



Introduction to Sectional Titles



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About Paddocks

Paddocks is a specialist sectional title and home owners' association firm that provides a range of products and services to anyone professionally or personally involved in these schemes.

Paddocks is led by expert community scheme attorney and Adjunct Professor Graham Paddock, who is an authority on the subject of sectional titles and other community schemes, having specialised in this area for over 35 years. Graham is the head legal advisor to the government Department of Human Settlements in the overhaul of the sectional title legislation. He has been the lead consultant to the DHS in the drafting of the pending Sectional Titles Scheme Management Act as well as the Community Schemes Ombudsmen Service Act.

Graham is assisted in the technical team by his daughter Jennifer Paddock, a specialist sectional title attorney (trained by him) who also has experience working as a managing agent in Victoria, Australia. Graham is also assisted by specialist teacher and consultant Anton Kelly, who has trained under Graham for over 5 years.

Paddocks is further driven by a team of passionate people with extensive skills in education, marketing and information technology.

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Introduction to sectional titles

1. What is sectional title?

Sectional title is a form of property ownership used in multi-level apartment blocks, townhouses and a variety of other developments with shared facilities and areas.

It allows individual ownership of part of a property (called a “section”, which is generally an apartment or townhouse) and joint or shared ownership of all the other areas (called the “common property”, which includes the driveway, gardens, foyers, lifts, stairways, roofs, etc.).

Every section is allocated a “participation quota” that determines the size of the share in the common property that is co-owned by the owner of that section.

Every owner is a member of the “body corporate”, which is a legal entity that exists to control, manage and maintain all the common property. Often a “managing agent”, being a person who professionally manages sectional title properties, is employed to manage the common property on the body corporate’s behalf.

Sectional title developments can be residential, commercial, retail, mixed use (eg. commercial and residential), serviced apartments, retirement villages, caravan parks or resorts.

2. What does an owner actually own?

An owner owns his section exclusively and co-owns all of the common property. Together these make up a “unit”, which is the property that is registered in the name of a sectional owner. So an owner’s unit consists of:

His SECTION (generally an apartment/townhouse) + undivided SHARE OF THE COMMON PROPERTY determined by the section’s PARTICIPATION QUOTA.

3. What is a sectional plan?

This is the plan or diagram that shows the division of the land and building(s) into sections and common property. The scheme’s sectional plan is held at the local Surveyor-General’s office and a copy can also be obtained from your local Deeds Registry. It is very important to study this plan to ensure that you know exactly where the boundaries of your section are and what areas are included in your section, because those are the areas that you, as a sectional owner, must repair and maintain.

4. Boundaries

An owner usually owns his section to the mid-point of its floors, walls and ceilings. This mid-point, called the “median line”, is shown on the sectional plan and forms the boundary between one section and another or between a section and the common property.



5. Bodies Corporate

A body corporate is a legal entity whose members are all the owners in a sectional title scheme. Owners automatically become members of the body corporate when a unit is transferred into their name. The body corporate meets at least once a year at the "Annual General Meeting" where "trustees", the elected representatives of the owners, are elected to manage the common property and carry out the body corporate's functions and duties. The body corporate has a legal responsibility to:

- Maintain all the common property;
- Insure the building(s) to their full replacement value;
- Administer the scheme's finances and collect funds called "levies" from owners;
- Carry out the secretarial functions of the body corporate including calling and conducting meetings, taking minutes and dealing with all correspondence;
- Enforce the body corporate rules, and
- Maintain proper records including financial statements, minutes of meetings, etc.

6. Funding

The body corporate raises funds through collecting "levies" from each owner. The trustees draw up a proposed budget before each Annual General Meeting (AGM) and the owners consider the budget at the meeting. They can either accept the budget as it is or amend it and then accept it. Once accepted, the trustees take the total budget for the year and divide it amongst the owners.

The way the budget is generally divided and each owner's levy calculated is based on the "participation quotas" (PQs). Each owner's PQ counts a certain percentage towards the total PQ. The PQs for exclusively residential sectional title schemes are based on the size of the floor area of an owner's section. Therefore the bigger the section (e.g. apartment or townhouse), the more of the body corporate's expenses that owner is obliged to pay. However, an owner's PQ also determines the size of his vote, so although the owner with the largest PQ has to pay the highest portion of the scheme's expenses, he is also entitled to the biggest vote. The sectional plan contains a PQ schedule that sets out the PQ allocated to each unit in the scheme.

