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**AUD007 A comparison of first and third generation sectional title
legislation – an accountancy perspective**

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ABSTRACT:

After being in effect since the late 1970s, first generation sectional title legislation in South Africa was recently completely overhauled into what is now commonly referred to as “third generation sectional title legislation”. The original Sectional Titles Act was split into three separate statutes, namely the Sectional Titles Schemes Management Act No. 8 of 2011, the Sectional Titles Amendment Act No. 33 of 2013 and the Community Schemes Ombud Service Act No. 9 of 2011, with various Regulations detailing how the different acts should be applied in practice. Even though some of the changes effected by the new legislation is simply technical adjustments and replications of the original first generation legislation, the new acts introduce a number of significant changes that will have an effect on accountancy, financial management and risk aspects of sectional title schemes in future. No academic research has been undertaken on a comparison of first and third generation sectional title legislation in South Africa from an accountancy perspective as yet. This paper, therefore, contributes to the current body of literature in an attempt to start addressing this shortcoming. The aim of this paper is to discuss the findings of a literature review comparing first and third generation sectional title legislation, with specific reference to accountancy-related aspects. Practical recommendations will be made on how role players in the sectional title industry can prepare for the new legislative aspects specifically regarding accountancy aspects, and further research opportunities in this regard will be discussed.

Key words: accountancy, body corporate, sectional title, third generation sectional title legislation

INTRODUCTION

The research results contained in this paper form part of the findings of two extensive studies (Steenkamp 2017; Lubbe 2013) that were done on the sectional title industry in South Africa from an accounting and auditing perspective, performed in fulfilment of the degree Philosophiae Doctor in Auditing. This paper will commence by giving a brief overview of the South African sectional title property industry. Thereafter, the problem statement and aim of the paper will be discussed, together with the research methodology. A discussion of the literature review will then be done and the paper will be concluded with possible recommendations and a concluding section.

A brief overview of the sectional title industry in South Africa

In 1971, the Sectional Titles Act ushered in a new era in home-ownership in South Africa. The Sectional Titles Act was assented to on 19 June 1971 and promulgated on 30 June 1971. The Act was finally proclaimed to come into operation almost two years later on 30 March 1973. For the first time in the history of South African law, home owners were able to purchase a section of a building, such as an apartment, with full ownership rights on that section (Van der Merwe 2014, pp.1–9; Woudberg 1999, p.3; Nel 1999, p.1; Shrand 1972, p.1; Paddock 2008, pp.1–3).

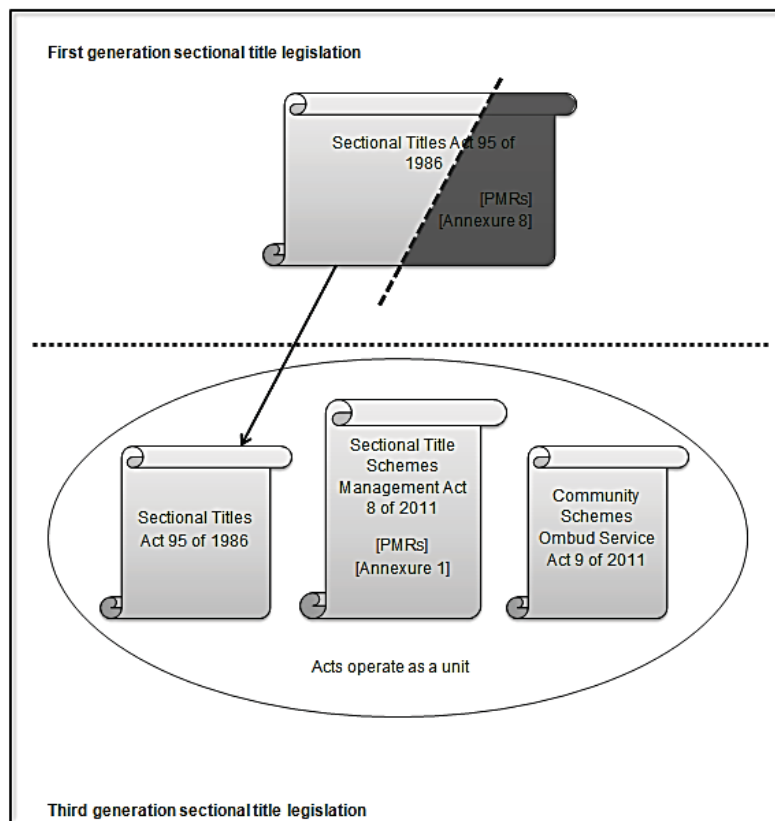
During 2010, it was estimated that the South African sectional title industry consists of almost 60 000 schemes (also known as complexes), comprising over 800 000 individual units (Van der Merwe 2014, p.1–30(17); Editorial 2010, p.1; Muller 2009, p.42). (See also Editorial (2008, p.2).) According a recent general household survey issued by Statistics South Africa, there are currently around 714 000 households living in flats or apartments and roughly a further 233 000 households living in town house complexes, adding up to approximately 947 000 households living in sectional title schemes (Statistics South Africa 2015, p.122;125).

The Sectional Titles Amendment Act No. 11 of 2010 contained the final amendments to the 1986 Sectional Titles Act before the split thereof into three separate statutes (Van der Merwe 2014, pp.1–35; Van der Merwe 2012, pp.611–612). Maree (2015e, p.1) explains that the original 1986 Act contained a number of problems regarding the examination, approval and filing of scheme rules and dispute resolution. Durham (2015, p.1) and Van der Merwe (2012, p.611) refer to the three new pieces of legislation as “third generation sectional titles legislation”. The Sectional Titles Schemes Management Act No. 8 of 2011 (also referred to as the STSMA), incorporates all governance and management provisions regarding sectional titles. These sections were taken out of the 1986 Act and amended and adapted to create the STSMA. The remainder of the Sectional Titles Act No. 95 of 1986 (STA) was amended by the Sectional Titles Amendment Act No. 33 of 2013. The 1986 Act now contains only technical registrations and survey provisions. The Community Schemes Ombud Service Act No. 9 of 2011 (also referred to as the CSOSA) henceforth provides a dispute resolution mechanism for sectional title and other community schemes. As mentioned in section 1.1, in October 2015 the Department of Human Settlements published in the Government Gazette draft regulations that flesh out how the STSMA and the CSOSA will be applied. The amended management rules as per the old Annexure 8 of the STA were

extensively revised and published for comment in the Regulations to the STSMA as Annexure 1 during October 2015 (Maree 2015a, p.1; Maree 2015f, p.1). The final revised Regulations were published on 7 October 2016.

Paddock (2011, p.1) explains that some of the changes effected by the new legislation are simply 'technical adjustments', such as updated descriptions, removing superfluous provisions and adding cross-references. Van der Merwe (2011, p.134; 2014, pp.1–43), Maree (2015c, p.1) and Bechard (2015a, p.1) concur that the three new sets of legislation have gone a long way to tidy up loose ends and clarify points of uncertainty. However, the authors point out that there are still numerous shortcomings in the legislation and that many of the new amendments are ambiguous. According to Van der Merwe (2013, p.707) some of the most interesting and controversial changes were the amendments to Annexure 8 of the Regulations, better known as the prescribed management rules (PMR) of a sectional titles scheme. Bechard (2015a, p.1) points out that many of the provisions of the STSMA replicate those of the Sectional Titles Act. However, the STSMA does introduce some significant changes. Furthermore, in October 2015 the Department of Human Settlements published in the Government Gazette draft regulations that flesh out how the STSMA and the CSOSA will be applied. The amended management rules as per the old Annexure 8 of the STA were extensively revised and published for comment in the Regulations to the STSMA as Annexure 1 during October 2015 (Maree 2015a, p.1; Maree 2015f, p.1). The final revised Regulations were published on 7 October 2016. Figure 1 below illustrates the changes to the legislation from first to third generation sectional title legislation.

