

Legal Update

Legislation relating to the real estate environment

Understanding Sectional Title Act and Sectional Title Schemes Management Act



Paddocks



**ESTATE AGENCY AFFAIRS BOARD
OF SOUTH AFRICA**

Content

1. Introduction
2. EAAB Code of Conduct
3. Nature of Sectional Title ownership
4. Sectional Plans
5. Analysis of Sectional Titles Act
6. Sectional Property Descriptions
7. Title Deeds and Other Restrictions
8. Consumer Protections
9. Fundamentals of Sectional Title Management
10. Sectional Rules
11. Dealings with Common Property
12. Structure of the Sectional Title Schemes
Management Act

Introduction

- Types of land titles
 - Conventional Land Title
 - Also known as “Full Title”
 - Sectional Title
 - Background

EAAB Code of Conduct

- The EAAB's Code of Conduct with regard to the delivery of estate agency services:
 - Clause 4 - "Duty to Disclose"
 - Clause 5.3 - "Duty not to make misrepresentations of false statements..."

Nature of Sectional Title Ownership

1. Sectional title is a legal arrangement in terms of which parts of buildings known as “sections” can be exclusively owned, together with shared ownership of all other parts of the buildings and the land - known as “common property”.
2. Parts of the common property in a sectional title scheme may be subject to “exclusive use rights” - where one or more owners may be entitled to the sole use of a specified part or parts of the common property and be obliged to pay all associated repair and maintenance costs. Usually the private parking bays, yards and garden areas you market will be “exclusive use areas”, but if they are within buildings, they could also be separate sections.

Nature of Sectional Title ownership

3. A scheme is administered by its body corporate, of which all owners of units in that scheme are members. The purchaser of a unit will, on taking transfer, be a participant in a “building collective” that collects money from its members to meet common expenses and manages the complex in accordance with the Act and its own special rules, which bind all its members. A new member is liable for a share of the body corporate’s debts even if they relate to past expenses.

Sectional Plans

- Title Page
- Block Plan
- Sheets (sections and EUAs)
- PQ Schedule

Practical Example

<p>SECTIONAL PLAN NO.SS147/1990</p> <p>Registered at CAPE TOWN</p> <p>1990-08-28 Registrar of Deeds Date</p>	<p>SHEET 1 OF 9 SHEETS</p> <p>(sheet 1 comprising this sheet and Annexure A hereto)</p>	<p>S. G. NO. D 180/1990</p> <p>Approved</p> <p><i>R.A.F.</i> 1990.08.03 for Surveyor-General Date</p>
<p>NAME OF BUILDINGS TO WHICH THE SCHEME RELATES : BONNE ESPERANCE</p> <p>TITLE DEED DESCRIPTION OF LAND: Remainder Erf 53429 Cape Town situate at Claremont in the Municipality of Cape Town, Administrative District of Cape, Province of Cape of Good Hope, measuring 901 (nine hundred and one) square metres.</p> <p>DIAGRAM NO.: S. G. No. 594/1904</p> <p>NUMBER OF TITLE DEED WITH WHICH DIAGRAM IS FILED : Deed of Transfer No. 2826/1904</p> <p>TITLE DEED NO. OF DEVELOPER : Deed of Transfer No. 23104/1981</p> <p>NAME, ADDRESS AND PARTICULARS OF DEVELOPER :</p> <p>Karla Helga Schröder P.O.Box 48 Swakopmund, Namibia I.D.Number 430624 0015 104 Married Out of Community of Property</p> <p>NAME OF LOCAL AUTHORITY : Municipality of Cape Town LOCAL AUTHORITY REFERENCE NO. : CT/1073</p> <p>DESCRIPTION OF BUILDINGS : Two buildings namely</p> <p>a) Building 1 being a three storey building comprising 9 flats</p> <p>b) Building 2 being a single storey building comprising toilets and store room (common property)</p>		

ENCROACHMENTS ON THE LAND :
PARTICULARS OF SERVITUDES, OTHER
REAL RIGHTS AND CONDITIONS :

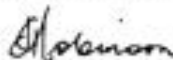
NR

See Annexure A and Sheets 7 and 8

CERTIFICATES :

- (a) I, Isidore Alexander Robinson, hereby certify that I have prepared sheets 1 and 2 and 7 and 8 inclusive of this sectional plan from survey in accordance with the provisions of the Sectional Titles Act and the regulations framed thereunder.

