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A T T O R N E Y S

QUESTIONS ON SECTIONAL TITLE

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1. What are the problems related to Exclusive Use areas?

- 1.1 The main problem would be explaining to a purchaser that an owner does not acquire ownership of an exclusive use area. Instead they acquire the EXCLUSIVE USE of the exclusive use area for as long as they are owners in the scheme.
- 1.2 Another problem would be explaining to the purchaser the difference between the exclusive use area being registered in terms of a notarial deed as opposed to being allocated in terms of the Rules of the Body corporate.
- 1.3 Even though parts of the common property are designated as exclusive use areas, these areas are still controlled by the Body Corporate and are therefore subject to the Rules of the scheme. Accordingly, there may be Rules that prohibit braaing in an exclusive
- 1.4 use balcony, control the type of fence or wall erected around a garden or prevent the installation of a pool without first obtaining the consent of the trustees of the Body Corporate.

2. How can I guard against the buyer not getting what he thought he was buying when talking about a Sectional Title Unit?

- 2.1 It should be explained to the Purchaser that in a sectional title scheme, the common property is jointly owned by all those who own sections in the scheme and that there are Management and Conduct rules which the purchaser will be obliged to comply with.
- 2.2 Accordingly, a purchaser ought to familiarise himself with the Rules to be sure he knows what he is buying into. The Rules would generally impose restrictions on the owners in a scheme so as to ensure uniformity and harmony.

- 2.3 Furthermore, apart from examining the unit, the purchaser should inspect as much of the common property as possible to ensure that the scheme is in an acceptable physical condition.
- 2.4 A purchaser should ask to see a copy of the latest audited financial statements, as this is the only way of establishing the financial state of the scheme. In this regard, of particular importance is the reserve fund, as a healthy reserve fund indicates that the scheme is well run.
- 2.5 A purchaser should be made aware that although it is the responsibility of the Body Corporate to ensure that the entire scheme is adequately insured against all risks, the onus is on the owner to ensure that his or her unit is adequately insured at all times. Body Corporate insurance is generally based on units in average condition and many owners after renovating their section may find that the insured amount for their unit is inadequate.
- 2.6 Also of importance to the purchaser, is that Body Corporate insurance does not cover the contents of the unit and this is solely the responsibility of the owner of the unit.
- 2.7 Another important issue for the purchaser would be the monthly levy, with particular reference to the extras such as security service and special levies.

3. What is the Body Corporate's responsibility?

- 3.1 The Body Corporate is required to carry out the functions assigned to it in terms of the Sectional Titles Act and these include the following:-
 - 3.1.1 The Body Corporate must establish a fund for administrative expenses and this fund must be sufficient to cover future maintenance and repairs in the scheme, payment of the rates and taxes and other local authority charges, insurance premiums and any other debt or expense of the scheme.

- 3.1.2 On the basis of its annual estimates of future administrative expenses, the Body Corporate must calculate and collect the levies. In its calculations the Body Corporate must apportion to owners entitled to exclusive use areas, the share of common expenses attributable to those exclusive use areas. The levies are usually calculated annually and collected in equal monthly installments on the passing of a resolution to that effect by the trustees of the Body Corporate.
- 3.2 The Body Corporate is obliged to insure the buildings in the scheme to their full replacement value and they must keep the buildings insured against fire and other prescribed risks.
- 3.3. The Body Corporate must properly maintain the common property and keep it in a state of good and serviceable repair.
- 3.4 The Body Corporate is obliged to provide information to members of the Body corporate and in general to control, manage and administer the common property in accordance with the Act, Rules and any direction given by the owners at a general meeting.

4. What are some of the delays in the opening of a Sectional Title Register?

- 4.1 Sectional Title Register can only be opened after the following have been attended to:
 - 4.1.1 The draft sectional plan must be prepared by an architect or land surveyor;
 - 4.1.2 The architect or land surveyor must certify that the development complies with local authority by-laws in regard to planning and building regulations;
 - 4.1.3 If there is any non-compliance, a certificate must be obtained from the local authority, condoning the non-compliance;

- 4.1.4 The draft sectional plan is then submitted to the appropriate Surveyor-General for approval;
 - 4.1.5 If there is a bond over the property being developed, then the bondholder must consent to the opening of the sectional title register;
 - 4.1.6 If there is a restrictive condition of title(i.e a condition prohibiting more than one dwelling on the property) in the Title Deed, such condition will have to be removed either by High Court application or by application to the Department of Traditional and Local Affairs.
- 4.2 Accordingly, if there is a delay with any of the above, the opening of the register will be delayed as well.

5. Can we do anything to protect our buyers against these delays?

You can include a clause in the agreement to the effect that the sectional title register is to be opened by a specified date, failing which the purchaser will be entitled to resile from the agreement by written notice to the Seller, in which event the status quo ante will be restored between the parties and neither party shall have a claim for loss or damages against the other.

6. What if I am selling a unit in a small scheme which is self-managed and they have no financial statements. How can I ensure that the rates are paid up to protect the buyer?

- 6.1 In terms of Management Rule 35 of the Sectional Titles Act, trustees must ensure that proper books of account and records are kept so as fairly to explain the transactions and financial position of the Body Corporate. Furthermore the trustees must make available for inspection any of the books of account or records of the Body Corporate and the trustees are obliged to retain all books of account and records for six years after completion of the transactions.

- 6.2 Should the financial statements not be available and the trustees are not prepared to furnish information regarding the rates, then you will need to make enquiries directly with the Rates Department, who would easily pick up whether or not the rates are in arrears.

7. Who should pay for the documents required for the purchaser's information i.e. Body Corporate Rules; Minutes of latest AGM or Special Meeting; Financial Statement and Sectional Plan?

As it is in the best interests of the Purchaser to study the above documents and ensure that all is in order, the Purchaser will have to bear the costs of obtaining same. Please note that as Conveyancers, we will only obtain these documents if there is a special condition to this effect in the agreement of sale.

8. What action can a Body Corporate take against an owner of a sectional title unit who is not paying his levies?

In terms of Section 37 of the Sectional Titles Act, levies may be recovered by the Body Corporate by court action against owners of units who are not paying their levies.

9. Can the trustees prevent an owner from having a dog or cat if the rules do not have such a restriction?

In terms of the Conduct Rules prescribed in terms of the Act, an owner may not keep any animal, reptile or bird in a section unless he first obtains the written consent of the Trustees. Accordingly, if the Scheme's Rules are silent regarding the issue of pets then this prescribed Rule would apply. If however, the Rules of the Scheme clearly prohibit pets in the sectional scheme then that rule would take precedence over the prescribed rule in the Act.

10.If a special levy is needed, who decides how each owner will pay off the required amount? For example: – would the payment be over a period of time or would it be a lump sum payment?

- 10.1 A Body Corporate is entitled to determine a "special levy" over and above the normal monthly levy in appropriate circumstances. A special levy may be raised for any common expense that was not included in the estimate of expenses approved at the last annual general meeting.

- 10.2 The trustees do not have the power to raise a special levy when a budgeted expense exceeds the estimate approved at the last annual general meeting. They can only raise a special levy for unexpected expenses that were not included in the budget.

- 10.3 If the Trustees resolve that a special levy is payable by the owners, they may determine whether it is payable in one lump sum or in instalments. This is in terms of the prescribed Management Rule 31(4) of the Act.

- 10.4 While the Trustees can allow owners to pay a special levy in a number of instalments, they cannot provide for an ongoing special levy that runs concurrently with ordinary levies over an extended period of time.