Figure 1: First generation versus third generation sectional title legislation



(Own diagram)

PROBLEM STATEMENT AND AIM OF THE PAPER

From the aforementioned, it follows that almost a million households in South Africa live in sectional title property schemes. Also, the industry has recently seen a complete legislative overhaul, which will have an impact on all sectional title schemes in South Africa. Very little academic research has so far been done on sectional titles in South Africa, specifically from an accountancy perspective. Further, no research studies have yet been undertaken comparing first generation and the new third generation sectional title legislation on bodies corporate from an accounting and auditing perspective. It is, therefore, clear that research in this area is imperative, and should be performed to start addressing the shortfall of academic research on a very topical phenomenon found in South Africa specifically. The paper aims to present the findings of a literature review comparing first generation the new third generation sectional title legislation. Specific reference will be made to accountancy-related aspects. The way forward for bodies corporate will be discussed, focusing on practical recommendations regarding the implementation of the new legislative aspects. Further research opportunities in this regard will be also be discussed.

RESEARCH METHODOLOGY

An extensive literature review emphasizes the importance of the research problem as the foundation on which to build an empirical study. It can either be a study on its own (i.e. a literature study) or the first phase of an empirical study. Mouton (2001, p. 86) views the literature review as an essential component of any study and states that every research project should begin with a review of existing literature available. (See also De Vos, Strydom, Fouché & Delport (2002, p. 67).) Pellissier (2007, p. 55) and Mouton (2001, p. 87) state that the literature review entails deeply reviewing the current status of the research in the traditional field you are planning to use, presenting the current state of major ideas right up to, but not including, the researcher's own study. A thorough background is also considered to be of importance, especially if the research spans two or more traditional fields. (See also Anderson & Poole (2009, p. 21).) Henning, Van Rensburg and Smit (2004, p. 27) is of the opinion that the main purpose of a literature review is to synthesise the available literature and to engage critically with the literature. It is also used to identify a niche to be occupied by the research. Coldwell & Herbst (2004, p. 31) view the purpose of a literature review as conveying what knowledge and ideas have been established on a topic together with the strengths and weaknesses thereof. (See also Creswell et al. (2014, p. 26) and Olivier (Olivier, 2009, pp. 41–44).) Coldwell & Herbst (2004, pp. 35–35), Welman, Kruger & Mitchell (2005, pp. 39–40), and Mouton (1996, pp. 119–120) provide criteria for a good literature review. It is agreed that the literature review should cover a wide range of resources; the sources should be current and relevant; and the sources should fall within the parameters of the study.

The literature study in this paper commenced with detailed searches by research specialists at the academic libraries at the University of the Free State and Central University of Technology, Free State as well as the Archive for Contemporary Affairs at the University of the Free State. In-depth searches were also done at the libraries of local auditing and accounting professional bodies such as the South African Institute of Chartered Accountants (SAICA) and the South African Institute of Professional Accountants (SAIPA), as well as international professional bodies such as the American Institute of Certified Public Accountants (AICPA), and the Independent Regulatory Board for Auditors (IRBA) and the Financial Accounting Standards Board (FASB). There were also a vast number of resources

in the libraries of the so-called 'big 4' audit firms and large legal firms and the Institute of Directors in Southern Africa (IoD) which were utilised in the process. These searches identified various possible literature sources, including books, articles, theses, dissertations, internet sources and professional and institutional publications.

The literature review in this paper is discursive prose which proceeds to a conclusion by reason and argument, and not merely summarising and listing various sources. The literature review covers the main themes of the research, namely comparing first generation and third generation sectional title legislation from an accountancy perspective, making practical recommendations regarding the implementation of the new legislative aspects and identifying research opportunities in this regard.

LITERATURE REVIEW

The literature review addresses the accountancy-related aspects as identified in the first and third generation sectional title legislation. The aspects being addressed include functions of bodies corporate, funds and reserves, contributions and charges, bank accounts, the onus of financial management, financial year ends, books of account, annual financial statements, small schemes, accounting officers, and various aspects related to sectional title audits.

Functions of bodies corporate

Van der Merwe (2014, pp.14–5) writes that the effective management of a sectional title scheme is vitally important, especially to unit owners and the financial institutions with an interest in the scheme. Therefore, as Pienaar (2010, p.150) points out, the functions of the body corporate as prescribed by the Acts (STA, STSMA and CSOSA) are not voluntary, but compulsory, as indicated by the wording in the new Annexure 1 of the STSMA "*the body corporate must...*". In the original STA, before amendment, the wording was "*the body corporate shall...*". Both the word 'shall' and the word 'must' mean 'has a duty to', but the use of the word 'must' is the clearest way to indicate that the functions are mandatory. The change in wording can be seen as an improvement in the legislation. Failure to perform the functions as prescribed constitutes a breach of the Act (Van der Merwe 2014, pp.14–14). The most important functions of the body corporate are set out in sections 2 and 3 of the STSMA (previously section 37 of the STA), with additional management and conduct rules contained in Annexures 1 and 2 of the STSMA. The main functions can be broadly categorised as the establishment of funds, levying contributions, the operating of accounts, procuring insurance, and maintaining the common property (Van der Merwe 2014, pp.14-15-14–16; Pienaar 2010, pp.152–162). These functions will be discussed below.

Funds and reserves

The term 'fund' is referred to several times in the STSMA and STSMA Regulations. However, despite the numerous references to the term, as well as the fact that the STSMA now specifically requires two different funds to be maintained, the term 'fund' is not defined in the definitions section of either the STSMA or the STSMA Regulations. Moreover, regarding accounting, International Financial Reporting Standards (IFRS) also has no distinct definition of the term 'fund'. Neither the *Conceptual Framework for Financial Reporting*, nor IAS 1 *Presentation of Financial Statements* make mention of or define the term 'fund' (Service 2015, pp.38–101; Koppeschaar et al. 2014, pp.7–54). IFRS 9 *Financial*

Instruments is the only standard which makes mention of the term 'funds', stating items such as mutual funds and investment funds. These items are, however, not applicable to the sectional title industry.

PwC (2014, p.1) points out that according to International Accounting Standard (IAS) 1, reserves, together with equity share capital and other own equity instruments, make up the shareholders' equity section of an entity's balance sheet (currently called the statement of financial position). It is added that the term 'reserves' are not specifically defined in IFRS and are frequently referred to as components of equity. Reserves may include reserves such as fair value reserves, cash flow hedge reserves, asset revaluation reserve and foreign currency translation reserve and other statutory reserves. Most reserves result from accounting requirements to reflect certain measurement changes in equity rather than profit or loss (currently the statement of comprehensive income). Of all the types of reserves mentioned, statutory reserves are probably the most relevant to the sectional titles act requirements. Statutory reserves are defined as reserves that are created based on the requirements of the law or the statute under which the company is incorporated (Mackenzie et al. 2014, p.85; Service 2015, p.78). For instance, many corporate statutes in Middle Eastern countries require that companies set aside 10% of their net income for the year as a 'statutory reserve', with such appropriations to continue until the balance in this reserve account equals 50% of the company's equity capital. The intent is to provide an extra 'cushion' of protection to creditors, such that even significant losses incurred in later periods will not reduce the entity's actual net worth below zero, which would, if it occurred, threaten creditors' ability for repayment of liabilities (Editorial 2013, p.1). IAS 1 requires that movements in reserves during the reporting period be disclosed, along with the nature and purpose of each reserve presented within owners' equity. Since bodies corporate are now required by law (the STSMA and STSMA Regulations) to maintain a reserve fund, these funds can be seen as statutory reserves in terms of IFRS. The STSMA differentiates between two types of funds, namely the administrative fund and the reserve fund. The two funds will be discussed below.

