

## **KEY ISSUES IN THE SYSTEM OF LAND REGISTRATION AND THE COMPARITIVELY RELIABLE AND SECURE SYSTEM OF LAND REGISTRATION IN SOUTH AFRICA**

Surveying, conveyancing and deeds registry administration comprise the three main areas of the land registration and land ownership system in South Africa (SA).

We are reputed to have one of the best deeds registration systems in the world based largely on the exceptional degree of accuracy associated with it. It has almost the same effect as guaranteeing ownership of immovable property because the system is based on a juristic foundation and long-standing practices and procedures.

Although very reliable (size and location of the property are always found on the registered diagram or section plan), in certain circumstances as listed below, SA law may not guarantee title to or other real rights:

- Prescription
- Expropriation
- Statutory Vesting
- Marriage in community of property
- Insolvency
- Death
- Abandonment

All land and ownership of land ('conventional' & 'sectional title') is recorded and registered in Deeds Registries situated at various large centres within SA. They are specifically tasked with administering our land registration system including the registration of rights to land and other matters prescribed by the Deeds Registries Act No. 47 of 1937, the Sectional Titles Act No. 95 of 1986, and other laws relating to land or rights to land.

The hallmark of the land registration system is that there is physical certainty that each title deed is linked to a specific survey, which has been approved by the Surveyor-General's office. This ensures our title to land is much more dependable than other countries.

The functions and processes of:

- examination (A fixed daily quota for the number of deeds examined and with an average of 26% of the deeds lodged being rejected because they are found to be unregistrable resulting from conveyancing errors, attachments, interdicts or legal constraints is a good indication of the quality of the procedure),
- registration,
- control,
- monitoring of standards and public registers,
- preservation of records, and information systems,

performed by Deeds Registry offices provide the holder of a title deed registered in SA with an indisputable right and definite proof of ownership. This affords security of title to land ownership and the respective rights in land, which is recognised and respected by:

- SA Courts,
- financial institutions,
- public at large.

Security of ownership forms the basis of investment in our real estate industry as well as the future development of housing in our country.

Cadastral surveying is undertaken exclusively by or under the control of registered professional Land Surveyors. Land Surveyors work closely together with registered Conveyancers to record land ownership and/or rights in a public register kept by the Registrar of Deeds. Documents produced by Land Surveyors must be submitted to any of the four Surveyors-Generals for examination & approval.

Once approved these survey documents are then lodged by a Conveyancer with the respective Registrars of Deeds for registration. Notwithstanding that all South African attorneys are qualified to attend to commercial property matters, only those attorneys who have been formally admitted to the Supreme Court of SA as Conveyancers or Notaries Public may prepare documents for registration in a Deeds Registry. This formal requirement ensures the protection of the interests of the parties to the transaction and also maintains the high standard of land registration in our country.

**COMPARISON OF SECTIONAL TITLE AND CONVENTIONAL LAND OWNERSHIP DEALING PARTICULARLY WITH THE SURVEY ASPECTS AND RESTRICTIONS ON AN OWNER'S REIGHTS**

<b>Sectional Title</b>	<b>Common Law / Conventional Land</b>
<b>Ownership / Title:</b>	
Of a unit which comprises a section + an undivided share in the common property based on Participation Quota.	Of a defined portion of conventional land.
<b>Diagrams:</b>	
Referenced to registered 'Section Plans' prepared by Land Surveyors (or architects who have passed a special exam but the sheet of the plan known as the block plan must be prepared by a Land Surveyor) and approved by the Surveyor-General's office. The section plan defines the buildings and the conventional land that falls within the scheme.	Referenced to registered 'Conventional Diagrams' prepared by Land Surveyors and approved by the Surveyor-General's office.
<b>Measured:</b>	
In horizontal and vertical strata. The individual sections are shown in relation to the buildings in a simple diagrammatic manner and the floor area of each section is tabulated.	As a separate and distinct part of the earth's surface.
<b>Right of ownership</b>	
A section in a sectional title scheme extends to the mid-point or median line of the walls, floors & ceiling as indicated on the section plan. As the common property is owned by all owners in undivided shares every owner's right to 'reasonable use' of common property is governed by the principles of co-ownership.	As per measured land parcel on the diagram. Extends to everything, which lies below the surface, to the air above the land and everything that is either artificially or naturally attached to the land and attachments of a permanent nature. So in principle conventional land ownership extends from the centre of the earth upwards to the sky. The Americans refer to this as the 'heaven to hell rule'.

In principle an owner of immovable property may do with it (the 'thing') as he pleases. In reality however this is only partially true. An owner can only act and deal with the affairs of his property within the law.

