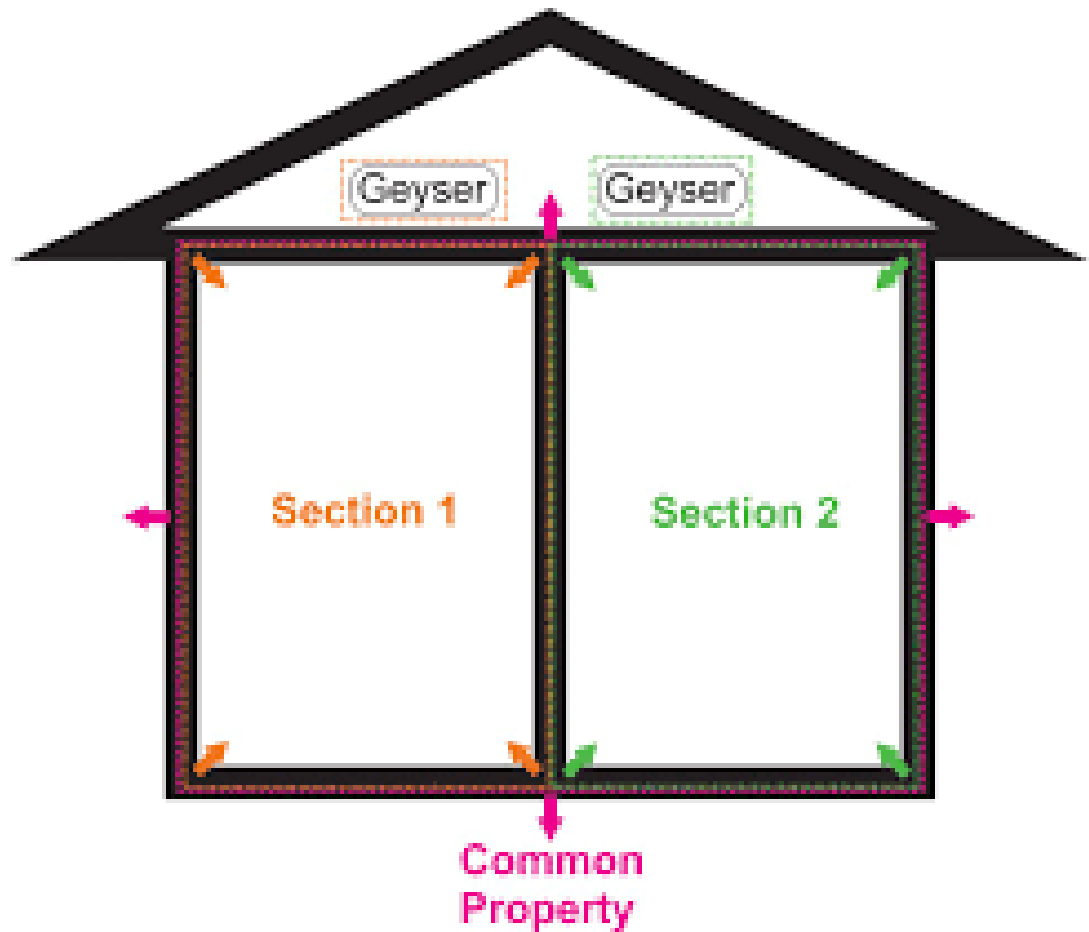
In certain schemes an enclosed garage or balcony or staff room may be registered as a section.

Common Property

Is the whole area that does *not* form part of a section – the land, corridors, parking areas, walls, gates, gardens, *swimming pool, balcony AND* area between the roof & median line of the ceiling *AND* the outer skin of the building, roof foundation, stairways, lifts etc.

Is owned by **ALL** owners in scheme in undivided shares & is always controlled by the Body Corporate.

Median lines is the common boundary between any section & another section or common property.



