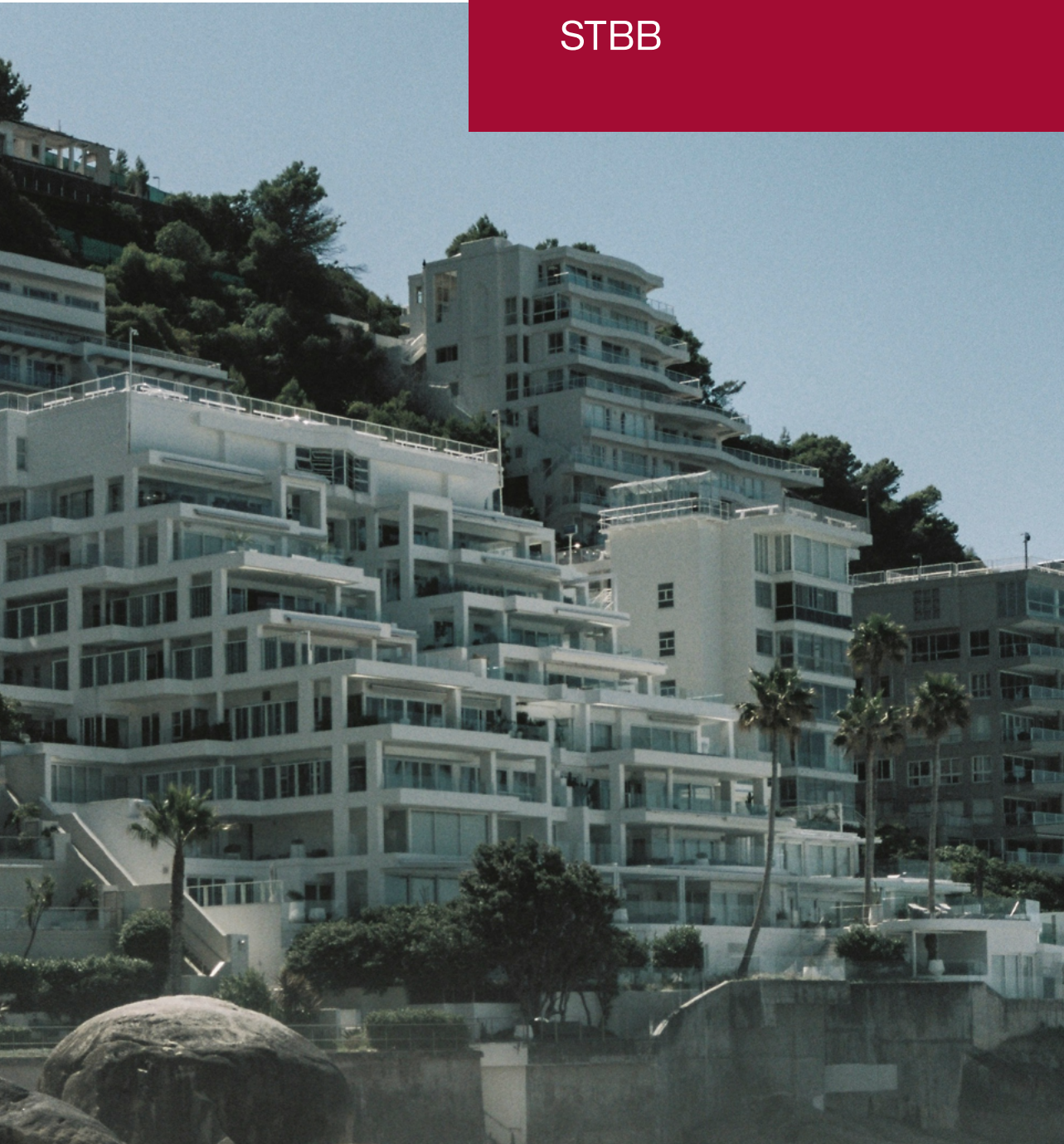


An introduction to *sectional title* schemes

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Sectional title ownership is a popular form of property ownership in South Africa, particularly in residential developments and apartment buildings. This brochure provides an introductory overview of sectional title schemes by explaining important concepts associated with this form of property.

What is a sectional title scheme?

A sectional title scheme is a development in which a building or buildings and the land on which they are situated are divided, in terms of an approved and registered sectional plan, into two or more sections capable of separate ownership together with common property that is owned jointly by the owners of the units in the scheme.

Each sectional title unit consists of a numbered section together with its undivided share in the common property. Depending on what is shown on the sectional plan, a section may, for example, comprise an apartment, townhouse, office, storeroom, or garage.