Administrative fund

Section 3(1)(a) of the STSMA and rule 24(1) of the STSMA Regulations state that a body corporate must establish and maintain an administrative fund, reasonably sufficient for covering the estimated annual operating costs of the body corporate. These operating costs include items such as repair and maintenance of the common property, payment of municipal charges and insurance premiums (See also Van der Merwe (2014, pp.14–15) and Pienaar (2010, pp.155–156).) In other words, the reserve fund should be maintained according to the body corporate budget, and enough money should be contributed (through levies) to cover the operations of the body corporate for the ensuing year. Rule 24(1) should be read together with rule 9(c), which deals with the duties of the trustees; rule 17(6)(j)(iv), which deals with matters to be discussed at the AGM; rule 25, which deals with contributions and charges; as well as rule 26(1)(e), which deals with budgets. Rule 24(4) further stipulates that money may be paid out of the administrative fund in accordance with trustee resolutions and the approved budget for the administrative fund.

The new rule 24 in the STSMA Regulations is similar to the old prescribed management rule (PMR) 37(1)(a) which stated that the body corporate should establish a fund for administrative expenses sufficient for the repair, upkeep, control, management and

administration of the common property (including reasonable provision for future maintenance and repairs), for the payment of rates and taxes and other local authority charges for the supply of electric current, gas, water, fuel and sanitary and other services to the building or buildings and land, and any premiums of insurance, and for the discharge of any duty or fulfilment of any other obligation of the body corporate. There has, therefore, been no significant change in the legislation regarding administrative funds.

Reserve fund

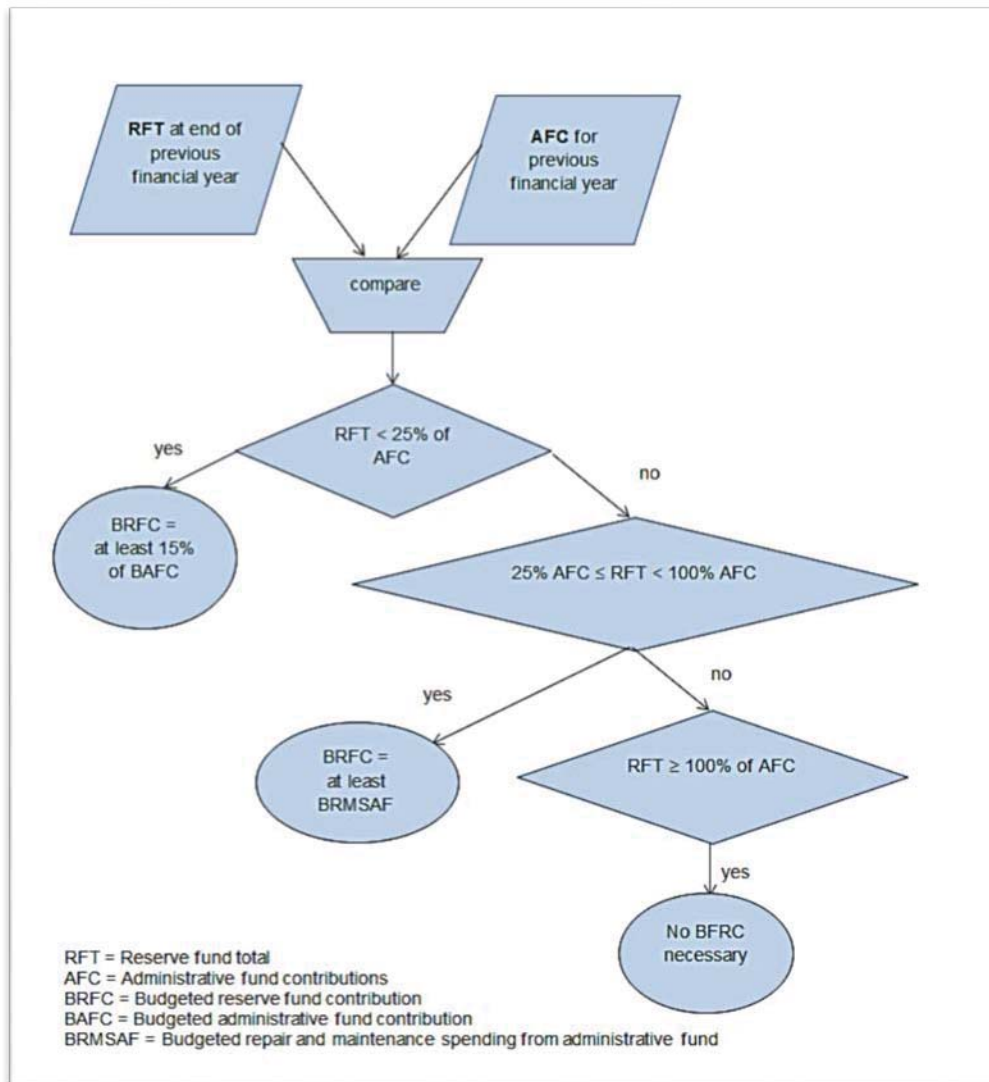
Probably the most significant and most controversial change brought about by the third generation sectional title legislation is the requirement by section 3(1)(b) of the STSMA to establish and maintain a reserve fund. Section 3(1)(b) of the STSMA requires the fund to be reasonably sufficient to cover the cost of future maintenance and repair of common property, but not less than such amounts as may be prescribed by the Minister. The reasoning behind this change in legislation was to force bodies corporate to move away from the practice of charging special levies and to assist bodies corporate to make proper provision for future maintenance and repair projects (Maree 2015d, p.1; Maree 2015a, p.1). It is widely believed that bodies corporate that do not currently have a reserve fund in place will be granted a period of two years from enactment of the new STSMA Regulations (Prince 2015a, p.1; Prince 2015b, p.1).

Rule 2 of the STSMA Regulations prescribes a formula for calculating the minimum amount of the annual contribution to the reserve fund for a financial year being budgeted for. The formula is based on the amount in the reserve fund at the end of a financial year and the total contributions collected in that year. In simple terms, the formula works as follows:

- If, at the end of the financial year, the money in the reserve fund is less than 25% of the total contributions to the administrative fund for that year, then, in the following financial year the minimum allocation to the reserve must be 15% of the total contributions to the administrative fund.
- If, at the end of the financial year, the money in the reserve fund is equal to, or more than 100% of the total contributions to the administrative fund for that year, the body corporate does not have to top up its reserve fund.
- If, at the end of the financial year, the money in the reserve fund is more than 25% but less than 100% of the total contributions to the administrative fund for that year, the contribution to the reserve fund must at least equal the amount the body corporate budgeted to be spent from the administrative fund on repairs and maintenance in the following year.

Figure 2 below illustrates on a basic level how a body corporate should go about determining its contribution to the reserve fund for a financial year being budgeted for.