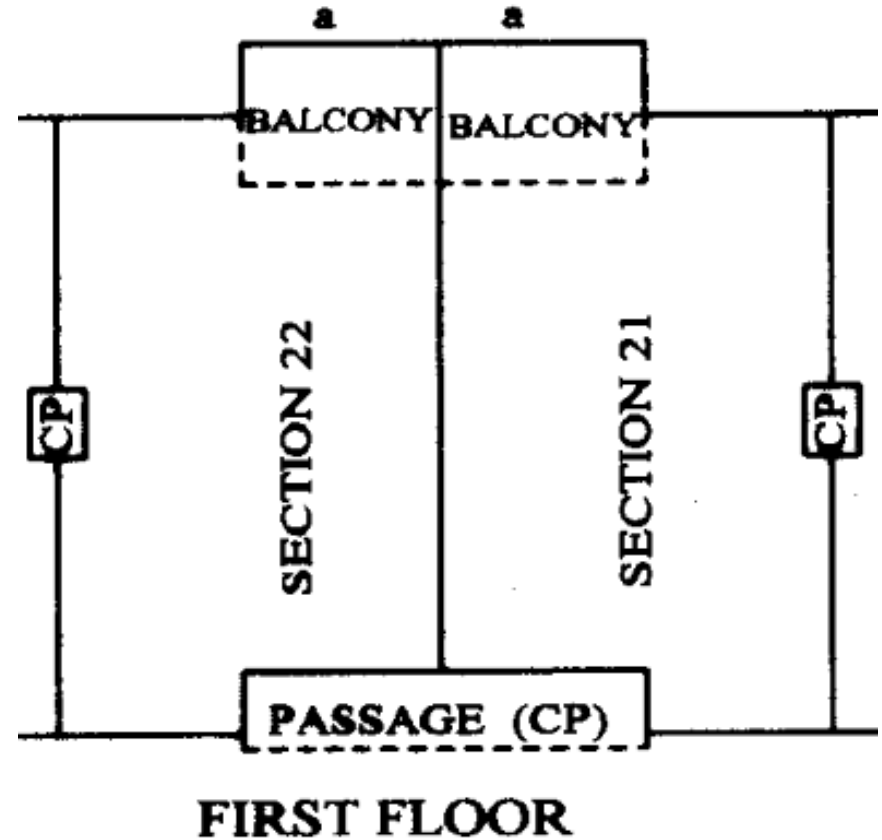
Unit

Often people are confused by the difference between a unit and a section.

Unit is a section together with its undivided share in common property apportioned with the “***quota***” of that section.

unit = section + undivided share in the common property

How is Section vs CP shown on a Sectional Plan



Importance of PQ (Sec 11(1) of STSMA)

Used to calculate the ***financial contributions*** of each owner, i.e. levies, special levies, portion of an owner's liability in the case of a judgement debt.

Used to determine the ***Value of the Vote*** of an owner of a section, where a vote is taken on value.

Used to work out the ***Undivided Share*** in the common property of each owner of a section.

When are PQ calculations *NOT* used?



- **Not** used in 2 circumstances:
 1. the developer, at the beginning of the Scheme actually *nominates values* for each unit; and/or
 2. the members of the body corporate, by way of a **Special Resolution**, decide to discard the PQ method, and opt for the “**nominated values**” method instead. The proviso to this is that any owners who are adversely affected by this resolution **MUST** give their written consent.

Exclusive Use Areas (EUA)

In addition to a unit, an owner may hold rights to the *exclusive use* of a portion of the scheme's common property.

EUA may be shown on the registered sectional plan or a plan that forms part of the scheme's rules.

EUA rights are commonly granted for parking bays, gardens, balconies, garages.



2 ways EUA can be allocated

| 1st | 2nd |
|---|---|
| <p>“Real Rights” EUA Registered under Section 27 of 1986 STA or Section 5 of STSMA</p> <p>Fully Owned Right: Can be <i>bought and sold</i> between owners in a scheme</p> <p>Developer or Body Corporate - <i>Unanimous Resolution</i></p> | <p>“Rule Created ” EUA known as <i>Personal Rights</i> Section 10 (7) & (8) of STSMA</p> <p>Owned by BC: Not a full right of ownership, CAN’T be bought and sold</p> <p>Developer or Body Corporate - <i>Special Resolution</i></p> |

IMPORTANT ROLE-PLAYERS



- The following are important role players with a Sectional Title Scheme:

- ❖ Body corporate;
- ❖ Owners;
- ❖ Trustees;
- ❖ Chairperson;
- ❖ Managing Agent.