For unexpected scheme expenses that were not budgeted for in the budget accepted at the AGM, the trustees are able to raise "special levies" which the owners are then responsible to pay for over and above their "general levies" that were raised based on the budget accepted at the AGM.

7. What does my levy include?

Owners pay general levies calculated on the approved budget for the current financial year, normally in monthly instalments.



The budget covers scheme expenses such as:

- Municipal service charges for water, sewerage and refuse removal;
- Cleaning, maintenance and repair of the common property, including lighting, lifts, intercom, security, fire alarms and extinguishers, refuse management, gardening services and equipment;
- Insurance premiums and valuation fees, and
- Perhaps, contributions to reserve funds for future maintenance, repairs and replacement costs.

8. Non-payment of levies

Levies must be paid by their due dates. If an owner falls into arrears, the body corporate, through the trustees and or managing agent, is obliged to recover the overdue amounts from the owner as quickly as possible. This can often be done through reminder notices or phone calls but sometimes an owner needs to be “handed over” to an attorney or registered debt collector to collect the debt. The defaulting owner is responsible for all the legal costs involved in chasing his overdue debt.

9. Who is responsible for repairs and maintenance?

Owners are responsible for repairing and maintaining, and paying for, everything inside their section. Check the sectional plan to see where the boundaries of your section are.

The body corporate is responsible for repairing and maintaining, and paying for, everything related to the common property, except when there is an area of common property that is subject to “exclusive use rights” (only one owner, or a few owners, are allowed to use the area even though all owners technically own it). Then the holder(s) of the exclusive use rights are responsible for paying the costs associated with that area, although the body corporate is responsible for arranging the maintenance and repair because the area is common property.

Sometimes a scheme has special rules that deal with the repairs and maintenance to exclusive use areas and these often provide that the owner(s) who hold(s) the exclusive use rights must arrange and pay for the maintenance and repairs of these areas without any involvement from the body corporate. It is important to see if any special rules have been made in relation to your scheme.

10. Management

All owners can vote on particular management decisions at every AGM, but the day-to-day decisions are usually made on behalf of the body corporate by the trustees, who are elected by the owners at each AGM.



Some schemes choose to manage the financial, administrative and maintenance duties of the body corporate themselves, but many choose to employ and pay a professional sectional title managing agent to do these tasks for them.

11. Managing Agents

Managing agents assist the trustees in running the scheme. They perform day-to-day management tasks, taking primary responsibility for administrative and record-keeping requirements and assisting in the physical management of the scheme. The managing agent provides the trustees with regular financial and other management information and assists them in making decisions. They usually provide a full accounting and levy collection service, deal with the payment of body corporate debts and assist in managing maintenance and repair projects.

12. Trustees

The trustees are the elected representatives of the body corporate and they are responsible for ensuring that the functions and duties of the body corporate are carried out. They usually arrange and attend trustee meetings where they meet, generally without the rest of the owners, to make decisions on behalf of the body corporate and attend to the management of the scheme.

The trustees elect a chairperson who generally chairs the meetings of owners and trustees. The chairperson has no special powers besides having the ability to cast an extra vote at a trustee meeting if there is a deadlock.

13. Decision making

Most of a scheme's decisions will be made by owners or trustees in meetings. These decisions are called "resolutions". The other way of making decisions is by "round robin" resolution where owners vote by way of signing a written or electronic document.

There are three different types of resolutions that can be taken by the body corporate:

- 1. Ordinary resolutions:** Resolutions requiring a majority of owners (more than 50%) to vote in favour. Taken at a meeting, only more than 50% of those present or represented at the meeting is required.
- 2. Special resolutions:** Resolutions requiring three-quarters of owners (at least 75% in both number and value of the votes) to vote in favour. If taken at a meeting, only 75% of those present or represented at the meeting is required. If taken by round robin, a special resolution requires 75% of all owners to vote in favour.
- 3. Unanimous resolutions:** Resolutions requiring an extremely high level of consensus, which changes depending on whether it is taken at a meeting or by round robin. At a meeting, a quorum (the minimum number of owners required to be present) must be at least 80% of owners counted both in number and value of the votes. Of those present every one must vote in favour. Even one vote against



the resolution defeats it. An abstention counts as a vote in favour. If taken by round robin, a unanimous resolution requires every owner to cast a written vote in favour.