Figure 2: Calculation of budgeted reserve fund contribution



(Own diagram)

Bechard (2015c, p.1) emphasises that although the original Sectional Titles Act required all bodies corporate to take account of future expenditure when budgeting, the first generation legislation did not prescribe a minimum amount that must be set aside specifically to pay for future maintenance and repairs. In order to keep levies low, many schemes made no or little provision in their annual budgets for future expenditure (J. Paddock 2014, p.1). Instead, schemes raised special levies whenever they were faced with a major expense. Sectional title legal specialist Maree (2015d, p.1; 2015a, p.1) is of the opinion that provision for sectional title reserve funds are crucial and even goes as far as stating that “*special levies is a symptom of poor management*”. Even though reactions to the prescribed reserve fund contributions were largely positive, Prince (2015a, p.1; 2015b, p.1) warns that numerous sectional title specialists are concerned that many sectional title owners will not be able to contribute to the reserve funds of their schemes. In the study done by Lubbe (2013, p.22;193;219;226), as well as the study by Steenkamp (2017, pp.344–346) it was pointed out that one of the biggest problems for bodies corporate is the approval of budgets. Many trustee chairpersons reported that increases in budgets and the resulting levies are always

met with negativity. (See also Steenkamp & Lubbe (2015b, p.568).) Prince (2015a, p.1; 2015b, p.1) states that in certain lower income sectional title schemes, the current owners can hardly afford to pay their regular levies; hence, the concern over the affordability of an additional 25% contribution spread only over a two year period. It is argued that due to the new regulation, it may become increasingly difficult for the lower to middle income group to gain entry into the sectional title market.

STSMA Regulation rule 24(2) stipulates that a body corporate's reserve fund must be used specifically for the implementation of the maintenance, repair and replacement plan of the body corporate. According to rule 24(5), money may be paid out of the body corporate's reserve fund at any time in accordance with trustee resolutions and the aforementioned approved maintenance, repair and replacement plan. Money may also be paid out of the reserve fund if the trustees resolve that such a payment is necessary for the purpose of an urgent maintenance, repair or replacement expense. There are also a number of sub-rules set out in rule 24(5)(b)(i) to 5(b)(iv) setting out the purposes and circumstances that constitute 'urgency'. All urgent payments made under sub-rule 5(b) from the body corporate reserve fund should fall within the limits and restrictions imposed by the body corporate members and must not exceed the amount necessary for the purpose for which it is expended.

The STSMA Regulation rule 26(5) deals with the audit of the financial statements of bodies corporate. Sub-section (c) brings about a significant change to the scope of work to be performed by auditors. Rule 26(5)(c)(ii) places a very specific burden on the auditor, stipulating that the audit of a body corporate's financial statements "*must include opinions as to whether or not the body corporate has complied with the accounting requirements set out in rules 21, 24 and section 26, with a specific description of any failure to comply with such requirements*". Since rule 24 deals with administrative and reserve funds, the new regulations regarding reserve funds will probably have a significant impact on the scope of work performed by auditing and assurance practitioners, as well as the audit fees that will have to be charged to do the additional work.

Contributions and charges

Most sectional title residents want to stay in a well-maintained complex, but very few want to contribute financially. In many cases, levy increase discussions at annual general meetings are met with negativity (Lubbe 2013, p.193; Steenkamp & Lubbe 2015b, p.568; Steenkamp 2017, pp.306–309) and owners want to put impossible cost restrictions on budgeted expenses (Lubbe 2013, p.203; Steenkamp & Lubbe 2015a, p.555; Steenkamp 2017, pp.331–333). This leaves trustees and managing agents in a very difficult situation. As a result, reactions to changes in legislation relating to levies and contributions will vary greatly among sectional title stakeholders.

Rule 25(1) of the STSMA Regulations deals with contributions and charges, also known as levies. The rule contains a number of new prescriptions regarding notifications, specific charges, interest on arrear accounts and how non-payment should be dealt with. Maree (2015f, p.1) warns that not adhering to the prescriptions of rule 25(1) may lead to levies becoming unrecoverable.

Rule 25(1) sets out a number of requirements regarding communication to members regarding amounts payable. The rule states the body corporate must give each member written notice of the contributions and charges due and payable by that member to the body corporate. This should be done as soon as possible but not later than 14 days after the approval of the body corporate budget by a general meeting. The written notice should state that the member has an obligation to pay the specified levy. The notice should also specify the due date for each payment and, if applicable, state that interest at a rate specified in the notice will be payable on any overdue levies. Furthermore, the notice must include details of the dispute resolution process that applies in respect of disputed contributions and charges.

Rule 25(2) stipulates that if money owing is not paid on the dates specified in the above-mentioned notice, a final notice must be sent to the member. This notice must state that the member has an obligation to pay the overdue contributions and charges and any applicable interest immediately. The final notice should also state that the body corporate intends to take action to recover the amount due if the overdue contributions and charges and interest owing are not paid within 14 days after the date the final notice is given.

According to rule 25(3), members automatically become liable for contributions in respect of the next financial year in the same amounts and payable in the same instalments as were due and payable by them during the past financial year. In addition, rule 21(3)(b) stipulates that the body corporate may, on the authority of a written trustee resolution, increase the contributions due by the members by a maximum of 10% at the end of a financial year to take account of the anticipated increased liabilities of the body corporate. This allowed 10% increase will then remain effective until members receive notice of the contributions due by them for the next financial year; provided that it is done in terms of rule 25.

In the past, there was no part of the STA or any prescribed management rule that set the rate of interest the trustees could charge on such overdue amounts (G. Paddock 2014, p.1). In Annexure 8 of the original STA (before the amendments as discussed in section 3.1 above), prescribed management rule (PMR) 31(6) simply stated that the trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine. The new STSMA stipulates in rule 21(3)(c) of the Regulations that the body corporate may, on the authority of a written trustee resolution, charge interest on any overdue amount payable by a member to the body corporate. However, the provision is that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) (Act No 34 of 2005) (also referred to as the NCA) compounded monthly in arrears.

Although interest rate limits in rule 21(3)(c) will protect debtors and other members of the body corporate in future, many sectional title experts expressed their concern regarding the new restrictions (Prince 2015a, p.1; Maree 2015f, p.1; Prince 2015b, p.1). Levy collection is currently one of the greatest problems in bodies corporate (Kloppers 2013, p.6; Prince 2015a, p.1; Lubbe 2013, p.219;226; Steenkamp 2017, pp.358–360). Bechard (2015c, p.1) highlights that, currently, about 20% of owners of sectional title property do not pay their levies on time. The only way for a body corporate to recover money from persistent non-payers is to obtain a sequestration order; a process that can take up to four years. A high interest rate generally acts as a deterrent to defaulters, and cash-strapped individuals would in all likelihood pay an account with the higher interest rate first (such as clothing accounts, short term loans, furniture accounts, bank overdrafts, etc.). It is, therefore, believed that an

interest rate cap will make it more affordable for defaulting owners to remain in arrears with levies than to borrow money to pay their debt (Prince 2015b, p.1). The paying members of the body corporate will, in all likelihood, end up financing shortfalls, making it harder to maintain common property (Bechard 2015c, p.1).

From the above it is evident that the new regulations regarding the capping of interest on arrear accounts can have a serious impact on the cash flow and debt collection of bodies corporate. The aspects mentioned in this section is likely to have a significant impact on the scope of work performed by auditing and assurance practitioners, as well as the audit fees that will have to be charged to do the additional work. (See also section 3.5 below for further discussions.)