Date 1989. 08. 11 Signed
Registration No. PLS0523-D



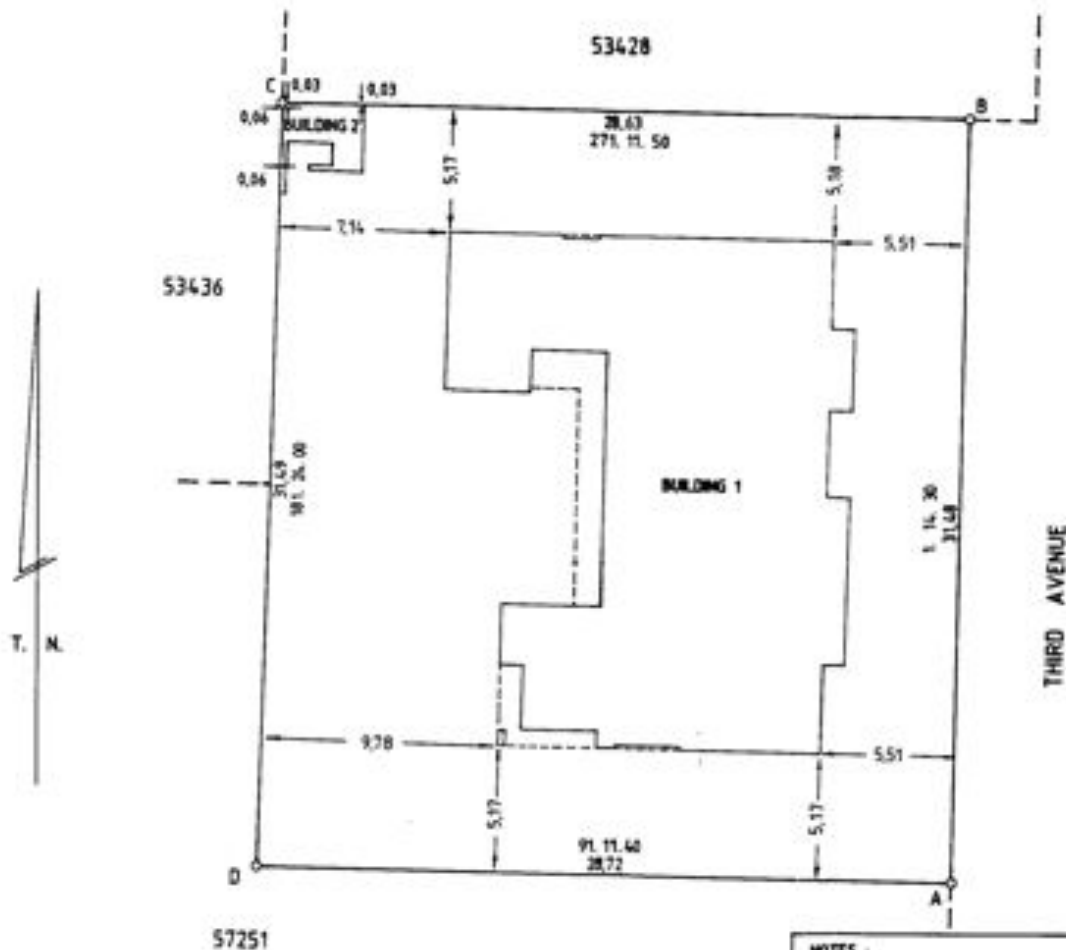
Land Surveyor
14 Tuin Plein
Cape Town

- (b) I, Richard Honikman, hereby certify that I have prepared sheets 3 to 6 and 9 inclusive of this sectional plan from survey in accordance with the provisions of the Sectional Titles Act and the regulations framed thereunder.

Date 1989. 08. 11 Signed
Registration No. ARC962-D



Architect
Strand Towers
Strand Street
Cape Town



NOTES:

1. The figure ABCD represents Res. Erf 53429 Cape Town
2. For exclusive use areas see sheets 7 and 8
3. All measurements are given in metres
4. - - - - denotes projections above ground floor level beyond external surfaces of buildings at ground level

