

Deadline looms for sectional title management, rules submissions

Sectional title sales, as a percentage of South Africa's total home sales, rose from 22% in 2010 to 28.4% in early-2016, and there are no signs of this trend abating.



Steyn City apartments

Coupled with a growing trend towards urban living in proximity to the workplace and all amenities, the lifestyle advantages of lock-up-and-go sectional title living are driving the rising demand for such properties, with their added benefits of security and hassle-free maintenance, says Basil Moraitis, Pam Golding Properties area principal in the Cape's Atlantic Seaboard and City Bowl.

“As a result of the growing popularity of sectional titles, the recently introduced updated legislation regarding sectional title schemes is of relevance to both existing and potential home buyers.”

While parts of the old Sectional Title Act 95 of 1986 are still in force, two new acts were added on 7 October this year (2016) – the Sectional Title Schemes Management Act (STSMA) and the Community Schemes Ombud Service Act (CSOSA).

Reserve fund

A noteworthy addition to legislation is that bodies corporate are now required by law to establish a reserve fund to cover the cost of future maintenance and repairs to common property, with the suggested amount being 25% of the annual levy.

Comments Jason Shaw, national sales executive for Pam Golding Properties: “The changes are welcome as they will enhance the benefits and limit the risks of the ownership of sectional title property ownership. Sectional title complexes/units are an extremely popular and growing property type. The new changes help protect owners’ rights and safeguard their investment through better governance and a greater reserve fund to draw on should this be necessary. While this might in certain instances place pressure on homeowners in the short term, through special levies raised to meet the 25% requirement, the benefits by far outweigh the risks by getting this done upfront.”

Adds Moraitis: “The changes will provide much needed certainty as well as security for owners in sectional title schemes, which in many metros around the country is becoming the dominant form of property ownership as a result of densification and the desire to live in particularly sought-after locations where land is at an absolute premium. The most pertinent example of this is on the Atlantic Seaboard. The need for further regulation and procedural clarity in the management of sectional title schemes has been long overdue. This, coupled with strict regulation of Reserve Funds will continue to ensure that the value of the underlying investment remains secure.”

Funds for future maintenance

Dexter Leite, rentals manager for Pam Golding Properties in the Western Cape agrees: “The (minimum) Reserve Fund now required will ensure that there are funds available for future maintenance to common property. This will benefit tenants in a sectional title scheme as often there are insufficient funds available, with the funds required then needing to be raised via a special levy which in instances can take time, lead to delays causing tenants to experience inconvenience which, for example could affect the scheme’s security or overall appeal.”

The new legislation extrapolates the existing, practical, day-to-day management of sectional title schemes from the more technical aspects like land registration and sectional title registers. It also aims to regulate matters and streamline the dispute resolution processes.

Fuller disclosure of management, conduct rules

According to an expert on the existing and new legislation, Melanie Coetzee, managing partner of STBB law firm, buyers are demanding fuller disclosure of management and conduct rules as well as proof of previous resolutions.

“It is a great positive for buyers in that it creates peace of mind for sectional title purchases, where so often, issues like parking and exclusive use areas create disputes. Section 39 of the Act is very clear on whether a complainant has a case or not – and these range from mismanagement of trustees to common area issues, maintenance, animals and much more. The complaint process is a simple online procedure that requires no legal representation unless both parties consent to it.

“So while the Ombud Service is certainly there to help resolve disputes their primary function is to keep a record of the Body Corporate Rules and records of resolutions of disputes. Previously these were not public records and this was certainly a defect of the original act. Buyers now have the comfort of knowing that these are updated.”

Deadline for submission to the ombud

The deadline for trustees of bodies corporate and home owners associations to submit these management and conduct rules, along with proof of the sectional title scheme’s domicile, registration and latest financials, is 7 January 2017. In addition the ombud requires a copy of the scheme’s maintenance plan – also a new requirement.

According to Coetzee, all 195,000 sectional title schemes across the country, currently registered at the Deeds office, will eventually feel either the positive or negative influence of the Ombud Service depending on their level of compliance.

“There is no point to this legislation unless the compliance of it is diligently managed and policed, but because, unlike other regulators, it is self-funded, I anticipate that the ombud, who will no doubt be working closely with the Deeds Office in the future, will have all the necessary resources to sweep far and wide to ensure compliance.”

So how will the Ombud Service Office be funded you ask? Admittedly, ‘the money’ is usually a good place to start explaining almost anything. A quarterly levy from every sectional title owner amounting to the lesser of R40 or 2% of the amount by which the monthly levy is charged when it exceeds R500, puts the Ombud Service Office in business. Just to be clear, this is a ‘per door’ fee and levies for the first quarter are also due 7 January 2017.

Separate bank account

New legislation also states that every scheme should open a separate bank account for a Reserve Fund. This fund should never be below 25% of the previous year’s collected levies. Proof of the fund will automatically be included in the scheme’s financials which are now required to be filed annually within 30 days of the scheme’s AGM. The good news here is that special levies collected before 7 October 2016 already count towards the Reserve Fund.

Another change is that before 7 October it was easy to pass special resolutions with 75% of members present, or 75% of members representing value, resulting in a quorum. The main change here is that members are restricted to one vote, irrespective of how many of the scheme’s units they represent. Proxies are still limited to two. Coetzee sees this as a positive change aimed at ensuring increased involvement of members. Also noteworthy in respect of meetings is that notices are now permitted via email.

Owners can also now monitor that all risk structural insurance policies, which must be reviewed every three years, are in place.

Special levies

On the subject of special levies, Coetzee comments that there should be less need for these now that Reserve Funds are required, however it’s important to note the new legislation only requires the seller to be liable for the pro-rata amount before transfer, resulting in the new buyer picking up the balance.

According to Emarie Campbell, Pam Golding Properties’ Western Seaboard area principal, the two new Acts are excellent pieces of legislation that allow property owners to secure their rights in a most transparent manner.

“Managing agents and trustees now have the responsibility to deliver against set legislation, giving the property owner easy-to-follow recourse via the Community Ombud’s structure to report any grievances they have with their body corporate/managing agents.”

Certificate from the ombud

Finally, interesting news for developers regarding the new legislation is that a certificate from the ombud stating that they have seen a record of the management and conduct rules, before a scheme can be registered at the Deeds Office, will now be issued. Any changes to these rules at a later stage will need to be re-submitted.

Adds Michelle Keegan, head of training at Pam Golding Properties: “There is little doubt that real estate is a legislation-heavy industry, so my advice when looking to buy property is to choose a professional agent who is continually trained and updated, because providing that confidence can make a great difference to both buyer and seller.”