Trustee resolutions: At a trustee meeting, a majority of trustees (more than 50%) must vote in favour. If the votes are tied, the chairperson has a "casting vote". If the vote is taken by round robin resolution then all the trustees who are in the country (which must be at least 50% of the trustees holding office and not less than 2) must sign the resolution voting in favour.

14. Quorums for meetings

A quorum is the minimum number of persons required to be present or represented before a meeting can deal with its business.

14.1. Trustee meetings

At least 50% of trustees, but not less than 2, must be present to form a quorum.

14.2. Owner meetings

The quorum requirements depend on the number of units in the scheme.

Between 2 and 10 units: 50% of owners (calculated by number of owners and 50% of the PQ values) must be present.

Between 11 and 49 units: 35% of owners (calculated by number of owners and 35% of the PQ values) must be present.

50 or more units: 20% of owners (calculated by number of owners and 20% of the PQ values) must be present.

Where a unanimous resolution is to be voted on: 80% of all owners (calculated by number of owners and 80% of the PQ values) must be present or represented.

15. Proxies

When an owner is not able to attend a meeting, he is able to appoint a person to represent and vote for him at the meeting. This person appointed to represent the owner is called a proxy. The owner needs to fill out, sign and deliver a valid "proxy form" prior to or at the start of the meeting.

16. Rules

Every body corporate has rules that the owners, other occupiers and tenants are bound to follow. Not every scheme has the same rules so you should make sure you have and read the rules applicable to your scheme. You can obtain a copy of your scheme's rules from the local Deeds Registry.



17. Legislation

The most important legislation that you need to know about is the Sectional Titles Act 95 of 1986 and its Regulations that contain the prescribed management and conduct rules. If the developer (the person who started the scheme) or the body corporate have not changed or made additional rules then the prescribed management and conduct rules will apply to your scheme.

18. Insurance

The body corporate has to insure the building(s) and common property facilities to their full replacement value. It also insures any moveable items owned by the body corporate and has public liability insurance in case anyone is injured on the common property. Owners must insure the contents of their sections themselves. These include furniture, fittings and personal effects. Investor owners (those owners who rent out their units) often take out landlord insurance.

19. Can I rent out my unit?

Generally, you can. But you must check the rules of the scheme to make sure that there is no restriction on renting or selling. It is not unusual for scheme rules to restrict short-term or "holiday" letting.

20. Disputes

Because sectional title properties tend to have people living in close proximity as well as sharing ownership and decision making in regard to the common property, disputes are common. Disputes mostly arise in relation to money and the way people behave. Common disputes arise in relation to use of the common property, noise, parking, breaking of rules, pets and so on. There are a number of ways in which to resolve disputes that arise in sectional titles, from an informal chat to formal mediation or arbitration proceedings.

21. What should I check when buying a sectional title property?

- **The sectional plan.** Make sure you know exactly what forms part of your section and what areas are common property. You might think the garden outside the apartment will be yours, but actually it is common property and unless you have exclusive use rights to it then every other owner is entitled to use it. Check if a balcony is included in your section or if it is common property, as this will determine who arranges and pays for expenses related to it. Check if the parking bay "attached" to your section is actually allocated to your section on the sectional plan or if there are rules that link it to your section.
- **The participation quota** of your section. This can be found on the sectional plan and determines the size of your levy contributions and your voting value.



- **The scheme rules.** Check that there is nothing in the rules that you can't live with and especially check for any rules that change the amount of levies you will be responsible to pay for and/or the value of your vote.
- **The financial statements.** Get a copy of the body corporate's most recent financial statements and check to see if there is a healthy bank balance and any reserve funds, and find out what the current monthly levies are. If you can, chat to the trustees or managing agent, and find out if there are any special levies coming up in the foreseeable future.
- **Insurance.** Ask the trustees and managing agent about the scheme's insurance. Make sure that the building is adequately insured. If it is not and it burns down, you will only get paid out the amount your section was insured for.
- **Minutes of the last Annual General Meeting.** Ask the seller, the trustees or the managing agent for a copy of the minutes of the last AGM. This will give you an idea of the issues the body corporate is dealing with and may shed some light on whether any big expenses are expected in the next few years.