Bank accounts

According to STSMA Regulation rule 21(4)(a), the body corporate must ensure that all money received by the body corporate is deposited to the credit of an interest-bearing bank account held in the name of the body corporate. Alternatively, rule 21(4)(b) allows for money being deposited in a trust account opened in terms of either the Estate Agency Affairs Act No. 112 of 1976, or the Attorneys Act No. 53 of 1979.

A further requirement is stipulated in rule 26(1)(b) requiring the body corporate to keep separate books of account as well as separate bank accounts for its administrative and reserve funds referred to in sections 3(1)(a) and (b) of the Act. (See also Maree (2015b, p.1).)

Rule 21(3)(d) states that the body corporate *may*, on the authority of a written trustee resolution, invest any moneys in the reserve fund referred to in sections 3(1)(b) of the STSMA in a secure investment. This secure investment may be made with any institution referred to in the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990). Lubbe (2013, pp.213–214) found that, in practice, quite a number of irregularities occur regarding body corporate bank accounts, especially where managing agents are involved.

Onus of financial management

Rule 9(1)(c) of the new Sectional Title Schemes Management Act (STSMA) Regulations stipulates that the trustees must apply the funds of the body corporate in accordance with the budgets approved by the members in the general meeting. This rule is the only one under the section dealing with general powers and duties of trustees that speaks specifically to the role of the trustees in the financial management of bodies corporate. Regarding other financial functions, the new STSMA Regulations introduces quite a significant change in wording. Previously, Prescribed Management Rules (PMR) 35, 36 and 37 of the original STA put the onus of preparing accounting records, financial statements, budgets, etc., on the trustees with the wording "*the trustees shall...*" The new STSMA Regulations rule 26 however contains the wording "*the body corporate must...*"

It can perhaps be argued that the new wording is more accurate, since preparing accounting records, financial statements, budgets, etc., ultimately remains the responsibility of the body corporate. It can also be argued that since it is already a difficult task to attract trustees

(Lubbe 2013, p.19), the 'toned-down' wording might just make the responsibility seem less daunting to prospective trustees.

Financial year end

Rule 21(1) in the STSMA Regulations brings about an interesting change to the legislation. The rule stipulates that the financial year of a body corporate established after the new Act came into operation must run from the first day of October of each year to the last day of September of the following year unless otherwise resolved by the body corporate in a general meeting. Prescribed Management Rule 51(2) in the original STA stipulated that unless otherwise decided at a general meeting or by the trustees, the financial year of the body corporate shall run from the first day of March in each year to the least day of February in the following year (Riddin 2011, p.1). As a result, many bodies corporate have February financial year-ends. This is usually a very busy time for accounting practitioners and, as the fiscal year-end of the government is also 28 February, bottle-neck situations sometimes occur during audit engagements (Lubbe 2013, p.122; Van der Merwe 2014, pp.14–81). Although the financial year-ends of existing bodies corporate will not be altered by the change in legislation, the fact that new bodies corporate will by default have October year-ends may bring about future relief in terms of time pressures regarding drafting of financial statements and the audit thereof.

Books of account

Regarding the requirements for the books of account, the content of the new STSMA Regulations is similar to the old STA Prescribed Management Rules. However, as mentioned earlier in this paper, the wording now puts the onus on the body corporate (previously on the trustees) to prepare accounting records, financial statements, budgets, etc. Rule 26(1)(a) explains what a body corporate should do in terms of its books of account. Bodies corporate must keep proper books of account that record all its income, expenditure, assets and liabilities (rule 26(1)(a)(i)). Furthermore, all amounts recovered from members by the body corporate or any managing agent or other service provider acting on its behalf should be disclosed (rule 26(1)(a)(ii)). The books of account should include individual accounts for each member (rule 26(1)(a)(iii)). From the information contained in the books of account, members should be able to assess the body corporate's financial situation and their financial situation in regard to the body corporate.

Rule 26(2) stipulates that on the application of any member, registered bondholder or of the managing agent, the body corporate must make all or any of the books of account and records available for inspection and copying. Furthermore, as per rule 26(3), the body corporate must ensure that all its books of account and financial records are retained for a period of six years after completion of the transactions, acts or operations to which they relate. (See also Van der Merwe (2014, pp.14–145).)

Annual financial statements

According to rule 26(c) of the STSMA Regulations, the body corporate should prepare annual financial statements for presentation at the annual general meeting. It is stipulated that the financial statements should include an analysis of:

- (i) “**amounts due to the body corporate in respect of contributions, special contributions and other charges, classified by member and the periods for which such amounts were owed...**” (Own emphasis.)

In the original STA, prescribed management rule (PMR) 37(2)(a) required the trustees to prepare an “*age analysis of debts in respect of levies, special levies and other contributions...*”. (See also Van der Merwe (2014, pp.14-146-14–147). Regarding the wording in the original STA, Lubbe (2013, p.132) commented that the Act did not specify the format, content or level of detail of the age analysis of debts. The Act also did not indicate whether the age analysis should include all debtors, or perhaps just those over 30 days. In the past, many owners of sectional title units did not want amounts outstanding by them to be disclosed on an individual basis in the financial statements, claiming that the information was of a private and confidential nature. Van der Merwe (2014, pp.14-148-14–149), however, clarifies that section 32 of the Bill of Rights (as incorporated into the Constitution of the Republic of South Africa) and supplemented by the Publication of Information Act guarantee the making available of information. The author explains that the principle is that a person is entitled to be furnished with all available information which affects his interest whether from the state, private persons or organisations. So-called ‘sensitive information’ may not be excluded. He adds that not only owners, but also prospective owners need bona fide information regarding all aspects of the scheme in which they live or into which they want to purchase. It is therefore evident that the concerns of Lubbe and Van der Merwe were addressed in the new STSMA Regulations.

As per rule 26(c) of the STSMA Regulations, the body corporate financial statements should include an analysis of:

- (ii) “**amounts due by the body corporate to its creditors generally and prominently disclosing amounts due to any public authority, local municipality or other entity for services including, without limitation, water, electricity, gas, sewerage and refuse removal, classified by creditor and the periods for which such amounts were owed...**” (Own emphasis.)

Prescribed management rule (PMR) 37(2)(b) of the original STA required the trustees to prepare an “*age analysis of amounts owing by the body corporate to the creditors and in particular to any public or local authority in respect of rates and taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal...*”. As was the case with the age analysis of debt, Lubbe (2013, p.133) commented that the Act did not specify the format, content or level of detail of the age analysis of amounts owing, whether the age analysis should include all creditors, or perhaps just those over 30 days. Once again Lubbe’s concern was addressed in the new STSMA Regulations with the wording now being less vague.

Rule 26(c) of the STSMA Regulations states that the body corporate financial statements should include an analysis of:

- (iii) “**amounts advanced to the body corporate by way of levy finance, a loan, in terms of a guarantee insurance policy or otherwise, setting out the actual or contingent liability of the body corporate and the amounts paid by the body corporate and by any member in terms of such arrangement...**” (Own emphasis.)

This is an entirely new requirement that will have to be disclosed as part of the financial statements of bodies corporate. One can possibly argue that the above will, as a rule, form part of the disclosure of liabilities in the statement of financial position and accompanying notes to the financial statements.

According to rule 26(c) of the STSMA Regulations, the body corporate financial statements should include an analysis of:

- (iv) “amounts in the **reserve fund** showing the **amount available** for maintenance, repair and replacement of **each major capital item** as a **percentage of the accrued estimated cost** and the **rand value of any shortfall...**” (Own emphasis.)