The scheme may also include exclusive use areas over parts of the common property.

When does a sectional title scheme come into existence?

A sectional title scheme comes into existence once a sectional plan has been approved by the Surveyor-General and registered in the Deeds Office and a sectional title register has been opened, as contemplated under the Sectional Titles Act ('the STA').

No unit may be transferred before the sectional title register has been opened.

Where a scheme has not yet been opened, this must be clearly disclosed in the sale agreement. It is customary to annex a site development plan to enable a purchaser to identify the proposed unit and its location within the development.

What is a sectional plan?

A sectional plan is a survey document prepared by a land surveyor or architect and approved by the Surveyor-General. It shows the building or buildings and land forming part of the scheme and their division into sections and common property.

A sectional plan identifies the numbers and boundaries of the sectional title units, their floor areas, the participation quotas allocated to them, and the common property, among other things. Where exclusive use rights are created as registered rights under the STA, the relevant exclusive use areas are also delineated on the sectional plan.

What is an exclusive use area?

An exclusive use area is a defined part of the common property over which a particular owner, or in appropriate cases an occupier, has the exclusive right to use and enjoy that area. The area remains common property and is not separately owned as part of the owner's section. Exclusive use rights may be created either as registered rights under the STA or in terms of the management or conduct rules of the scheme, as provided for in the Sectional Titles Schemes Management Act ('the STSMA'). Examples of exclusive use areas include gardens, parking bays, and storerooms.

What is common property?

Common property consists of the land included in the scheme and those parts of the building or buildings that do not form part of any section.

Depending on the particular sectional plan, this generally includes areas such as foundations, roofs, passages, stairways, lifts, gardens, driveways, and shared recreational facilities.

It is important to note that parking bays, gardens, and patios may form part of the common property, but an owner can have an exclusive use right over them, as indicated above.

The common property is owned jointly by the owners of units in the scheme in undivided shares, as determined by the participation quotas of their sections.

What is a body corporate and how is it established?

The body corporate is an entity that is responsible for the management, administration, and control of the common property and enforcing the scheme's rules for the benefit of all owners, as set out in the STSMA. This includes maintaining insurance, collecting levies, and keeping proper records.

Under the STSMA, a body corporate is deemed to be established on the date when a person other than the developer becomes the owner of a unit. All owners of units in the scheme automatically become members of the body corporate.

The body corporate operates in accordance with the prescribed management and conduct rules contained in the STSMA Regulations, unless amended or substituted rules have been lodged with and approved by the Chief Ombud at the Community Schemes Ombud Service.

What is a participation quota?

A participation quota is the percentage allocated to each section as shown in the participation quota schedule on the sectional plan. It determines the owner's undivided share in the common property.

For a scheme that is used solely for residential purposes, the participation quota of a section is calculated by dividing the floor area of that section by the total floor area of all sections in the scheme and expressing the result as a percentage to four decimal places.

For mixed-use sectional title schemes, different rules apply. The STA permits the developer to determine the participation quotas, subject to the statutory requirements applying to such schemes. In a mixed-use scheme, the residential sections are governed by the proportionality requirements.

Why does a participation quota matter?

Subject to the STSMA and any valid rule providing otherwise, the participation quota determines:

- The owner's undivided share in the common property;
- The value of the owner's vote where votes are calculated in value; and
- The proportion in which the owner contributes – through levies – towards certain expenses of the body corporate.

What do the levies cover?

Generally, levies may include the following expenses to cover the cost of operating and maintaining the scheme:

- Electricity and repair costs relating to electrical installations on the common property;
- Insurance in respect of the buildings in the scheme;
- The managing agent's fees;
- Auditing or accounting fees;
- Maintenance costs; and
- Security costs.

What are special levies?

If additional income is required to meet a necessary expense which cannot reasonably be delayed until provision can be made for it in the budget for the next financial year, the body corporate may, on the authority of a written resolution by the trustees, levy a special contribution, commonly referred to as a special levy.

The trustees determine the amounts payable and the manner in which the special levy is to be paid.

What do a scheme's conduct rules cover and can they be amended?

Every scheme has conduct rules regulating the conduct of owners and occupiers regarding the keeping of animals, maximum occupancy, refuse disposal, and use of the common property, among other things.

The body corporate may, subject to the requirements of the Act, substitute, add to, amend, or repeal its conduct rules by special resolution, i.e. 75% of the total participation quota.

Amended conduct rules must be reasonable, apply equally to all owners of units, and may not be irreconcilable with any prescribed management rule. They must be lodged with and approved by the Chief Ombud.

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