22. Top tips for successful sectional title living

1. **Be aware** – know the laws and rules so you know your rights and responsibilities.
2. **Be involved** – if you are not a trustee you can still attend their meetings so you know what's going on. Appoint a proxy if you can't attend owner meetings – make your opinions and vote count.
3. **Budget for levies** – you have to pay your levies (generally every month) so make sure you put money aside for this. If you don't, you compromise the scheme's cash flow, which is not fair on other owners.
4. **Protect your investment** – make sure the body corporate is maintaining the common property. If it is run down, your investment is worth less.
5. **Be respectful** – seek approval before altering any part of the common property; even if it is "your" garden, if it is not part of your section on the sectional plan, it is still owned by everyone and you more than likely need trustee or body corporate approval before making any alterations.
6. **Be empathetic** – know that your neighbours are close by and that your music, voice and actions may disturb them.
7. **Speak up** – if someone is breaching the rules make sure to politely inform them. If talking does not help, contact the trustees or managing agent for assistance.



Glossary

AGM

Annual General Meeting.

Body Corporate

The legal entity that exists to manage and control the common property, made up of all owners of units in the scheme.

Body corporate manager

Another term for a sectional title managing agent.

Chairperson

The chairperson is the head of the board of trustees and has the primary role of chairing owner and trustee meetings. S/he is elected by the trustees at their first meeting after the AGM.

Common property

All the areas not included in the sections of the scheme and which every owner co-owns. Common property includes foyers, driveways, fences, gardens, stairways, lifts, pools and so on.

Exclusive use area

This is an area of common property co-owned by all owners, but to which only one owner (or a group of owners) holds the usage rights, i.e. no one else can use it. Good examples are a garden area directly outside the front or back of an owner's section or a parking bay.

Levy/levies

Contributions paid by owners to the body corporate to cover its anticipated expenses. Levies are usually paid monthly and are based on an owner's PQ.

Managing agent

A person who manages sectional title bodies corporate professionally. They take over the responsibilities from the body corporate for arranging the maintenance of the common property and for collecting levies, calling and arranging meetings and so on. They report to the trustees of the body corporate.

Median line

An owner usually owns his section to the mid-point of its floors, walls and ceilings. This mid-point is called the median line and forms the boundary between one section and another or between a section and the common property.

Owner

A person who owns a unit in a sectional title scheme.

Participation quota (PQ)

A value expressed as a percentage that allocates the portion of the body corporate expenses that an owner is liable to pay, as well as the value of an owner's vote. For residential sections, the PQ is calculated based on the size of the floor area of an owner's section.



Therefore the bigger the section, the larger the share of expenses that owner is liable for and also the larger their voting value.

Proxy

A person authorised to act on behalf of another. An owner is entitled to appoint a proxy to attend, speak and vote on his behalf at any general meeting.

Quorum

A quorum is the minimum number of persons required to be present or represented before a meeting can deal with its business.

Reserve fund

Also called a sinking fund. Levies paid into this account are saved and used to cover the costs of future capital expenses such as replacing common property roofing, repainting the building and so on.

Rules

The rules that the body corporate, owners of units and occupiers of sections must follow.

Section

A portion of a building or property, usually an apartment or townhouse (but may also be a garage, storeroom or other area), that can be separately owned from the rest of the building or property.

Sectional plan

The plan that shows the division of the land and building(s) into sections and common property. A copy of the scheme's sectional plan will be held at your local Deeds Registry and can be obtained from there.

Sectional title scheme

A piece of land with a building(s) where individual owners own portions of the building(s) and co-own the common property. A scheme can be a vertical block of apartments or a single level row of townhouses that may be attached or detached. A scheme has a minimum of two sections and can be used for residential or commercial purposes, or a mixture of both.

Trustees

The persons elected by the body corporate at each AGM to represent all the owners in the scheme. The trustees are responsible for the management, administration and maintenance of the common property and they must ensure that all the body corporate's duties are carried out.

Unit

The legal "thing" that a sectional title property owner actually owns. This is made up of his or her section (generally an apartment or townhouse) and his or her undivided share of the common property.