

THE SECTIONAL TITLE INDUSTRY IN SOUTH AFRICA: PERSPECTIVES OF CHAIRMEN OF BODIES CORPORATE

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Abstract

This article is the third in a series of three on the sectional title industry in South Africa. (The first article dealt with perspectives of accounting and auditing practitioners and the second article in the series addressed the perspectives of managing agents of bodies corporate.)

The aim of this article was to provide an overview of practical problems experienced by chairmen of bodies corporate in the sectional title industry in South Africa by way of interviewing a sample of key role players in the industry.

The empirical results revealed various practical challenges and uncertainties in the industry. Various problems and concerns were addressed and practical recommendations were made that can be of assistance to owners, trustees, managing agents, accountants and auditing professionals. The findings can also be used as a valuable basis for further research. This article also gave a discussion of possible further research for the article series as a whole.

Key words: Sectional Title, Sectional Titles Act, Sectional Title Management, Sectional Title Schemes, Sectional Title Budget, Trustees, Body Corporate, Trust Money, Accounting, Auditing, Accounting Profession, Auditing Profession

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1. Introduction

The research findings in this article form part of the results of an extensive study done on the sectional title industry in South Africa, performed in fulfilment of a Magister degree in Accounting. This article is the third in a series of three articles highlighting the research findings.

The first article in the series sketched the background and overview of the sectional title property industry in South Africa. It also gave a detailed layout of the research methodology and contained a comprehensive literature review. The second article in the series addressed the perspectives of managing agents of bodies corporate. Therefore, these aspects will not be addressed again in detail in this article. This article will commence with the problem statement and aim of the article, followed by the research methodology. A discussion of the empirical findings will then be done under different sub-sections, followed by a conclusion and possible recommendations. This article will also give a discussion of possible further research for the article series as a whole.

2. Problem Statement and Aim of the Article

The trustees are the executive and management organ of the body corporate. Management rule 5 of the Sectional Titles Act 95 of 1986 states that it is not

required that trustees are owners of sections in the scheme; however, the majority of the trustees elected must be owners or spouses of owners. The chairman of the trustees should act as chairman at every general meeting, unless the members of the body corporate decide otherwise.

Trustee of sectional title schemes encounter various practical challenges when managing these schemes on a day-to-day basis. Against this background, the aim of the study is to give an overview of practical problems experienced by trustee chairmen relating to sectional title. Possible solutions recommendations will also be suggested in this regard.

3. Research Methodology

The research design was developed to address the research problem stated above. The research consists of a brief literature study, followed by a qualitative empirical study.

Flowing from the literature study, an investigation into current practices and challenges in the sectional title industry was undertaken. A qualitative research strategy was followed and the study was done by way of standardised interviews with chairmen of bodies corporate involved in the sectional title industry limited to the Bloemfontein area in South Africa.

The exact population of the participants was difficult to determine, due to the fact that many

sectional title schemes in Bloemfontein operate without a functioning body corporate and board of trustees. In order to address this practical challenge, the authors undertook extensive consultation among role players in the industry. After the consultation process, a joint decision was made to include five respondents and it was also jointly decided which five respondents were to be chosen. In view of clarity, the decision making process will be briefly discussed.

The sample was selected to represent one large sectional title scheme (more than 50 units) in the form of a townhouse complex, one medium-sized scheme (between 10 and 50 units) in the form of a townhouse complex, one small sectional title scheme (less than 10 units) in the form of a townhouse complex, one scheme in the form of a large block of flats (more than 100 units) and one scheme in the form of a small block of flats (less than 20 units). This ensured that in terms of residential schemes, the two main forms of complexes (flats and townhouses) are represented and that inputs were received from chairmen over the entire size spectrum, from small to large schemes.

In order to address the research problem of the article, a research questionnaire was developed as a measurement instrument in order to structure the interviews. The questionnaire was designed to structure the interview process, and ensure consistency of the coverage of questions between the interviewees. A formal cover letter from the authors explaining the purpose of the interviews and addressing the terms of confidentiality was sent to all interviewees before the interviews. Due to restrictions on the length of articles, the questionnaire was not attached to this article. It is, however, available upon request.

As mentioned in the previous article, various aspects from available literature were taken into account in developing the questionnaires and conducting the interviews.

4. Empirical Findings

4.1 Introduction

As mentioned above, this section will deal with the results of the information from the questionnaires and interviews with managing agents. These aspects will be discussed under the following headings: operations, problems and risks, managing agents, meetings and financial matters.