The Body Corporate (BC)



The **Body Corporate** is the collective name given to all the owners of Units in a Scheme.



It comes into **existence** as soon as the Developer of the Scheme transfers a Unit to a new owner.
(Developer & owner become members of BC)



All registered owners of Units in a Scheme **are** members of the **Body Corporate**.



The **Body Corporate** controls and runs the Scheme.



Membership of the body corporate is **not a voluntary** one



Membership **ceases** only when ownership of the unit/s within the scheme is transferred to another person, who then becomes a member of the body corporate.



Body Corporate as a Legal Entity



The law views a body corporate as a *Legal Entity*, capable of *suing* or *being sued* in its own name.



For example –

BC can sue a member for outstanding levies.

BC can sue or be sued for any contract entered – security services, painting or damage of/to common property, etc.

BC can claim against the Developer in respect of a scheme if so determined by special resolution.



What Rules govern a BC

- A BC has 2 sets of rules, namely **Management Rules** & **Conduct Rules**, which determine how the owner, their family, staff, visitors & tenants **Must** or must **Not** act.

| MANAGEMENT RULES Deals... | CONDUCT RULES Deals... |
|---|---|
| <ul style="list-style-type: none">▪ The appointment & removal of Trustees and Chairperson;▪ Duties of Trustees;▪ General meetings;▪ Voting at meetings;▪ Elections;▪ Financial Management▪ Administrative Management▪ Managing Agent | <ul style="list-style-type: none">▪ Behavioural issues i.e. behaviour of occupiers & visitors; pets, parking, waste disposal;▪ Damage to CP;▪ Appearance of section & EAU;▪ Storage of flammable materials;▪ Eradication of pests |



What are the owners obligations with regard to “their” Section

- Sec 13 of the STSMA sets out Duties of **Owners** as follows:
 - ❖ You must maintain your section in a good state of repair;
 - ❖ You must allow reasonable access to any authorised person(s) (Trustees) to your section for the purpose of inspection & maintaining common electrical & plumbing installations;
 - ❖ You must carry out & pay for any work on your section that is ordered by a competent local or public authority;
 - ❖ You cannot use your section, or permit your section to be used in a manner which will create a nuisance to others;
 - ❖ You must only use your section for the purpose which is expressly shown on a registered Sectional plan.



What are the Owner's obligation with regards to Common Property (CP)

- In terms of the STSM Regulations, in respect of Management & Conduct Rules, the owner must:
 - ❖ Not use CP so as to cause a nuisance or unreasonably interfere with other persons lawfully on the scheme;
 - ❖ Not contravene any law or by-laws
 - ❖ Not make any alterations to a section or exclusive use area that are likely to impair the stability of the building;
 - ❖ Not use or do anything to a section or EUA that has a material negative affect on the value of the building
 - ❖ ***Not make improvement or alterations on CP without complying with the requirements of the STA & STSMA, provided that the BC may by Ordinary resolution:-***
 - ✓ Give consent for such improvement or alterations,
 - ✓ Prescribe any reasonable condition in regard to the use or appearance of the building; and
 - ✓ Withdraw any consent if the owner or occupier breached any such condition.

**What are the
Owner's obligation
with regards to
Common Property
(CP) cont..**

- ❖ **Without written consent of the Trustees, an owner or occupier should **Not**:-**
 - ✓ keep any animal, reptile or bird;
 - ✓ leave refuse or other materials in a way or place likely to interfere with the enjoyment of CP;
 - ✓ (except in a case of emergency) or allow a visitor to park or leave any vehicle standing on CP without written consent of Trustees;
 - ✓ install any locking device, safety gate, burglar bars or any safety device ;
 - ✓ Mark, paint, drive nails or screws into or otherwise damage or alter any part of CP;
 - ✓ Erect any washing lines or hang washing or laundry;
 - ✓ Display a sign, notice or advertisement

Meetings

MAJOR DECISIONS REGARDING THE SCHEME ARE MADE BY THE BODY CORPORATE, USUALLY AT THE **ANNUAL GENERAL MEETING (AGM)**, OR AT A **SPECIAL GENERAL MEETING (SGM)**.

