SECTIONAL TITLE PROPERTY

INTRODUCTION
The purpose of this article is to provide a brief explanation of the concepts related to sectional title property.

THE CONCEPT OF SHARED OWNERSHIP
The Sectional Titles Act No 95 of 1986 (the Act) introduced the concept of shared ownership. The Act introduced the concept of ownership of a Unit comprising a section and an undivided share in the common property. Prior to the Act there was no provision in our law for the shared ownership of immovable property in undivided shares.

Prior to the Act, legislation such as the Share Block Control Act was used where the property is owned by a company and shares owned in the company entitle the holder of the shares to the use of a specific portion of the building.

ESTABLISHMENT OF A SECTIONAL SCHEME
Freehold property is converted in the deeds registry to sectional title property by means of an application to the deeds registry to establish a sectional title scheme on that property.

Amongst the various documents filed together with such application will be the sectional title plans. The sectional title plans are drawn by a land surveyor and approved by the Surveyor General. The sectional plans will indicate the section, common property and any exclusive use areas.

In the event of doubt as to the position of any of the aforementioned, the sectional plans must be consulted.

Bear in mind that the door numbers on the unit may differ from the deeds registry section number. Both should be recorded in any sale agreement.

DEEDS REGISTRY SECTIONAL TITLE OFFICE
Each deeds registry will contain a sectional title office. When a sectional scheme is established a file for each scheme is opened and will contain all documents related to that scheme including the sectional plans, rules and documents relevant to the establishment of the scheme.

The deeds registry is a public office and any of these documents can be viewed by any person.

DEEDS OFFICE SEARCH: PERSON AND PROPERTY SEARCH
Prior to dealing with sectional title property a person and property deeds search must be conducted.

The property search will contain the details of the property searched whilst the person search will describe what properties are registered in the name of the person searched.

The property search will indicate if there is a Section 25 Real Right of extension registered. In this regard please see below.

The person search is useful when dealing with sectional title property as different schemes are registered in different ways and the details of ownership need to be established. The property owner may own more than one section. An example would be where the actual home and the garage are registered as different sections in which case both sections must be referred to in the sale agreement.

Exclusive use areas such as parking bays, garage’s, storerooms etc registered by means of notarial deeds will also be shown as separate properties on the search. See below for details of exclusive use areas (EUA).
DESCRIPTION OF A UNIT
The deeds registry documentation refers to a sectional title property being owned as a “Unit” comprising of:

(a) A section
(b) An undivided share in the common property

This is significant and important to understand from a conceptual point of view. A sectional title property owner is the owner of the actual section which will be indicated as a certain square meterage and an undivided share of the common property.

The size of an owners section will determine the owner’s participation quota, expressed as a percentage of the total area. The participation quota is used to determine that owner’s share of the common expenses as provided for in the monthly levy and also determines the owner’s voting rights.

The common property comprises the common access roads, common amenities, shared walls, roofs etc.

EXCLUSIVE USE AREAS
Exclusive use areas represent a portion of the common property over which a particular owner has exclusive use. The EUA is thus not owned by the section owner but rather the section owner has the right of exclusive use of that portion of the common property.

There are various types of exclusive use areas: parking bays, garages, storerooms, balconies, stairwells, gardens etc.

In order to own an EUA, the owner must first be the owner of a unit in the scheme. Likewise when an owner sells a section, any EUA’s must be sold at the same time.

EUA’s are one of the most vexed and potentially problematic sectional title issues. Each scheme is different in regard to the registration and recording of EUA’s.

Should an EUA be included as part of the property sold, the purchaser is entitled to insist on the transfer/cession of that right, in the absence of which the purchaser is entitled to a reduction in the purchase price, thus the importance of properly and accurately identifying the relevant EUA.

EUA’s can be registered in various ways (or a combination of these):

1. By means of registration by virtue of a notarial deed of cession. Should this be the case a deeds search will reveal the existence of this form of EUA;
2. By means of allocation by the body corporate. Should this be the case the body corporate, trustees or managing agents should have a schedule which can be consulted;
3. By means of registration in the rules of the scheme. Should this be the case the rules in the sectional file in the deeds registry should be consulted.

Levy statements can also be looked at to determine if there is a levy in respect of the EUA.

BODY CORPORATE
The Sectional Titles Act makes provision for a body corporate, which is deemed to have been established upon the transfer of the first unit from the developer.

Every owner of a unit in the scheme is deemed to be a member of the body corporate and is thus bound by the body corporates rules. A member cannot resign from the body corporate. The body corporate has certain statutory duties in terms of the Act.

The body corporate is obliged to hold a yearly AGM (annual general meeting).
The body corporate is obliged to nominate and elect trustees from the members to be responsible for the functioning of the body corporate.

The trustees may (and usually do) appoint professional managing agents to assist in the affairs of the body corporate and the compliance with the various statutory duties.

LEVIES
One of the body corporate responsibilities is to determine the monthly levy payable by each unit. The levy will include inter alia provision for insurance, common property electricity and water, security, maintenance etc.

The levy statement should be consulted to determine the precise levy.

In order to transfer sectional title property a section 15(B)(3) certificate is lodged in the deeds registry. This certificate certifies that the levies due to the body corporate are paid in full until the end of the month of registration.

The existence or otherwise of special levies should be determined and dealt with in any sale agreement.

RATES AND TAXES
With effect from July 2008 all sectional title units are separately rated and liable to the local authority for monthly rates and taxes.

On transfer a rates clearance certificate is obtained from the local authority and presented to the registrar of deeds on transfer. The rates clearance certificate certifies that the rates are fully paid for a period of 60 days from the date of issue of the certificate. Sellers need to allow for the payment of 3-4 months rates in advance.

INSURANCE
Sectional schemes are insured as a whole. The extent of the insurance cover is to some degree standard but differences are found in regard to for example the insurance cover of burst geysers.

When a mortgage bond is passed over the unit, a sectional title insurance certificate is provided to the bank granting the finance, which certificate provides confirmation of insurance cover.

SECTIONAL TITLE SCHEME FINANCIALS
The body corporate is obliged to have the scheme’s financials audited each year. The audited financials are then approved at the AGM.

When purchasing sectional title property, the financials should be obtained and scrutinized. Banks granting bonds often call for copies of the latest financials.

In the absence of the latest audited financials, the body corporate can be requested to provide a letter to confirm all is in order and that the body corporate is solvent.

SECTIONAL TITLE RULES
When the sectional scheme is registered in the deeds registry, the developer has the option to use the statutory rules or to introduce new rules. The conduct rules may be substituted, however the amendment and substitution of the management rules are limited.

The sectional title file in the deeds registry will thus either contain a document in which the developer declares that the statutory rules apply (this will not include a copy of the statutory rules) or the substituted rules will be in the file.

Should the body corporate amend the rules thereafter by means of an appropriate meeting and resolution, the new rules must be filed in the deeds registry before they are deemed to be enforceable.
SECTION 25 REAL RIGHTS
In terms of section 25 of the Sectional Titles Act, a developer may reserve the right to extend the scheme on the common property and in order to do so will upon the establishment of the scheme in the deeds registry reserve such a right in terms of section 25 of the Act.

In terms of the Act, should such a right have been reserved by the developer, the seller is obliged to disclose such reservation to the purchaser in the sale agreement failing which the purchaser has the right to withdraw from the sale.

CONCLUSION
Whilst sellers and purchasers are in general familiar with the concept of sectional title property, the sale and purchase of a sectional title unit can still present various issues. Proper preparation and a good understanding of sectional title is necessary.