

## **WHY IS AN UNDERSTANDING OF THE LAW IMPORTANT IN MANAGING A SECTIONAL TITLE SCHEME?**

In their highly informative publication '*Demistifying Sectional Title*' attorneys and sectional title specialists, Marina Constas & Karen Bleijs, pose the question "*Can the Body Corporate sue the managing agent?*" They express the opinion that "*the managing agent should, in certain circumstances, be liable to the Body Corporate for its actions or omissions.*" Four examples of these instances are listed and it's the one that reads "*Furnishing of incorrect legal advice*" which should resonate loudly in the ear of any managing agent!

A Body Corporate and its managing agent enjoy a 'master' and 'servant' relationship. The Body Corporate is the master and the managing agent is the servant. Notwithstanding this, there is fair reason to argue that a fiduciary relationship (a relationship of trust) exists between a Body Corporate and its managing agent. A Body Corporate has full legal capacity, can sue, be sued and contract.

Through implication and interpretation, a managing agent must have a wide range of specialised skills and expertise to perform his / her duties satisfactorily (Management Rules 46-49). Although not specified, the scope of the requirements & duties listed suggests that encounters with matters of a legal nature are inevitable. The law that applies to sectional title is under constant review. A sound knowledge of the Sectional Titles Act No.95 of 1986 (the Act) is an essential prerequisite for a managing agent, but knowledge of the Act alone will not suffice.

Many disputes experienced within schemes do not fall neatly within the provisions of the Act, or the management or conduct rules contained therein. Disputes that encroach into other areas of the law leave the Body Corporate outside the relatively safe environment of the prescribed provisions of the Act. A managing agent will be called upon to advise on these disputes thereby dispensing paralegal advice of a varied nature. Close proximity living and the diminished real rights synonymous with sectional title ownership will affect the harmony and neighbourliness of a scheme thus the potential for legal disputes is escalated.

Laws are rules of conduct enforced by the state and their basic function is to control the behaviour of people in society and enforce certain standards. Laws tell us what we must do, what we must not do and what others may or may not do to us. Laws prescribe various forms of punishment for certain behaviour. Modern society could not operate and function without laws as there would be no way of forcing certain standards of acceptable behaviour. Laws need not be fair in order for them to be binding on us, as a valid law binds everyone even those who are unaware that certain laws even exist.

In essence, a sectional title scheme is a community or sub-section of society all on it's own. Body Corporate members are seldom aware of their rights and duties as owners and often lack even the most basic working knowledge of the sectional title concept.

An astute, efficient and proactive managing agent with an uncanny ability to guide and educate, who possesses a sound understanding of the law, will:

- Save a Body Corporate a lot of time, trouble and unnecessary expense in avoidable litigation.
- Enjoy heightened appeal in the market place.
- Ensure the scheme operates within the provisions of the Act.
- Uplift general perceptions of the entire profession.
- Reduce pettiness among Body Corporate members.
- Expedite dispute resolution procedures & solutions.
- Minimise the potential for scheme degeneration.
- Maximise their personal level of job satisfaction & professionalism.

## **ALTERNATIVE RESOURCES FOR CONSIDERATION BY A MANAGING AGENT DEALING WITH A LEGAL PROBLEM WITHOUT ACCESS TO A LAWYER.**

Depending on the nature of the problem, the obvious first choice of reference should be the Act itself together with the registered management and conduct rules of the scheme. If the problem is of a more specific nature then direction may be sought from any other act/s relevant to the problem at hand.

All acts:

- Are written law.
- Are made by Government.
- Form part of Statute Law.
- Are stronger than Common Law (laws not made by Parliament or any level of Government. Developed through decisions of judges in the Courts).
- Can be declared invalid by the Constitutional Court if they go against the Constitution (the supreme law of the land).

In conjunction with the perusal and examination of the provisions of the relevant act one should also source and study recent and applicable Case Law (Judicial Precedent) where possible.

Case Law:

- Are reported decisions of the court, which make new interpretations of the law in areas of the law where it is unclear.
- Are quoted as authority.
- Courts follow previous decisions unless there is good reason to deviate from them.
- The decisions of superior courts are binding on lower courts and persuasive to the same court when it next deals with an identical matter.

The Internet is a quick, easy and inexpensive alternative research resource. Access to information on just about anything is available. A managing agent should have a comprehensive list of 'favourites' dealing with sectional title matters at his disposal. Graham Paddock's 'Sectional Titles Online' should head the list! The discussion forum is a terrific problem-solving platform!

Publications, reference works and papers penned by accepted 'sectional title gurus', David Shrand, Graham Paddock, Marina Constas, Karen Bleijs, the late Bob Gauld, Tertius Maree, Henk Delpont and Professor C.G. van der Merwe provide invaluable support material. Their insight and expertise on sectional title matters should form part of any legal research!

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

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