AT THESE MEETINGS, MATTERS WHICH AFFECT THE SCHEME, ARE DISCUSSED, **BUDGETS ARE APPROVED**, RULES CAN BE AMENDED AND TRUSTEES ARE APPOINTED.

EACH MEMBER OF A BODY CORPORATE IS ENTITLED TO VOTE AT THESE MEETINGS.

UNLESS A MEMBER HAS A **COURT OR ADJUDICATION ORDER** FOR A PAYMENT OF LEVIES OR TO REFRAIN FROM BREACHING THE BC'S RULES. HOWEVER THIS RULE DOESN'T APPLY TO SPECIAL OR UNANIMOUS RESOLUTIONS.

Meetings requirements

Notices for BC Meetings:

- AGM – 14 days;
- SGM – 30 days.

Quorum:

- Ordinary & Special resolution – 33.33%
- Unanimous resolution – 80%

Proxy:

- A maximum of two proxy

Voting

- Votes are calculated in value(PQ) or
- in number – each member has one vote

Types of Resolutions

| ORDINARY RESOLUTION | SPECIAL RESOLUTION | UNANIMOUS RESOLUTION |
|--|---|---|
| Resolution passed by at least 50% plus one of votes of members, present or represented by proxy at a meeting | Resolution passed by at least 75% of votes (calculated in value and in number) of members, present or represented by proxy at a meeting; OR | Resolution passed by All members at a meeting , which at least 80% of votes (calculated in value and in number), are present or represented by proxy AND all members vote in favour of the resolution ; OR |
| Resolution agreed in writing by at least 50% plus one of all such members of the scheme personally or by proxy | Resolution agreed in writing by at least 75% of all such members of the scheme personally or by proxy | Resolution agreed to in writing by ALL the members of the BC |



When to pass certain types of resolutions

| Ordinary Resolutions | Special Resolutions | Unanimous Resolutions |
|---|--|---|
| To install separate metres | To install pre-paid water & electricity meters | To effect improvements or alterations not reasonably necessary |
| To remunerate Trustee who is not a member | To effect improvements or alterations that are reasonably necessary | To sell any part of the common property |
| To remove a Trustee from office. | To grant a Trustee who is a member the right to any reward, whether monetary or otherwise for their services. To borrow money. | To rent land outside of the Scheme To deem destroy the scheme. |
| To appoint a Managing Agent and/or cancel the management agreement with accordance with its terms or refuse to renew it when it expires | To cancel the management agreement on two months' notice prior to expiry. To appoint an Executive Managing Agent. To sue the Developer of the scheme for any claim. | To create a registered exclusive use right. |
| To consent for a structure or building improvement on EUA or extension of a section or EAU, if the BC is satisfied that such work does not require compliance with the STSMA & STA requirements | To enter into a notarial deed of cancellation of an exclusive use right. To approve the extension of boundaries or floor area of a section. To purchase, take transfer of, mortgage, sell, give transfer of or hire let units. To change the value of votes of owners or the liability of owners to make contributions. | To extend the time period within which the Developer may erect, or complete a building, or an extension of an existing building. To rebuild or reinstate any building, or not to rebuild or reinstate any building, that was damaged or destroyed. |
| To prescribe any reasonable conditions and /or to withdraw such consent if a member/occupier breach such condition in respect of any structure or building improvement. | To change the location of a AGM to a place other than one in the local municipal area where the scheme is situated. To insure any additional insurable interest the BC has in the land & Buildings. To add to, amend, or repeal conduct rules. | To make loans from the BC's fund. To add to, amend, or repeal management rules. |





Thank You

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