

## **SECTIONAL TITLE VERSUS SHARE BLOCK**

### **BACKGROUND**

There are still many Share Block flats in the Durban and coast region.

Prior to the inception of the Sectional Titles Act in 1971, which has since been replaced by the Sectional Titles Act 95 of 1986, developers went the share block route.

A share block company was registered as the owner of the land and buildings, and each flat was allocated a number of shares (known as a "share block") in the company which entitled the owner to the exclusive use and occupation of the flat.

Developers began evolving their own format of documentation, and so to regulate and control this and relationships between developer and purchaser, the legislator promulgated the Share Blocks Control Act 59 of 1980 which came into force on the 1 January 1981.

Thus share block developments were operating for many years in tandem with the Sectional Title schemes which had been introduced by the Sectional Title Act in 1971.

However in practice developers clearly began preferring sectional title schemes which growingly began to replace share block developments so that today one does not hear of any one being involved in a new share block development. So for all intents and purposes one can say that the setting up of a new share block development is a thing of the past. Of course they could come back into vogue but not in the near future.

As mentioned above there are still existing round and about Durban from the boom days of share blocking many existing buildings run on a share block basis.

### **TO BE SHAREBLOCK OR SECTIONAL?**

We regularly receive enquiries as to the advantages and disadvantages of buying into an existing shareblock scheme or of converting from Share Block to Sectional Title.

Let's deal first with converting from share block to sectional title. There are many advantages in doing so. One will see also why most people prefer buying into a sectional rather than a share block scheme. Some of the more pertinent differences and advantages are listed below:

1. Upon converting to Sectional Title you obtain a title deed which gives you ownership of the unit. As a member of a Share Block company you have a share certificate indicating your ownership of shares in the company and an agreement (known as a "Use Agreement") with the company in terms

of which you have the right of occupation and use of the flat in perpetuity. You do not actually own the flat.

2. Purchase prices for Sectional Title units are almost 25% to 30% higher than those of similar Share Block flats.
3. Banks and financial institutions are reluctant to lend money to purchasers of Share Block flats. To the best of our knowledge Nedbank is the only financial institutions which will do so. However, one third of the purchase price must have been paid as a deposit; the interest rate is calculated according to the credit rating of the applicant, but may be higher than the prime rate ; the loan must be for not less than 10 years and not more than 30 years; there is a bank fee which must be ascertained from the bank as this will fluctuate depending on the amount of the loan; and the share certificates must be pledged to the bank as security.
4. The promulgation of the National Credit Act has further complicated the matter of obtaining finance for Share Block flats.
5. The 'pool' of buyers for Share Block is accordingly much smaller and many prospective buyers are dissuaded from purchasing due to the large deposit and high interest rates. We believe that this has a marked effect on the purchase price over a similar Sectional Title unit.
6. As an owner of a Sectional Title unit you have complete control over your unit. As a shareholder in a Share Block company the company owns all the land and buildings and you have a right to the use of your flat – the result being that your interests are essentially controlled by third parties.
7. Transfer duty is now payable on the transfer of shares. Consequently the cost saving which used to prevail on Share Block transfers no longer exists.
8. If there is a bond over the company property in a share block scheme and the other shareholders fail to contribute their share of the allocated bond account you may have to contribute to avoid the property being sold in execution. This is markedly different to a unit in a sectional title development as each person owns their unit; so if your neighbour fails to pay his bond account, only his property is at risk of being sold in execution.
9. The sale documentation for share block schemes is onerous and expensive in comparison to the sale documentation for a sectional title unit.
10. Sections are now rated individually so the danger of losing your unit because other sectional title owners failed to pay their levies no longer exists. Also sectional owners are entitled presently to a rebate of R120000, 00 off the rates valuation, and owners 60 years and older to an

additional rebate of R400000, 00. These rebates are not granted to share block individual owners because the owner of the property is the Share Block Company.

However there are still some advantages to doing a share block development as against a sectional development but these are mostly of interest only to a potential developer–

- 1 share block developers can sell a new development on plan and receive deposits as soon as the company is registered.
- 2 The share block development can also be built on land situated anywhere. In comparison, the sectional title development can only be built on land situated within a local authority area and the developer can only receive deposits once the sectional title register is opened.
- 3 A share block development can be built on leased land and a sectional title development cannot.
- 4 It is generally quicker to have the building plans approved for a share block development as no sectional plan need be approved by the local authority and surveyor general, and no Deeds Office registration is required.

### **DISPELLING CONVERSION MISCONCEPTIONS**

There are numerous misconceptions which exist about Sectional Title Schemes and the conversion process from Share Block to Sectional Title. Some are listed and addressed below:

*“Share Block companies can control who purchases shares in the company”*

Whilst this is true in theory, the objections of directors would have to be founded in law and could be challenged in court if they were based on ethnicity or any other factor which may be deemed as discriminatory by our constitution.

*“It is prohibitively expensive to open a Sectional Title Register”*

The cost per unit is between R3000.00 and R4000.00 depending on the size of the block. The process takes between 5 and 8 months, so the shareholders can pay a monthly instalment into our trust account to make the obligation more affordable.

In the long term the amount expended on the conversion is negligible especially in light of the comparative ease that a prospective buyer can arrange for finance, and the subsequent increase in the purchase price which can be sought.

*“Every shareholder has to convert from Share Block to Sectional Title immediately the Sectional Title Register is opened”*

No shareholder is obligated to convert from Share Block to Sectional Title. He or she can continue to remain a Share Block holder and convert at any time or when wanting to mortgage the unit. However, conversion assists the sale as the purchaser can raise a bank bond.

The Body Corporate is only established when the first transfer is effected, and it follows that the existing directors can carry on as the first trustees of the Sectional Title Body Corporate. Their duties remain essentially the same and they are responsible for the smooth running of the complex and the enforcement of the rules.

*“The powers of the directors to administer Share Blocks is greatly diminished if a conversion to Sectional Title occurs”*

Statutory Rules in terms of the Sectional Title Act makes provision for most eventualities regarding administration which may arise. In addition, Directors may impose certain rules with the opening of any Sectional Title register provided that they are reasonable and accepted by the Deeds Office.

The above is a brief summary of the advantages and disadvantages; by no means have all the questions which we have encountered been dealt with above.

## **CONTACTS**

For more information on the above or in relation to the procedure to be followed please contact **BRUCE FORREST**.

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