

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.

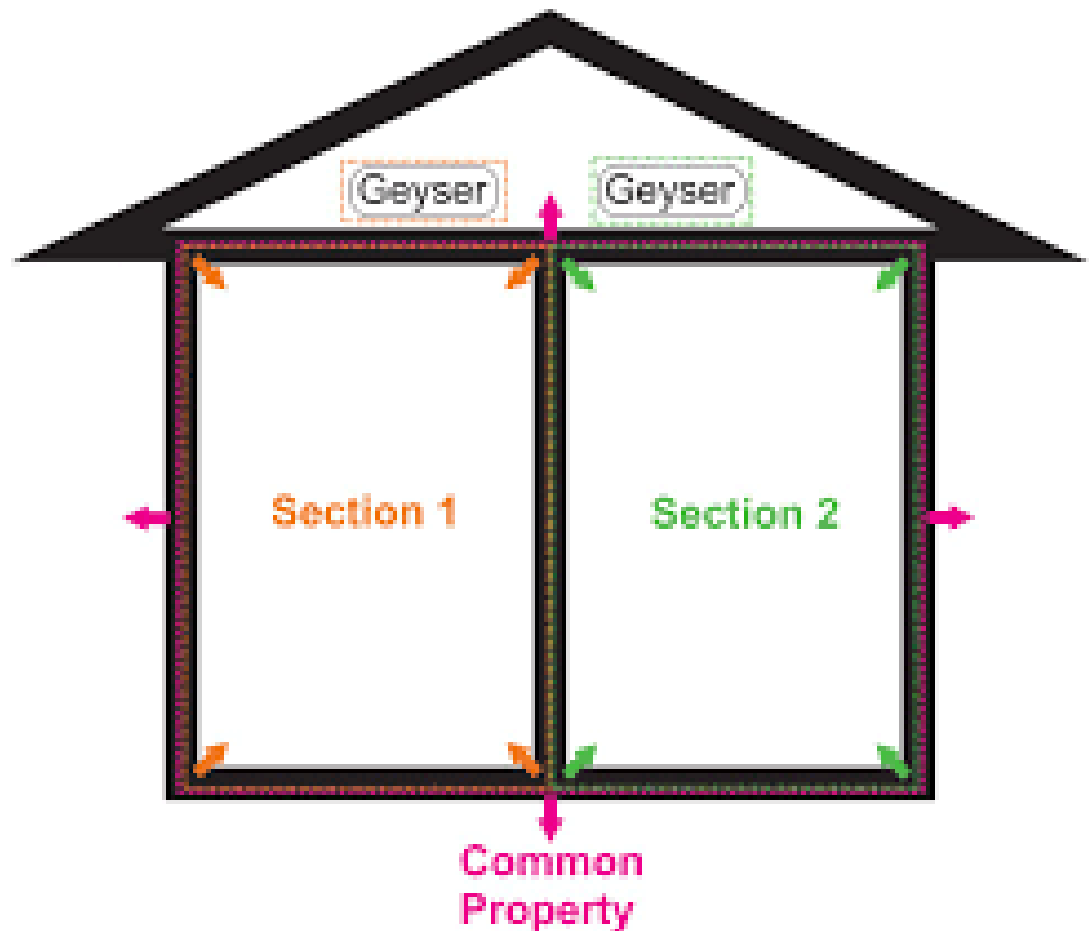
In certain schemes an enclosed garage or balcony or staff room may be registered as a section.

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.



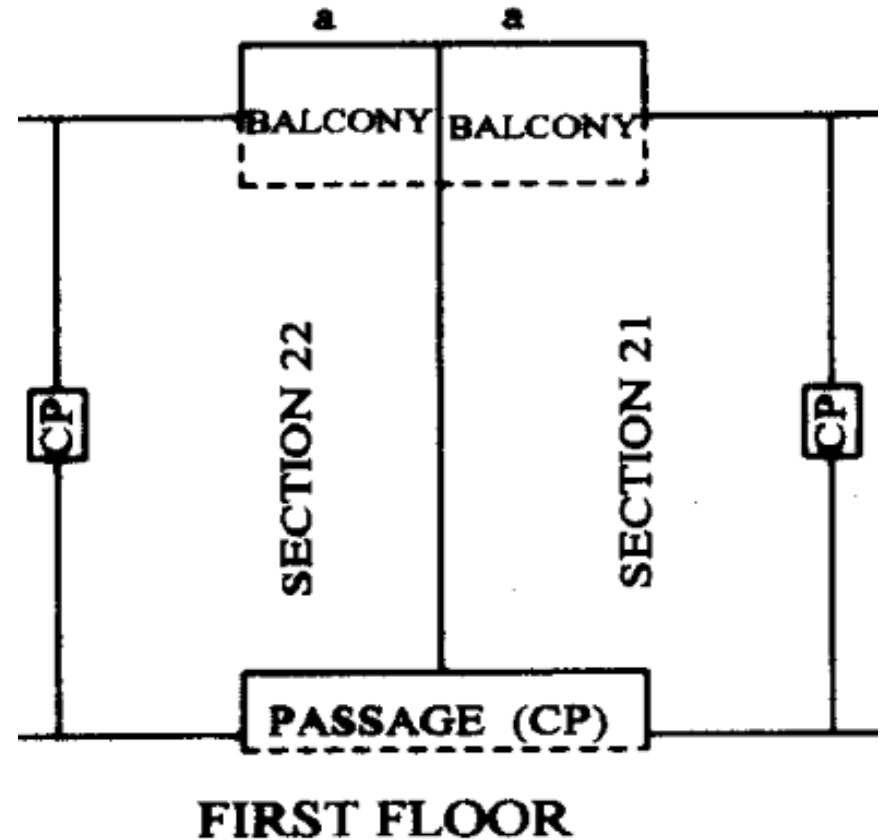
Unit

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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