Leaks in Apartments

1. Introduction

1.1. Water leaks do occur in Dolphin Beach apartments.

1.2. These leaks most commonly result from old water pipes and amenities in apartments as well as leaks from balconies positioned over apartments below. Leaks also occur from common property.

1.3. It causes anxiety amongst the residents and their neighbours as well as between residents and the Body Corporate.

1.4. This House rule endeavours to specify the procedure and responsibilities in order to solve or manage the leak problems timeously and legally.

2. Legal position of Responsibilities

2.1. For clarity the terms of the Sectional Title Legislature are outlined as basis for this House Rule.

2.2. The law relating to pipes in sectional title schemes is as follows:

- If the pipe is part of an owner's section (i.e. within the median line) it is that owners responsibility unless the pipe serves a number of parts of the scheme (i.e. more than one section), then it is the body corporate's responsibility. As the higher owner will own and be responsible for his floor, to the midpoint of that floor, while the underside of the floor (the below owners ceiling) forms part of their section and is their responsibility. Here there is no common property between these sections and therefore the body corporate is not obliged to involve itself in dealing with any complaints relating to the leaking pipes or initiate and oversee any repairs in this regard.
- If the pipe is outside of a section (i.e. on the common property) the body corporate must maintain and repair it even if it only serves only one section.

2.3. Sectional Title Schemes Management Act:

Functions of bodies corporate

3. (1) A body corporate must perform the functions entrusted to it by or under this Act or the rules, and such functions include—

(r) subject to the rights of the local municipality concerned, to maintain and repair including renewal where reasonably necessary, pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the common property or in favour of one section over the common property;

Duties of owners

13. (1) An owner must—

(a) permit any person authorised in writing by the body corporate, during reasonable hours and on notice (except in case of emergency, when no notice is required), to enter his or her section or exclusive use area for the purposes of inspecting it and maintaining, repairing or renewing pipes, wires, cables and ducts existing in the section and capable of being used in connection with the enjoyment of any other section or common property, or for the purpose of ensuring that this Act and the rules are being observed; and

(c) repair and maintain his or her section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition;

2.4. Paddocks Press Newsletter (31/05/2017) The following article published by Paddocks Press, renowned sectional title experts detail the areas of responsibility between Body Corporate and owner. This article, sets out the basic maintenance responsibilities of the common property and some of the more complex situations, where both the function of a utility service and its location are important when determining maintenance responsibilities

2.4.1. Maintenance of common property

- At a basic level, the Sectional Titles Schemes Management Act 8 of 2011 ("the STSMA") provides that the body corporate must maintain the common property, and unit owners must each maintain their section.
- Common property is defined in section 1 of the STSMA as follows:

  "'common property', in relation to a scheme, means
  (a) the land included in the scheme;
  (b) such parts of the building or buildings as are not included in a section; and
  (c) land referred to in section 5(1)(d)."
- The body corporate has the power to purchase, hire or otherwise acquire movable property for the use of owners for their enjoyment or protection, or in connection with the enjoyment or protection of the common property in terms of section 4(c) of the STSMA. Assets acquired by the body corporate may also be incorporated into the common property and will need to be maintained by the body corporate. For example, assets may include the following:

  - pool furniture for use around a common property swimming pool;
  - a generator;
  - gardening equipment;
  - gym equipment; or
  - adjoining land purchased to use as a tennis court or parking lot.

- The body corporate must properly maintain all the common property and keep it in a state of good and serviceable repair in terms of section 3(1)(l) of the STSMA. The STSMA does not distinguish between structural and non-structural maintenance and repair responsibilities. Therefore, any parts of a building that are structural in nature must be maintained by the body corporate or unit owner in a structurally sound condition depending on whether those parts of the building are common property or part of a section.
- In terms of section 28 of the Sectional Titles Act 95 of 1986 ("the STA") there are a number of implied servitudes, which are deemed incorporated in the title deeds of all owners, that operate between the sections themselves and between sections and the common property. Each section is entitled to support from any other section and any common property beneath it or next to it and which can support it. Equally, each section has a duty to give support to any other section or common property above or next to it and which it can support. In practical terms this means that an owner cannot change his section so as to reduce the structural support it gives any other section or the common property.

This is reiterated in Prescribed Management Rule ("PMR") 30(d) which obliges an owner not to make alterations which are likely to impair the stability of the building or the use and enjoyment of other sections, the common property or any exclusive use area.

- In addition to maintaining the common property, the STSMA also assigns the body corporate the responsibility for maintaining the utility infrastructure within a sectional titles scheme.
- Utility infrastructure includes:
    - pipes, wires, cables and ducts;
    - plant, machinery, fixtures and fittings and equipment used in connection with the common property and sections; and
    - separate meters to record the consumption of electricity, water and gas
    - Utility services include:
    - water reticulation or supply;
    - gas reticulation or supply;
    - electricity supply;
    - air conditioning;
    - telephone service;
    - a computer data or television service;
    - a sewer system;
    - drainage;
    - a system for the removal or disposal of garbage or waste; or
    - system or service designed to improve the amenity, or enhance the enjoyment, of sections or the common property.

    - <u>Supply to several Sections.</u> The body corporate has the responsibility, subject to the rights of the local authority concerned, to maintain and repair (including renewal where reasonably necessary) pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one section or of the common property or in favour of one section over the common property in terms of section 3(1)(r) of the STSMA. Therefore, the owner of the section will be responsible for the maintenance of pipes, wires, cables and ducts that:
    - only supplies a utility service to that section; and
    - is located in that section
    - the system that supplies a section with hot water must be maintained by the owner of the section it supplies, irrespective of where it is located. If the system supplies more than one section, the owners of those sections share the responsibility and costs.
    - <u>Meters.</u> The body corporate must, if so directed by a resolution of members, install and maintain separate meters to measure the supply of electricity, water, gas or the supply of any other service to each member's sections and exclusive use areas and to the common property in terms of PMR 29(3)(a).