4.2 Operations

The 5 chairmen interviewed had varying numbers of units, namely 5, 6, 17, 42, 47 in their complexes respectively. The boards of trustees of which they were chairmen also varied in size. One of the five (20%) chairmen stated that he used to be the only trustee for a period of 3 years, but that there are currently four trustees. Three of the five (60%)

chairmen said that their boards consisted of 3 trustees, and one (20%) chairman stated that the board consisted of 4 trustees. Four of the five (80%) chairmen were of the opinion that the majority of the trustees should be residents of the scheme, as they are more in touch with the day-to-day problems and how the scheme should be managed.

The chairmen differed in their opinions on what the optimal number would be for a well-functioning board of trustees. One chairman said 3 to 8 trustees would be sufficient, depending of the size of the scheme. Two chairmen were of the opinion that 3 to 5 would be sufficient, depending on the size of the scheme. One chairman said that 5 trustees would be sufficient and the remaining one said 4 trustees is an optimal number.

All of the chairmen interviewed (100%) stated that the trustees serving on the boards of their bodies corporate received no remuneration. They stated that if they as chairmen incurred expenses on behalf of the body corporate, they are reimbursed for the expenses incurred. All of the chairmen interviewed received a honorarium of between R400 and R1 200 per month. All of them were of the opinion that trustees as well as chairmen should receive some form of remuneration. The concept of remuneration was also discussed in the second article in this series.

Three of the five (60%) chairmen interviewed said that they were entirely up to date with the latest stipulations of the Sectional Titles Act. One chairman (20%) said the he is not up to date, and the remaining one (20%) said that he does not know all the relevant legislation, but is trying to familiarise himself with it.

Four of the five (80%) chairmen interviewed stated that there is a definite need for sectional title training courses for trustees as well as chairmen. They mentioned, however, that the available training courses provided by some managing agents and the National Association of Managing Agents (NAMA) are too expensive and time-consuming. One chairman (20%) said that he does not see a need for trustee training.

4.3 Problems and Risks

According to the results of the interviews, the single biggest problem experienced by chairmen of bodies corporate is residents not adhering to management and conduct rules. All of the chairmen (100%) stated that they spend most of their time dealing with complaints regarding transgression of rules, such as parking problems, pets, unauthorised changes and extensions to units and noise. They were all of the opinion that the trustees were very unpopular in their complexes due to the fact that they enforced the management and conduct rules. Two of the five (40%) chairmen stated that they think the problem with non-adherence to rules stems from owners, and sometimes even fellow trustees, being uninformed and ignorant, not understanding the way a body

corporate functions. This viewpoint was also shared by managing agents and auditors interviewed, as discussed in the two previous articles.

Three of the five (60%) chairmen interviewed were of the opinion that uninvolved owners are the biggest problem experienced by them, especially non-resident owners. They stated that the owners were only interested in receiving rental income and did not care about the day-to-day operations of the complex.

Another frustration, which is experienced by all chairmen (100%), and that was also mentioned by managing agents as well as accounting practitioners in the previous two articles in this series, regards local authorities. The biggest problems with local authorities are a lack of communication, poor municipal service delivery, account estimates, corrections on statements, inaccurate balances and incorrect allocations on statements. One chairman mentioned the example of a water account of over R40 000 which was received by the owner of a unit in a specific month. No results were achieved with queries and complaints to the local authority and the owner had to settle the full amount.

One of the chairmen (20%) mentioned that managing agents receive kickbacks from service providers, such as insurance institutions and service contractors. He said that managing agents are not always acting in the best interest of the bodies corporate, and simply use or suggest the services of institutions from which they receive kickbacks.

Only three of the five (60%) chairmen had any experience with developers. All three said that the developers cut corners and used cheap materials during the building process, and did not want to take responsibility afterwards. One chairman mentioned that the developers did not install any geyser switches within a certain distance from the geysers according to government regulation. The trustees only realised this after receiving a complaint from an owner who wanted to sell his unit, who could not get an electricity clearance certificate because of this problem. The chairman said that they had to threaten the developer with legal action before receiving a response. Another chairman stated that they waited for three years to receive electricity certificates from the developers. Problems with developers were also mentioned by managing agents in the previous article in this series.