As mentioned earlier, the new STSMA requires all bodies corporate to establish and maintain a reserve fund. The disclosure requirement mentioned above will entail identification of individual capital items together with estimates and calculations of varying complexity depending on the body corporate. Furthermore, the reserve fund contribution calculation also entails using a prescribed formula as per the Act. Since it is a new requirement, it is still uncertain whether trustees will feel capable and comfortable doing these estimates and calculations themselves. Lubbe (2013, p.204) pointed out that a great number of bodies corporate do not even prepare ‘normal’ financial statements themselves.

As per rule 26(c) of the STSMA Regulations, the body corporate financial statements should include an analysis of:

- (v) “premiums and other amounts **paid** and payments **received** by the body corporate and any member in terms of the **insurance policies** of the body corporate and the **expiry date of each policy...**” (Own emphasis.)

In the original STA, prescribed management rule (PMR) 37(2)(c) only required the trustees to indicate “*the expiry dates of all insurance policies*”. Lubbe (2013, p.134) commented that including the expiry dates of insurance policies is an important aspect to include in the financial statements, so that the members of the body corporate can know that their property is properly insured against possible damage for the foreseeable future. Sectional title legal experts have not yet commented on the above additions to the insurance disclosure. However, it is possible that the new STSMA requirements will provide stakeholders with a clearer picture of the state of a body corporate’s insurance, whether payments are actually being made, as well as the extent to which claims have been paid out. This may also enable stakeholders to ask informed questions relating to insurance at the body corporate’s AGM.

From the above it is clear that in addition to the standard content of annual financial statements, the new STSMA Regulations commands quite a considerable amount of additional disclosure requirements from bodies corporate. These aspects will, however not be dealt with in further detail, since it falls outside the scope of this study.

Under the section in the STSMA Regulations dealing with financial records, budgets, reports and audit (rule 26), it is also stated that the body corporate must prepare the following:

Subsection (d) “...prepare a **maintenance, repair and replacement plan** in accordance with rule 22 for presentation at the annual general meeting...” (Own emphasis.)

As mentioned above, this task may prove to be quite onerous and most trustees will probably need expert help from people with experience or qualifications in construction and property maintenance to provide services in drafting maintenance plans and advising trustees on the matter.

Subsection (e) “...prepare **budgets** for the **administrative and reserve funds** comprising itemised estimates of the anticipated income and expenses during the next financial year for presentation at the annual general meeting; provided that such budgets may include **discounts** not exceeding 10 per cent of members' annual contributions applicable if all those contributions are paid on or before the due dates...” (Own emphasis.)

Prescribed management rule (PMR) 36 of the original STA only required the trustees to prepare “an itemized estimate of the anticipated income and expenses of the body corporate during the ensuing financial year”. No mention was made of any discounts allowed to members. The possibility of discounts may in future prove to act as an incentive to members to pay their annual contributions upfront.

Small schemes and accounting officers

In the original STA, Prescribed Management Rule (PMR) 40 allowed bodies corporate with fewer than 10 units to appoint what was called an ‘accounting officer’ to review the financial statements. Lubbe (2013, pp.75–76) pointed out that Prescribed Management Rule 50 in the old STA Regulations defined an ‘accounting officer’ by referring to the definition in the Close Corporations Act No.69 of 1984. This definition as per the Close Corporations Act is quite wide, and includes members of professional bodies such as The South African Institute of Business Accountants (SAIBA), The South African Institute of Chartered Accountants (SAICA), the Chartered Institute of Management Accountants (CIMA) and The South African Institute of Professional Accountants (SAIPA). In practice, it was found that small bodies corporate of fewer than 10 units did not make extensive use of the services of accounting officers, but rather used the services of auditors (Lubbe 2013, pp.78–79).

In the updated STA, the new STSMA and Regulations thereto, the option for small bodies corporate to appoint accounting officers were scrapped from the legislation. Therefore, the legislation does not contain any definition of or reference to ‘accounting officers’ anymore. Rule 17(6)(j)(vi) stipulates that an auditor should be appointed to audit the financial statements, unless all sections in the scheme are registered in the name of one person. Rule 26(4) adds to rule 17(6)(j)(vi), stating that unless all the sections in the scheme are registered in the name of one person, the body corporate must present audited financial statements to a general meeting for consideration within four months after the end of the financial year.

The reason for the change in legislation is due to the fact that many banks require audited financial statements of a body corporate as one of the prerequisites in granting a home loan to a prospective buyer of a sectional title unit (Editorial 2016, p.1). Even though the change in legislation is positive from the perspective of prospective buyers of sectional title property,

it may negatively impact on the practices of some members of the above-mentioned professional bodies who used to act as accounting officers for bodies corporate.

Audit

Rule 26(5) of the STSMA Regulations introduces a number of new developments regarding what is required during an audit of a body corporate's annual financial statements. These include matters such as the definition of an auditor, segregation of duties, frameworks, opinions and time frames.

Definition of an auditor

In PMR 2(c) of the old STA, an 'auditor' was defined as an auditor qualified to act as such under the Public Accountants' and Auditors' Act No. 1951. As pointed out by Lubbe (2013, pp.66–67) this definition referred to obsolete and outdated legislation.

The new STSMA Regulations defines an auditor in rule 2(1)(c) of the section dealing with interpretations. An auditor is now defined as “*a person accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act No.26 of 2005)*” (sic). The Auditing Profession Act (APA) defines a registered auditor as an individual or firm registered as an auditor with the Independent Regulatory Board for Auditors (IRBA) (Parliament of the Republic of South Africa 2005, pp.1–7). In turn, IRBA prescribes the minimum qualifications and competency standards of auditors. IRBA also performs various functions with regard to the education, training and professional development of auditors (IRBA 2015, pp.1-16-6-9), and regulates the registration of individuals and firms as registered auditors (IRBA 2015, pp.1–32). The change from the outdated reference to 'auditor' in the old STA to the current definition in the STSMA Regulations is a positive improvement in the new legislation.

Segregation of duties

Probably the most profound change regarding auditing in the new STSMA Regulations is contained in rule 26(5)(a) which reads as follows:

*“...the **audit** of a body corporate's annual financial statements must be carried out by an independent auditor who has **not** participated in the **preparation of the annual financial statements** or **advised on any aspect of the accounts** of the body corporate during the period being reported on...”* (Own emphasis.)

In practice, the majority of audit practitioners currently involved in sectional title audits prepare the annual financial statements for the body corporate, as well as carry out the audit work (Steenkamp & Lubbe 2017, pp.1–2). Some practitioners also complete tax returns, prepare budgets and provide business advice for their sectional title clients (Lubbe 2013, p.194;206; Steenkamp & Lubbe 2015a, p.554).

Auditors of sectional title schemes should read this change in legislation in conjunction with section 290.167 of the Code of Professional Conduct for Registered Auditors, which deals with auditor independence regarding the preparation of accounting records and financial statements (International Federation of Accountants 2009, p.78). The Code stipulates that management (in the case of sectional title, the body corporate) is responsible for the preparation and fair presentation of the financial statements in accordance with the applicable financial reporting framework. These responsibilities include preparing source

documents, originating or changing journal entries, etc. Should the auditor assume responsibility for these activities, a self-review threat may arise, and consequently safeguards should be put in place (Jackson & Stent 2014, p.2/35; Marx et al. 2011, pp.3–39).