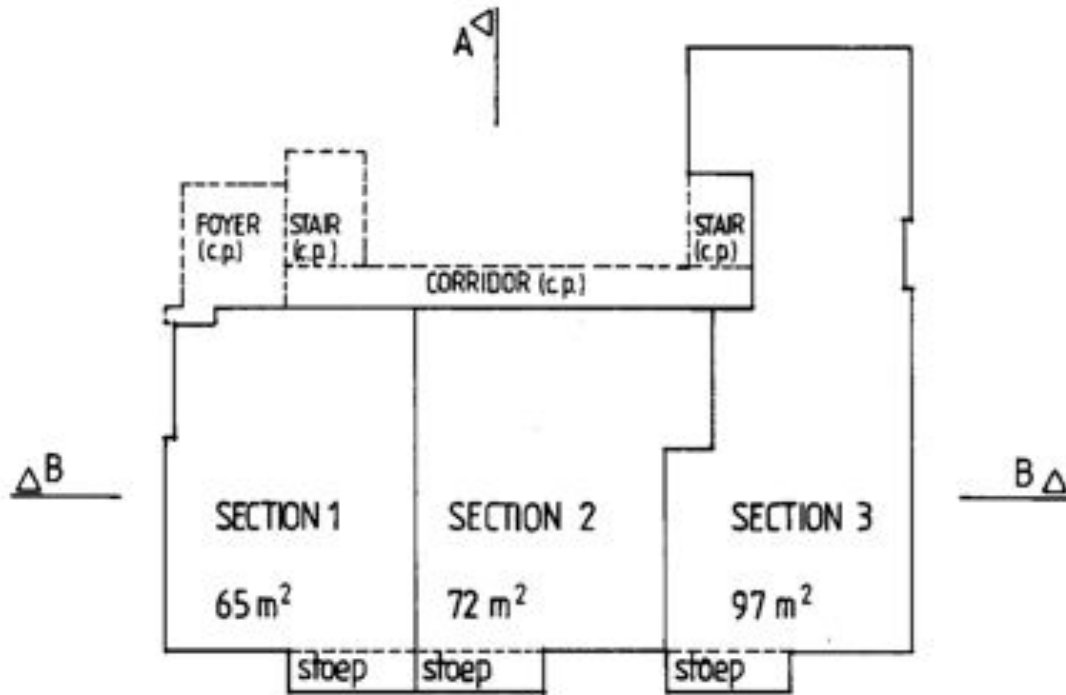
Signed *L.A. Robinson*
LAND SURVEYOR: L.A. ROBINSON
Shaw Robinson Associates
14 Tuin Plein, Cape Town

1989. 08. 11

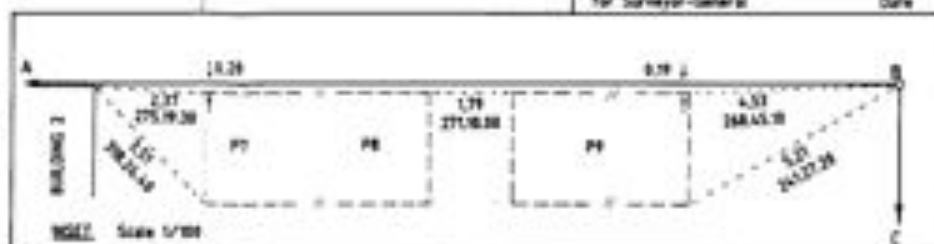
BONNE ESPERANCE

DRAWING TITLE:
Block Plan

Scale 1/200



GROUND FLOOR PLAN



NGZL Scale 1/200



LEGEND

- P = Parking
G = Garden

PARKING BAYS

	SIDES	ANGLES OF DIRECTION
P1 - P4	Pg 5.00	271.11.40
	qf 2.40	91.11.40
	h1 5.00	91.11.40
	if 2.40	181.11.40
P5 - P8	ki 2.40	271.24.00
	lm 5.50	91.24.00
	nn 2.40	91.24.00
	no 5.50	181.24.00
P7 - P8	po 5.50	271.18.00
	qt 2.40	91.18.00
	ra 5.50	91.18.00
	sp 2.40	181.18.00
P9 - P11	tu 2.40	270.41.20
	uv 5.50	90.41.20
	vw 2.40	90.41.20
	wx 5.50	180.41.20

NOTES:

- For schedule of areas of exclusive use areas see sheet B
- Exclusive use areas adjoining sections extend to the boundaries of such sections
- denotes painted white lines
- denotes wall
- denotes not physically defined
- Section Description: Each corner of parking bays marked with 10cm round iron peg except:
 - v - which is a 10cm drill hole in concrete
 - w - Drill hole in concrete; u,v,t,t - Drill hole in wall

Signed *[Signature]* 1994.08.13
LAND SURVEYOR - L.A. ROBINSON
Shaw Robinson Associates
14 Tuhi Plain, Cape Town