A concern raised by two of the five (40%) chairmen was also mentioned by the accounting and auditing practitioners in the first of the three articles in this series. The chairmen had a problem with the fact that the managing agent did not open a separate bank account for the body corporate and that all levies had to be deposited in the bank account of the managing agent. They stated that the body corporate never earned any interest on surplus funds and that the managing agent simply told him that it is generally accepted practice and that is the way the system is set up. One of the chairmen said that after various

requests the managing agent opened an “investment” account for the body corporate. The managing agent transfers surplus funds to this account after doing his calculations and reconciliations. The chairman said that there are large amounts of money in the bank account of the managing agent, since levies are received by the first week of a month and creditors are only paid days or even weeks later. He said that the body corporate never receives any interest on these funds, since the managing agent only pays the surplus funds over at the end of the month at his own discretion. The chairman also added that the managing agent earns “loyalty points” from his bank on the balances and transactions of this bank account for his own benefit. This matter was also dealt with in detail in the first of the series of articles.

According to two of the five (40%) chairmen they have noticed that many residents are falling behind on their payments. They also stated that they regard debt collection as a great challenge. The problem was also mentioned by the managing agents in the previous article.

4.4 Managing Agents

All of the chairmen interviewed (100%) stated that their bodies corporate made use of the services of a managing agent. The managing agents assisted the bodies corporate with the day-to-day management of the complex, administrative tasks, preparation of budgets and financial statements, collection of levies, etc.

During the interviews the chairmen were asked to rate the services of their managing agent, with the options ranging from very satisfied to very dissatisfied. Two of the five (40%) chairmen stated that they were satisfied with the services of the managing agents, while three of the five (60%) chairmen said that they were not satisfied with the services of the managing agents. The dissatisfied chairmen stated that making use of a managing agent is very expensive, and that they did not always feel that they were getting value for their money and that the managing agent is not prepared to walk the extra mile for them. These chairmen also added that the managing agents do not seem to care about smaller bodies corporate and did not give the necessary attention to their needs. These chairmen stated that even though they are not satisfied with the service they receive from their managing agent, they cannot operate without one, and that other available managing agents have an even worse reputation. The dissatisfied chairmen also mentioned that the lack of continuity of staff members at managing agents were frustrating. This viewpoint was shared by managing agents and audit practitioners as discussed in the previous two articles.

Two of the five (40%) chairmen stated that they had no idea how their managing agents calculated

their management fees, while the other 3 (60%) said that they knew how it was calculated.

All of the chairmen (100%) stated that they have never changed from one managing agent to another, and that they have made use of the services of their managing agent since they became involved in the body corporate. This comment opposes the viewpoints of the managing agents as well as those of the auditors as discussed in the previous two articles in the series.

All of the chairmen (100%) stated that the most important factor to take into account when deciding on a managing agent is service delivery and a genuine interest in the complex. This is an interesting comment, because, as mentioned above, 60% of the chairmen were not satisfied with the service they received from their managing agents.

According to two of the five (40%) chairmen another factor that they consider as important when choosing a managing agent, is that the managing agent must be trustworthy regarding the finances of the body corporate. One chairman (20%) said that affordability of the management fees is important.

4.5 Meetings

According to all of the chairmen, the annual general meeting (AGM) of their body corporate is poorly attended, an opinion shared by the managing agents interviewed as discussed in the previous article. All of the chairmen stated that their annual general meetings (AGMs) never have a quorum and have to be postponed, despite various communication efforts such as registered mail and sms-messages. Two of the five (40%) chairmen complained that there are high costs involved in postponing an AGM, since the managing agent charges them an after-hours meeting fee for each meeting, including the postponed one.

Another comment by the chairmen, which corresponded with what the managing agents said in the previous article, was that one of the biggest problems at AGMs is the approval of budgets. The chairmen stated that increases in budgets and the resulting levies are always met with negativity. One chairman mentioned that everybody wants to stay in a well-maintained complex, but nobody wants to contribute financially.

As was mentioned by some managing agents in the previous article in the series, the chairmen interviewed also stated that owners do not adhere to proper meeting procedures during AGMs, and that owners regularly want to discuss operational matters which fall outside the scope of the agenda.

Four of the five (80%) chairmen stated that the election of trustees at the AGM is usually problematic, because very few people want to serve as trustees.

One of the five (20%) chairmen said that they have monthly trustee meetings, two of the five (40%) chairmen said that the board of trustees meet

quarterly, and the other two chairmen (40%) stated that the board of trustees only meet once a year, after the AGM.

All of the chairmen (100%) stated that there are never any meetings held other than the AGM and trustee meetings, but that if the need arises they would arrange a special meeting.

4.6 Financial Matters

Most of the comments below by the chairmen interviewed were also made by the managing agents interviewed, as discussed in the previous article.

According to all of the chairmen (100%) the annual financial statements of their schemes are prepared, and the audits performed by firms of chartered accountants (CA(SA)). All of the chairmen (100%) stated that the auditors are appointed by the members of the body corporate at the AGM. They stated that their managing agents recommend audit firms which, according to them, give good service.