There are three possible safeguards that an auditor can put in place to address this self-review threat (Steenkamp & Lubbe 2017, pp.1–2). Firstly, it can be arranged that the accounting services be performed by an individual who is not on the audit team. If such services are performed by a member of the audit team, using a partner or senior staff member with appropriate expertise who is not a member of the audit team to review the work performed. Secondly, the audit team should be notified that they may not make any management decisions. Thirdly, it should be made perfectly clear for management (the body corporate) that they are responsible for the source data, transaction approval, journal entries etc., and clarify what the audit team is permitted to do (Jackson & Stent 2014, p.2/35; The South African Institute of Chartered Accountants 2015c, p.1; Marx et al. 2011, pp.3–39).

Recognised framework

The legislator made a number of profound errors in the wording of STSMA Regulation rule 26(5)(b), which states the following:

*“...the **audit** of a body corporate’s annual financial statements **need not be carried out** in accordance with **any recognised financial reporting framework of guidelines for financial accounting...**”* (Own emphasis.)

R.D.C. Jackson & Stent (2014, p.1/4) explains that in the context of the auditing and accounting profession, the term audit is defined in the Auditing Profession Act No. 26 of 2005 (APA). The term ‘audit’ means “...*the examination of ... financial statements, financial and other information ... in accordance with prescribed or applicable **auditing standards.***” (Own emphasis.) The authority to conduct an audit of financial statements or financial information is restricted to auditors registered with the Independent Regulatory Board for Auditors (IRBA), who must, according to law, perform their work as prescribed by the APA. It is indeed strange that the legislator refers to the APA when defining an ‘auditor’ (as mentioned above), but attempts to bypass the requirements of the APA when addressing how the work should be carried out.

The ‘applicable auditing standards’ as prescribed by the APA is the International Audit Standards (ISAs). The ISAs provide the standards to which the auditor must attain and provide guidance on how this should be done, covering the entire audit process (Jackson & Stent 2014, p.1/17). It is therefore not up to the Department of Human Settlements to prescribe that the audit “...***need not be carried out in accordance with any recognised framework of guidelines for financial accounting...***” (Own emphasis.) In practice, not performing an audit according to the ISAs will constitute a legal offence for which an audit practitioner may face disciplinary action, suspension or removal from the register of auditors (The South African Institute of Chartered Accountants 2015a, p.1).

The wording “*in accordance with any recognised framework of guidelines for **financial accounting...***” (own emphasis) used to describe how an **audit** should be performed is very ambiguous and confusing. As mentioned above, an audit is performed in accordance with audit (not accounting) standards.

Opinions

STSMA Regulation rule 26(5)(c) states the following:

*“...the **audit** of a body corporate’s annual financial statements must include **opinions** as to whether or not*

*(i) the annual **financial statements accurately reflect the financial position** of the body corporate for the financial year under review, with such **qualifications and reservations** as the auditor considers necessary;*

*(ii) the body corporate has **complied with the accounting requirements** set out in **rules 21, 24 and this rule 26**, with a specific **description of any failure** to comply with such requirements;*

*(iii) the **books of account** of the body corporate have been **kept** and its **funds** have been **managed** so as to provide a **reasonable level of protection against theft or fraud**; and*

*(iv) the **financial affairs** of the body corporate appear to be **effectively managed**...” (Own emphasis)*

As was the case in the previous section, it seems as though the legislator is finding himself in somewhat unfamiliar territory, attempting to prescribe to auditing practitioners how they should go about conducting their audits and what they should give opinions on.

Firstly, the auditor is required by the STSMA rule to give an opinion as to whether the financial statements **accurately** reflect the **financial position** of the body corporate. Regarding this requirement, it should be noted that the objective of financial statements, according to International Financial Reporting Standards (IFRS), is to provide information on the financial position, financial performance as well as the cash flows of an entity (Koppeschaar et al. 2014, p.26), and not just the financial position of an entity. Furthermore, an auditor forms an opinion on **fair presentation** (not accurate reflection) (Jackson & Stent 2014, p.1/7-1/8). It is important to note that an audit engagement provides **reasonable assurance** (not absolute assurance). ISA200 dealing with overall objectives of the Independent Auditor, defines reasonable assurance as a ‘high but not absolute’ assurance. The practitioner will reduce engagement risk to an acceptably low level in the circumstances of the engagement as the basis for the practitioner’s conclusion (The South African Institute of Chartered Accountants 2015b, p.75; Jackson & Stent 2014, p.1/8). Moreover, the drafting and issuing of the audit report is the final stage in the audit process, in terms of ISA700. R.D.C Jackson & Stent (2014, p.18/2) explains that, to be in a position to form the opinion, the auditor must draw his conclusion taking into consideration a great number of factors. The auditor will, based on his opinion, issue either an unmodified or a modified audit report and may add information to the report for the benefit of users, in terms of South African Auditing Practice Statement 3 (SAAPS3) (Revised) (The South African Institute of Chartered Accountants 2015b, p.SAAPS3(REVISED)-1; Jackson & Stent 2014, p.18/2-18/14). It is therefore not simply a case of adding “*qualifications and reservations as the auditor considers necessary*” as the wording in the STSMA suggests.

Secondly, there is a requirement for an **opinion** on whether the body corporate has **complied** with the **accounting requirements** set out in **rule 21** (dealing with financial management, financial year, functions and powers), **rule 24** (dealing with administrative and reserve funds) and **rule 26** (dealing with financial records, budgets, reports and audits) with a specific **description of any failure** to comply with such requirements. The wording is not clear as to what exactly is expected when the auditor should test for this “*compliance with accounting requirements*” in the mentioned rules and sections. Many of the mentioned rules were discussed in the above sections of this paper. Therefore, it can be argued that audit practitioners may perhaps in future become even more reluctant to take on assurance engagements of sectional title clients.

Thirdly, an opinion is required as to whether the **books of account** of the body corporate have been **kept** and its **funds** have been **managed** so as to provide a **reasonable level of protection against theft or fraud**. ISA240 deals with the auditor’s responsibilities relating to fraud in an audit of financial statements (International Auditing and Assurance Standards Board 2013, p.157). R.D.C. Jackson & Stent (2014, p.7/32) comment that in terms of ISA240, the objectives of the auditor are to:

- identify and **assess the risk** of material misstatement of the financial statements **due to fraud**;
- **obtain** sufficient, appropriate **audit evidence** regarding the **assessed risk** of material misstatement through designing and implementing appropriate responses; and
- **respond** appropriately to fraud or suspected fraud identified during the audit. (Own emphasis.)

The authors also make it clear that the responsibility for the prevention as well as detection of fraud and error lies with management and those charged with governance, not with the auditors (Jackson & Stent 2014, p.7/34; Marx et al. 2011, pp.6–4). ISA240 stipulates that there are five requirements of the auditor in respect of fraud. Firstly, the auditor should maintain an attitude of professional scepticism throughout the audit. Secondly, the audit team should be made aware of ‘what to look out for’ during the audit. Thirdly, the auditor should conduct relevant risk assessment procedures and related activities. Fourthly, the risk of material misstatement due to fraud should be identified and assessed at both the financial statement level and at the assertion level. Finally, an overall audit response should be determined to address the risk of material misstatement at the two mentioned levels (SAICA & IAASB 2016, pp.169–171; Marx et al. 2011, pp.6-4-6–7).

SAAPS3, which contains illustrative audit reports, also addresses the auditor’s responsibility clearly. The wording of a standard Independent Auditor’s Report is as follows:

*“...An audit involves performing **procedures** to obtain audit **evidence** about the **amounts and disclosures in the financial statements**. The procedures selected depend on the auditor’s judgement, including the **assessment of the risks of material misstatement** of the financial statements, whether due to fraud or error. In making those risk assessments, **the auditor considers internal control** relevant to the entity’s **preparation of the financial statements** in order to design audit procedures that are appropriate in the circumstances, but **not for***

the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements..." (Own emphasis.)