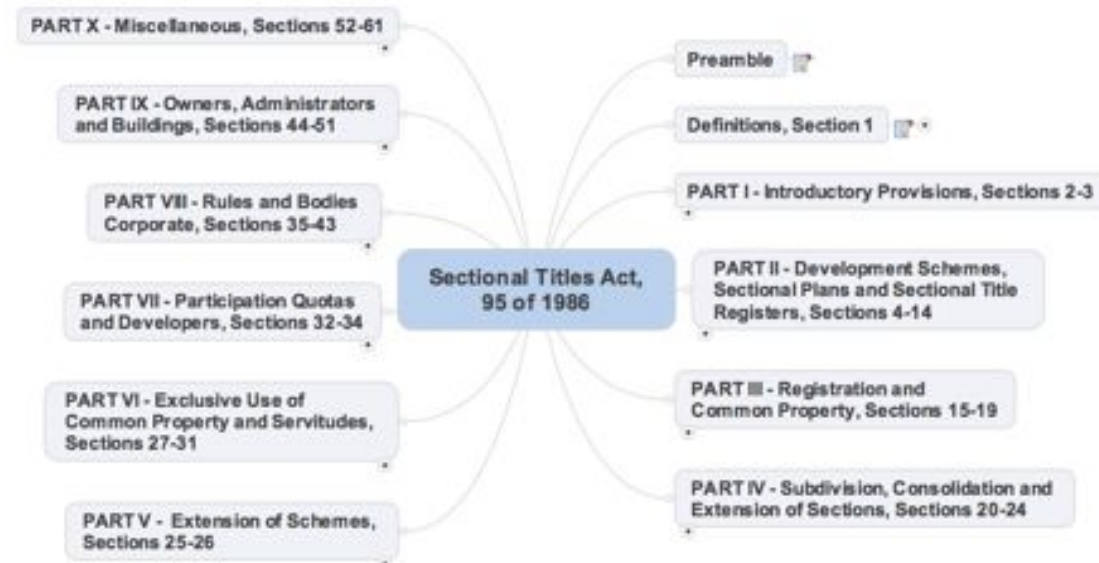
BONNE ESPERANCE

(DRAWING TITLE)
Layout of exclusive use areas
Scale 1/200

SHEET 9 OF 9 SHEETS		S.G. No. D180/1990
		APPROVED <i>R.A.F.</i> 1990.08.03 for Surveyor General Date
SECTION NO.	FLOOR AREA (square metres)	PARTICIPATION QUOTA PERCENTAGES
1	65	8,8797
2	72	9,8361
3	97	13,2514
4	80	10,9289
5	72	9,8361
6	97	13,2514
7	80	10,9289
8	72	9,8361
9	97	13,2514
TOTAL	732	100,0000
NOTES		
RICHARD HONIKMAN ARCHITECTS 5th FLOOR STRAND TOWER 66 STRAND STREET CAPE TOWN 8001 <i>R. Honikman</i> signed 1989.08.11 date		BONNE ESPERANCE DRAWING TITLE Participation quota percentages schedule

Analysis of Sectional Titles Act

- Original Sectional Titles Act, No. 66 of 1971
- Replaced by current Sectional Titles Act, No. 95 of 1986
- Amendments, namely 1997



Sectional Property Descriptions

- Units

A unit consisting of –

*(a) **Section No. 2** as shown and more fully described on **Sectional Plan No. SS 321/2003** in the scheme known as **MAYFAYRE LODGE** in respect of the land and building or buildings situate in Kenilworth, in the City of Cape Town, Cape Division, **Western Cape Province**, of which section the floor area according to the said Sectional plan is **89 (Eighty Nine) square meters** in extent; and*

*(b) An **undivided share in the common property** in the scheme apportioned to the said section in accordance with the participation quota as endorsed on the said Sectional plan;*

Sectional Property Descriptions (continued)

The Sale Agreement should contain the following:

Door number – G107

Section number - 178

Scheme name – Forest Hill

Street Address – 108 Main Road, Mowbray, Western Cape

Deeds office number for the scheme – SS 106 / 2003

Floor area of section – 75 (Seventy Five) square meters

Share in common property – undivided share in common property

- Exclusive Use Rights
- Future Development / Scheme Extension Rights

Sectional Property Descriptions (continued)