All of the chairmen interviewed (100%) stated that they try to incorporate a reserve fund into the budget of their body corporate, but that many owners just want to keep costs at a minimum and do not want to make provision for a reserve.

Four of the five (80%) chairmen were of the opinion that cost is the most important factor to take into account when choosing an audit firm. Four of the five (80%) chairmen also stated that they also take into account whether the audit firm can deliver the financial statements and audit report on time. One of the five (20%) chairmen mentioned that the auditor should be trustworthy and transparent.

Two of the five (40%) chairmen interviewed said that they experience bottle-neck situations regarding the receipt of financial statements and audit reports for their schemes. The other three (60%) chairmen remarked that they never experienced any timing problems. This problem was also discussed from the viewpoint of accounting and auditing practitioners in the previous article in this series.

All of the chairmen (100%) were of the opinion that the audit of the financial statements adds value to sectional title schemes; an opinion which agrees with that of managing agents as well as accounting and auditing practitioners, as discussed in the previous two articles. The chairmen stated that they need an independent opinion on the financial matters of the body corporate.

5. Conclusion

This study was the first of its kind undertaken in South Africa. The series of articles provides a valuable background on aspects relating to managing agents in the sectional title industry which can be used by bodies corporate, trustees managing agents, accounting and auditing practitioners, researchers and other role players in the industry. It also laid the

foundation for several possible further academic research studies that can be undertaken regarding the sectional title industry.

For the chairmen of bodies corporate the main concerns were rule enforcement, uninvolved and uninformed owners, difficulties with municipalities and poor meeting attendance. They also mentioned a lack of trustee remuneration and certain problems where developers were involved. Financial pressures, debt collection and difficulties in getting budgets approved were also raised as concerns.

As mentioned in the research methodology section in the previous article, the empirical research done for the articles focused only on role players in the sectional title industry in the Bloemfontein area in South Africa. An empirical study could be undertaken amongst the role players throughout South

Africa, covering a larger geographical area. A comparison could be made between role players in different provinces in the country. Furthermore, an internationally comparative study could also be undertaken, comparing sectional title accounting and auditing aspects in South Africa with similar entities around the globe.

There are various interest groups for the different industries in South Africa. In the light of the findings, the SAICA and the SAIPA could possibly consider establishing an interest group for the sectional title industry in South Africa.

A further study could also be undertaken to develop a specific accounting framework for the sectional title industry in South Africa, possibly under the guidance of SAICA, as mentioned in the previous paragraph.

International conference “Corporate and Institutional Innovations in Finance and Governance”, Paris,
May 21, 2015

Concept: Some researchers characterize current stage of the economic relations development as VUCA from volatility, uncertainty, complexity и ambiguity. Traditional approaches to management, strategy and governance do not work anymore and are subject to substantial transformation and reforms. It is the task of owners and managers, governments and regulators to find out new paradigms of efficient governance, control and strategy making. Such governance issues as ownership structure, agency problem, executive compensation, internal and external audit, strategic risk management, accountability and reporting, social responsibility, M&As, board activity and structure need to be reviewed according to the recent developments. Although the essence and fundamentals of finance, management and corporate governance are still on their places, but under the pressure of overall changes of making business, technological progress, development of the research, innovations they change. It is important to trace these changes, follow regulatory developments, business practice to identify stable fundamentals in corporate governance and management practices and distinguish emerging trends that are going to occupy practitioners, regulators and academics minds in nearest future.

Key-note speakers:

- Carsten Gerner-Beuerle, Professor, London School of Economics, the UK;
- Loic Sauce, Professor, ISTECS, Paris, France.

Key topics of this international conference include but is not limited to:

- Corporate Finance and Governance
- Corporate laws and Regulations
- Bankruptcy; Liquidation
- Mergers; Acquisitions, Restructuring
- Reporting, Accountability and Transparency Issues
- Consulting and Audit
- Production and Personnel Management
- Compensation Issues
- Risk Management
- Public Finance
- etc.

Key deadlines:

- Deadline for submission of the full papers or summaries (1 -2 pages): *March 15, 2015*
- Notification of authors of accepted papers: *April 1, 2015*
- Registration and conference fee payment deadline - *April 21, 2015*

Contacts: For any queries concerning the conference please contact conference organizing committee at [paris2015conf\(at\)virtusinterpress.org](mailto:paris2015conf(at)virtusinterpress.org), or directly Professor Alexander Kostyuk at [alex_kostyuk\(at\)virtusinterpress.org](mailto:alex_kostyuk(at)virtusinterpress.org).