An owner's performance may be restricted by:

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Certificate – Advanced Sectional Title Scheme Management – University of Cape Town & Paddocks  
Certificate – Specialist Sectional Title Realtor (Distinction) – University of Cape Town & Paddocks*

- common law principles (e.g. law of nuisance applicable to neighbours),
- statutory provisions (includes national, provincial and municipal laws),
- contractual rights (binding on the current owner)
- or by the rights of others (applies to whoever owns the land).

Ownership in a sectional title scheme provides further restrictions contained directly in the Act as well as in the co-ownership of the common property.

The following characteristic rights of ownership:

- occupation & possession,
- use and enjoyment,
- taking fruits,
- encumbrance and alienation,
- consumption & destruction,

all possess additional restrictions in sectional title ownership. Provisions within the Act or the scheme's management & conduct rules, together with resolutions passed by a body corporate from time to time, will further restrict the owner in a sectional title scheme.

### **SIGNIFICANT DIFFERENCES BETWEEN THE SECTION PLAN OF A SECTIONAL TITLE SCHEME AND THE BUILDING PLAN OF A FREE STANDING HOUSE**

The fundamental purpose of a 'Sectional Plan' (SP) is different to that of a conventional 'Building Plan' (BP). It is neither as detailed nor as accurate an architectural 'work-of-art' as a BP. The SP ostensibly has the same function as a 'General Plan' (diagram of subdivision of land / township) on which a freestanding house is built.

A SP is a simple plan-to-scale that clearly and accurately defines and records the number of sections into which the land and building/s comprising the scheme have been divided i.e. 'Sections' & 'Common Property', together with the exact floor area, height & size of each section (three-dimensional data).

The registered SP of any scheme forms the basis of sectional title ownership and contains the only reliable record or reference of each section's Participation Quota (PQ). Unless the scheme operates on Nominated Values (altered PQ's), PQ's will determine a section owner's contribution toward the scheme's expenses, the size of their undivided share in the common property and their voting rights. The SP clearly indicates any and all servitudes as well as the intended use of each section.

Building Plans:

- Are prepared by Architects or Draftsmen.
- Are approved by local authorities prior to construction.
- Contain precise building details (windows, doors, eaves, joists).
- Indicate to the observer the final appearance or style of the building.

Section plans:

- Are prepared by an Architect or Land Surveyor but the part known as the Block Plan and any delineation of Exclusive Use Areas of which their boundaries are not represented by actual permanent features must be done by a Land Surveyor.
- Are approved by a Surveyor-General.
- Indicate the boundaries of all Sections (median line of the walls, floors and ceilings) in a scheme, the Common Property, registered Exclusive Use Areas (if any) and Participation Quota details.
- Do not contain information whereby a local authority could ascertain whether any or all town planning provisions have been met with.

**COMPARISON OF RIGHTS ENJOYED BY TWO OR MORE OWNERS OF CONVENTIONAL PROPERTY AS OPPOSED TO A SIMILAR NUMBER OF SECTION OWNERS IN THE COMMON PROPERTY OF A SECTIONAL TITLE SCHEME**

<b>Rights of Co-ownership</b>	
<b>Conventional</b>	<b>Sectional Title</b>
Individualistic in nature.	Universalistic in nature.
Normally a short-term relationship.	Long lasting relationship.
Any co-owner is at liberty to request to terminate the relationship whenever they please by instituting an ' <i>actio communi dividendo</i> '. This would result in dissolution of the property with the common assets divided proportionately.	No co-owner may unilaterally request that a scheme be terminated. This may only occur when the property is destroyed or when all co-owners unanimously agree to do so.
Have the most power with regards to their undivided share in the Common Property (CP). May use it at will, sell when they want and have no duty to maintain it.	Have restricted use of the CP. Can't dispose of their undivided share in the CP without their attached section. Can't use or enjoy CP in a manner, which unreasonably interferes with its use and enjoyment by other owners as well as other persons who are lawfully entitled to same. Can't use in a manner, which may increase the insurance premium of the property. Need written consent from the trustees & body corporate to keep an animal. The CP has to be maintained.
Co-owners may forbid other co-owners from doing certain things and in some cases instruct them to make amends for wrongful actions.	No co-owner may unilaterally make administrative decisions regarding CP. All owners make resolutions, which the trustees carry out.
The 'whims' of the individual co-owners determine the use & management of CP.	The Body Corporate (all the section owners) controls the use & management of CP in terms of the Act. Resolutions passed must meet with the provisions contained therein i.e. unanimous or specified majority.
Have 'abstract' shares in the object of co-ownership. No link between any part of the property and an undivided share. No co-owner may claim any part of the property for his exclusive use.	Undivided shares are indivisibly linked to a section.

**Notes compiled by Charles Baker for Connecta Realty**

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