- Exclusive Use Rights
 - Notarial Deed of Cession / Title Deed

*An exclusive use area described as **Parking bay P1** measuring **Fourteen (14) square meters** being as such part of the common property, comprising the land and the scheme known as **MAYFAYRE LODGE** in respect of the land and building or buildings situate at **Kenilworth in the City of Cape Town** as shown and more fully described on **Sectional plan No. SS 321/2003**.*

Sectional Property Descriptions (continued)

- Creation in the rules

*Rights to exclusive use **Parking bay P1** measuring **Fourteen (14) square meters** in terms of the rules of the scheme.*

*Rights to the exclusive use of the common property area described as **Parking bay P1** measuring **Fourteen (14) square meters** in terms of and subject to the conditions contained in the **(Management OR Conduct) Rules** of the scheme known as **MAYFARE LODGE, Kenilworth in the City of Cape Town, Sectional plan No. SS 321/2003** in terms of which rules the rights are allocated to the owner of unit / section **2** in the scheme.*

Sectional Property Descriptions (continued)

- Future Development / Scheme Extension Rights
 - Reserved by Developer
 - Section 25 of the Act
 - Specified period of time - lapse

Title Deeds and Other Restrictions

- Title Deeds
 - Certificate of Registered Sectional Title (CRST)
 - Deed of Transfer
- Conditions of title
 - (Developer's) Conveyancer's Certificate of Schedule of Conditions
- Implied Reciprocal Servitudes
 - Support
 - Right of Way
- Sectional Plan
 - Purpose for which a section and / or exclusive use area may be used

Title Deeds and Other Restrictions (continued)

- Prescribed Management Rule (PMR) 68 (1) (x)
 - An owner shall, when the purpose for which a section or exclusive use area is intended to be used –
 - (a) is shown expressly or by implication on a registered sectional plan;
 - (b) is shown expressly or by implication on the original approved building plan thereof;
 - (c) can be inferred from the provisions of the rules; or
 - (d) is obvious from its construction, layout and available amenities;not use, nor permit such section or exclusive use area to be used, for any other purpose: provided that with the written consent of all owners such section or exclusive use area may be used for another purpose.

Consumer Protection

- Protection for Residential Tenants
- Compulsory disclosure of reservation of right to extend scheme
- Compulsory disclosure of rules that vary the financial effect of the participation quotas, for sales before the register is open

Fundamentals of Sectional Title Management

- Body corporate is responsible for the enforcement of the rules and for the control, administration and management of the common property
- Powers and Functions of the Body corporate
 - Exercised by the trustees
- Owner / Member Resolutions
 - Ordinary
 - Special
 - Unanimous

Sectional Rules

- Body corporate is controlled and managed in terms of its rules
 - Management rules
 - Prescribed – Annexure 8 of the Act
 - Amended by Unanimous Resolution
 - Conduct rules
 - Prescribed – Annexure 9 of the Act
 - Amended by Special Resolution
 - Reasonable and apply equally
 - Amendments to be filed at Deeds Registry / Registrar of Deeds - effective

Dealings with Common Property

- Use of common property
 - Subject to:
 - The use rights of other owners;
 - The provisions of the Act, and
 - The Scheme's rules.
- Maintenance of and repairs to sections and common property
- Minor alterations to the common property
- Body corporate improvements to common property
- Owner improvements to common property
- Extension of schemes by addition of land to common property

Dealings with Common Property (continued)

- Future development rights – the right to extend schemes by the addition of sections
- Exclusive use rights
- Leases of parts of common property
- Servitudes
- Alienation of part or all of the common property

Structure of the Sectional Title Schemes Management Act

- Section 1 Definitions
- Section 2 Bodies corporate
- Section 3 Functions
- Section 4 Powers
- Section 5 Additional powers
- Section 6 Meetings
- Section 7 Trustees
- Section 8 Fiduciary position of trustees
- Section 9 Proceedings on behalf of body corporate
- Section 10 Rules
- Section 11 Quotas
- Section 12 Expropriation of common property
- Section 13 Duties of owners
- Section 14 Insurance by owners
- Section 15 Recovery from owners

Structure of the Sectional Title Schemes Management Act (continued)

- Section 16 Appointment of administrators
- Section 17 Destruction / damage
- Section 18 Advisory Council
- Section 19 Regulations
- Section 20 Amendment Act
- Section 21 Transitional arrangements
- Section 22 Short title and commencement
- Schedule



Thank You

Should you have any queries, kindly contact us on 021 686 3950 or by email at consulting@paddocks.co.za

Consultants:

Professor Graham Paddock

Anton Kelly

Carryn Melissa Durham

Zerlinda van der Merwe