

Sectional Title Schemes: The impact of non-functioning body corporates on the affordable housing market

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Since its introduction in South Africa in the early 1970s, sectional title ownership has proven to be very popular and has become an important and enduring fixture within the broader property market landscape in the country, where almost 60% of all new residential building plans approved and buildings completed are sectional title units.

We expect this to escalate well beyond these levels as municipalities seek to densify human settlements in terms of their Spatial Development Plans and to provide increased levels of infrastructure to development corridors. The new norm will become new developments situated within these corridors. These developments are expected to be mixed income, mixed use developments, where sectional title ownership will be the norm, including social and affordable housing.

The Sectional Titles Act 66 of 1971 for the first time created the opportunity for a person to own a particular part (section) or portion of a building, such as a flat (apartment). The Act in effect introduced a new form of property ownership which consisted of sole ownership of a particular portion of the building (section) as well as joint ownership of the land and all buildings or parts of the buildings which do not form part of the individual owner's section/s, referred to as the common property. The Sectional Titles Act 66 of 1971 has since been replaced by the Sectional Titles Schemes Management Act 8 of 2011 ('STSM' Act). The STSM Act has carried through some of the provisions of the Sectional Titles Act of 1971 and clearly provides that with effect from the date on which any person other than the developer becomes an owner of a unit or units in a scheme, there shall be deemed to be established a body corporate for that scheme and the body corporate becomes a creature of statute and derives its authority and duties from the STSM Act.

Therefore, when a person or family buys into a sectional title development and they purchase an apartment (flat) or a duplex or simplex within a scheme, they enter what may be considered a threefold legal relationship. Firstly, they become the owner of that unit/section (apartment), secondly they become the joint-owner of the land and parts of the building which do not form part of their unit/section like the roof, outside walls, stairways and common amenities (pool area, clubhouse, visitors parking) and lastly they become a member of the body corporate.

Membership of the body corporate is inseparably linked to a person's ownership of their unit.

it is required to, amongst other things:

- Set up a fund for the scheme that is then used to carry out the duties of the body corporate such as maintenance of the common property, payment of insurance premiums, municipal levies, management expenses such as auditing fees, bank fees and various other administration fees.
- Determine and impose levies on members (owners).
- Insure the buildings and maintain the common property.
- Appoint service providers or employees as it sees fit such as security guards, garden or cleaning services, maintenance contractors.
- To invest any moneys of the fund and keep appropriate records.
- To do all things reasonably necessary for the enforcement of the rules of the scheme.

Central to sectional title ownership is the aspect of communal living and idea of caring for and looking after the community environment. Homeowners in sectional title schemes must reckon with the statutes and limits of communal living and the body corporate plays an important role in ensuring that they safeguard the property rights of individual owners, moneys in the schemes fund and adherence to the STSM Act.

All sectional title schemes are mandated by the STSM Act that to be registered and managed by means of four types of rules (a) management rules, (b) conduct rules (c) exclusive use rules, and (d) rules that modify the variable effects of the participation quotas within the scheme. The STSM Act allows the developer of the sectional title scheme or the body corporate to make these rules and ensure that they are put in place as from the date of establishment of the body corporate and are binding on any person occupying a unit for example a tenant.

In a sectional title scheme the owners belong to a mutually dependent community which cannot function unless it is

governed properly and the value of the owners units are determined to an important, perhaps crucial, degree by the quality of the management of the scheme.

The STSM Act provides a form of judicial management of a scheme to protect owners in case of maladministration, failure of the body corporate to perform its statutory duties or if it becomes unable to pay its debts. Aggrieved homeowners can approach the Community Schemes Ombud Service ('CSOS') which is responsible for ensuring that the conduct of parties within sectional title and community schemes is not in contravention of the STSM Act and that the scheme continues to operate for the benefit of all owners and that of the community environment. For the CSOS to carry out its function, it is incumbent on all sectional title schemes to pay a levy (contribution) over to the CSOS, failing which the members of the body corporate may be considered to be acting illegally and could expose homeowners within that scheme to quite hefty fines or even imprisonment for not paying their CSOS contributions.

Testament to the popularity of community living and perhaps sectional title ownership is the 2019 residential building activity indices where close to 60% of the residential buildings that were completed in that year were flats and townhouses.

This provides a unique opportunity for the affordable housing market, a distinct sector within the broader housing market that operates and is developed with specific aims in mind, the potential to expand into this space.

“The body corporate becomes responsible for the enforcement of the STSM Act and the rules by which that specific scheme is managed.”

For the affordable housing market, a non-functioning body corporate would not only erode the property value of the homes of families/households on moderate income but it could render them more vulnerable if the dysfunctionality of the body corporate leads to a neglect in for instance maintenance, security or upkeep of common areas with the scheme. It may exacerbate inefficiencies in the transfer of properties and registration of the unit/s as security, contribute to the increasing undersupply of stock in the affordable housing market, result in a high credit risk of financing into that scheme and ultimately any prospects for the rehabilitation of a non-functioning body corporate or delict scheme may prove far too costly for homeowners.

The affordable housing market provides accommodation to a group of people who are an important part of the economically productive population of our country. Therefore to mitigate against the risk of dysfunctional body corporates, coordinated oversight by the CSOS and other key stakeholders is needed as this stands to offer the best possible defence and prospect for the growth of sectional title ownership within the affordable housing market. 🏠