In light of ISA240 and SAAPS3 it is therefore clear that the auditor cannot be expected to express an opinion as to whether the body corporate is protected against theft or fraud.

Fourthly, an opinion is expected as to whether the "***financial affairs of the body corporate appear to be effectively managed...***" As was mentioned above, in performing the audit, the auditor will **consider internal control** relevant to the entity's preparation of the financial statements in order to design audit procedures that are appropriate in the circumstances, **but not for the purpose of expressing an opinion** on the effectiveness of the entity's internal control (Jackson & Stent 2014, p.7/34).

Opting out of being audited

Technically, a body corporate can opt not to be audited. This can be done by means of amending the rules of a body corporate. The following is stipulated in Section 35 of the original Sectional Titles Act:

*"(1) A scheme shall as from the date of the establishment of the body corporate be controlled and managed, subject to the provisions of this Act, by means of **rules***

(2) The rules shall provide for the control, management, administration, use and enjoyment of the sections and the common property, and shall comprise

*(a) management rules, prescribed by regulation, which rules may be substituted, added to, amended or repealed by the developer when submitting an application for the opening of a sectional title register, to the extent prescribed by regulation, **and which rules may be substituted, added to, amended or repealed from time to time by unanimous resolution of the body corporate as prescribed by regulation...***" (Own emphasis.)

Paddock (2010, p.8) explains that the Sectional Titles Act makes provision for rules to be altered, but that the necessary procedures should be followed. The auditing of sectional titles schemes was previously governed by Prescribed Management Rules (PMR) 2, 40 and 56. As a result, one could interpret Section 35 in such a way that a unanimous resolution may be passed, removing those PMRs from the rules of the scheme. This was especially helpful in cases such as, for example, self-managed schemes with a limited number of owners who did not want to incur the extra expense and administration involved in having the financial statements of the complex audited.

The above option is still available for schemes in terms of the amended STA. Section 30 states the following:

*"(4) The management rules set out in Annexure 8 may be **added to, amended or repealed by unanimous resolution of the body corporate**: Provided that no such addition, amendment or repeal shall be made until such time as there are owners, other than the developer, of at least 30 per cent of the units in the scheme save in*

the case of a body corporate which is established in a scheme which was approved in terms of the Sectional Titles Act, 1971.” (Own emphasis.)

Since the auditing of sectional title schemes is now governed by Rule 26 of the Regulations to the STSMA, the option is technically still available, but not advisable in cases where the units in the scheme are registered in the name of more than one person. As mentioned above, banks often require audited financial statements of a body corporate as one of the preconditions before granting a home loan to a prospective buyer of a sectional title unit. The intention of the legislator regarding this is quite clear, as stated in Rule 17(6)(j)(vi) of the STSMA Regulations. It stipulates that an auditor should be appointed to audit the financial statements, unless all sections in the scheme are registered in the name of one person. As mentioned earlier in this paper, it should also be noted that the auditing of the annual financial statements is perceived to add great value to schemes (Steenkamp 2017, pp.365–367).

Time frame

STSMA Regulation rule 26(5)(d) stipulates that the audit of the body corporate’s annual financial statements must be completed within four months of the end of the body corporate’s financial year. Rules 17(1) and 17(2) of the STSMA Regulations specify that the body corporate must hold an annual general meeting (AGM) within four months of the end of each financial year. This is still in line with PMR 51 of the old STA.

General

According to Riddin (2011, p.1) the practitioners who draft financial statements often fail to see that the financial statements must comply with specific requirements of sectional title legislation. He also mentions a few other specific aspects that need to be checked, complied with or reported on, such as

- whether his or her firm’s appointment is reflected in the minutes of the annual general meeting;
- that any added, amended or deleted management or conduct rule has been submitted to the Registrar of Deeds for filing;
- that any restrictions imposed on or directions given to trustees at a general meeting have been complied with;
- that all contracts have been properly signed and supported by a resolution formerly and correctly minuted;
- that levies have been determined correctly;
- that all the required minutes have been kept that the minutes record the transactions that form the basis for the accounting entries, for example approval of the budget at the AGM and the raising of levies by the trustees; and
- that the accounting complies with the Act and the rules of the scheme.

Van der Merwe (2014, p.147) and Riddin (2011, p.1) point out that these matters must be kept in mind when professionals are appointed to prepare the annual financial statements on behalf of the trustees. Due to the fact that the ultimate responsibility rests with the body corporate, it is vital that the trustees work closely with the appointed professional firms who specialise in sectional title matters.

It is worth noting that Van der Merwe (2014, pp.14–81) holds the same view as Lubbe (2013, p.31) that body corporate audits are not auditors' most profitable work. Riddin (2011, p.1) adds that trustees should realise that to meet all accounting, auditing and sectional title needs, higher accounting and auditing fees may have to be expended.

Comparative summary

The table below indicates the extent to which the various aspects above changed from first to third generation legislation.

Aspect	Extent of change from first to third generation legislation			
	New	No changes	Minor changes	Major changes
Functions of bodies corporate				X
Funds and reserves	X			
Administrative fund	X			
Reserve fund	X			
Contributions and charges			X	
Bank accounts			X	
Onus of financial management			X	
Financial year end			X	
Books of account			X	
Annual financial statements				X
Small schemes and accounting officers				X
Audit				X
Definition of an auditor				X
Segregation of duties				X
Recognised framework				X
Opinions				X
Opting out of being audited			X	
Time frame		X		

Table 1: Extent of change from first to third generation legislation

RECOMMENDATIONS AND FURTHER RESEARCH OPPORTUNITIES

The literature review addressed the accountancy-related aspects as identified in the first and third generation sectional title legislation. Role players in the sectional title industry, namely body corporate trustee chairpersons, managing agents of bodies corporate, sectional title accounting and auditing practitioners should take note of the legislative changes and its effects. Persons responsible for the accounting functions of bodies corporate should take

specific note of the new disclosures required by the legislation, and take it into consideration in future accounting work. Auditing practitioners should also take note of the new auditing requirements and the possible increases in risks flowing from the new legislation. Specific attention should be paid to matters relating to trust money, and possible occurrences of non-compliance with sectional title laws and regulations. Furthermore, the accountancy professional bodies involved in sectional title accounting and auditing, such as the South African Institute of Chartered Accountants (SAICA) and the South African Institute of Professional Accountants (SAIPA) should also consider issuing guidelines specifically for practitioners involved in sectional title accounting and auditing, in order to assist them in addressing the new legislative changes. The professional bodies should also consider engaging with the legislator in terms of the various new legislative aspects that are not in line with internationally accepted accounting and auditing practices and standards.

Regarding further research opportunities, a future research study can be undertaken once third generation sectional title has been in effect for a certain time period. The implementation by bodies corporate of the new legal aspects can be researched, and the effect of legislative changes on the finances of bodies corporate can also be analysed.

CONCLUSION

No academic research has been undertaken as yet on third generation sectional title legislation from an accounting and auditing perspective. Therefore, this was the first study of its kind undertaken in South Africa. In this paper the findings of a literature review comparing first generation and the new third generation sectional title legislation was discussed, and specific reference was made to accountancy-related aspects. Recommendations were made on how sectional title role players can prepare for the new legislative aspects, and further research opportunities in this regard were also discussed.

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