The body corporate must recover from members the cost of such supplies to sections and exclusive use areas based on the metered supply in terms of PMR 29(3)(b).

- The body corporate may on the authority of a special resolution install separate pre-payment meters on the common property to control the supply of water or electricity to a section or exclusive use area in terms of PMR 29(4). All members and occupiers of sections must be given at least 60 days' notice of the proposed resolution with details of all costs associated with the installation of the pre-payment system and its estimated effect on the cost of the services over the next three years.
- Clearly defined boundaries. In order to establish maintenance responsibilities, the common property and sections in a scheme must be accurately identified. The registered sectional plan for a sectional titles scheme must clearly show the boundaries of the common property and the sections in the scheme.

3. Purchasing an Apartment at Dolphin Beach

3.1. Many first-time buyers at a Sectional Title scheme are not aware of the Sectional Title act nor the guidance and restrictions set by the Registered or House rules.

3.2. To ensure a co-operative neighbourly co-existence new owner will be given a set of the Registered rules as well as the applicable House rules.

3.3. When a property is sold, the transferring attorneys will contact the Managing Agent to request clearance figures. At the same time, the Managing Agent will collect the full details of the new owner, and will require the new owner to sign receipt and acknowledgement of the Body Corporate Conduct and House Rules.

4. Specific procedure

4.1. The Estate Manager will inspect the leak.

4.2. The Estate Manager has been trained to positively identify the origin of the leak. He/she is also equipped with specialised equipment to make the necessary investigations.

4.3. If the Estate Manager or owner is not satisfied with the findings of the investigation, they may ask the Design Review Committee (DRC) to review the findings. If the DRC is not satisfied with the findings, they may authorise an independent leak expert to verify the findings. In the case where an owner objects and the expert confirms the findings the cost of the additional investigation must be borne by the owner.

4.4. If the leak originates from common property, the Estate Manager will attend to the matter urgently, at the cost of the Body Corporate.

4.5. If the leak originates from another unit the Estate Manager will inform the Owners accordingly.

5. Specific identified Problem Areas

5.1. Solving the leak between Neighbours

- Effected neighbours should discuss the leak when it is noticed.
- Good neighbourly manners should be exercised to resolve the problem.
- The Estate Manager and the Managing Agent may be contacted to assist in resolving the dispute of leaks.

5.2. Un-cooperative neighbour

- When the Estate Manager has identified a leak coming from a neighbour, he/she will inform the neighbour of the leak emanating from that apartment. All supporting documentation of the findings will be included.
- If the leak is serious and is originating from the water supply (i.e.. threatening the integrity of the building or another apartment) the owner must immediately attend to the leak. The Estate Manager may switch off the water supply to that unit after informing the owner. The water supply may only be switched on if the leak is repaired.
- It the leak originates from a balcony (i.e.. discolouring ceilings or walls) to a neighbour, the owner must urgently attend to the leak. The neighbour will be given five days to attend to the problem. It the neighbour does not attend to the problem in five days the Managing Agent will send a formal letter to the owner to attend to the problem within the next five days. If the neighbour still does not attend to the problem the Estate Manager in conjunction with the Managing Agent may obtain access to the balcony and attend to the leak. The Estate Manager may open up/remove tiles as is necessary to attend to the problem. The owner will be kept liable for the cost of the repair. The owner will have to repair the tiles and other infrastructure as is necessary at his/hers own cost.

5.3. Full bores

- The full bore is a water gathering box normally installed on a balcony.
- The owner is responsible to keep the full bore clean and in working order. The full bore should regularly be serviced.
- Any problem in the full bore is the responsibility of the owner. If the full bore is situated on common property, the Body Corporate responsible.
- The down pipe from the full bore is the responsibility of the Body Corporate.
- The full bore must be tested before and after alterations.

5.4. Expansion Joints

- The building was designed 500 meters long and therefore the original design included expansion joints through the building, to allow for expansion and contraction. If water on the balcony penetrates these expansion joints, it could flow for many meters along the slab between the different floors, and only become visible in most unexpected areas. Apartment owners positioned close to an expansion joint must be vigilant about leaks.
    - The maintenance of these joints is an owner’s responsibility as it is part of the apartment.
    - The Body Corporate may decide to assist owners to maintain the expansion joint as it may affect many apartments.
    - In such cases the Body Corporate will very specifically give notice of such assistance.
    - Normally the Body Corporate will then recover the cost of the work done on behalf of the owner.
    - Tiling must not be done across an expansion joint.

- The Body Corporate reserves the right to inspect the integrity of the waterproofing across the expansion joint, especially if other owners complain about water leaks.
- The Estate Manager will issue specific clearances when alteration or renovation is done close to or across an expansion joint.

5.5. Damaging the Slab

- No holes may be made into or through the slab.
- If holes are made into the slab or if the slab is damaged in any way the owner must affect the prescribed repair immediately at own cost.
- The Estate Manager must be informed if the slab is damaged and what remedial actions are taken.

6. Documentation

6.1. The Estate Manager must keep a written record of all leaks and the process to attend to the leaks.

6.2. The report must be backed with comprehensive photos and leak detection reports.