

Analysis of Conflict in Managing Sectional Title Properties

By: Nathaniel Ndala-Ka Dlamini
13172434

Submitted in fulfillment of the requirements for the degree Master of Science in Real Estate in the Faculty of Engineering, Built Environment and Information Technology, University of Pretoria.

2017, January 30

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
Cover page.....	I
Table of content.....	II
Acknowledgement.....	VIII
Declaration.....	IX
Ethics statement.....	X
Synopsis of the dissertation.....	XI
Definition.....	XII

CHAPTER 1: ORIENTATION OF THE STUDY

1.1 Introduction.....	1
1.2 Problem statement.....	2
1.3 Purpose statement.....	4
1.4 Aims and objectives of the study.....	5
1.5 Significance of the study	5
1.6 Rationale.....	6
1.7 Research questions.....	7
1.8 Background information.....	8
1.9 Case studies and their selection.....	15
1.10 Conclusion.....	23

CHAPTER 2: LITERATURE REVIEW

2.1 Literature review.....	25
2.2 What is a sectional title scheme?	26
2.3 Sectional titles schemes are products of legislation.....	29
2.4 Key elements of residential title schemes.....	30
2.4.1 The body corporate.....	30
2.4.2 The trustees of the body corporate.....	40
2.4.3 Managing agents.....	45
2.4.4 Levies.....	50
2.4.5 Rules of the schemes.....	60
2.4.6 Common property and ownership	66
2.5 Appointment of an administrator.....	68

2.6 Brief summary of sectional title properties.....	69
2.7 The rising of residential sectional title properties.....	71
2.8 Factors that led to the rise of residential sectional title properties.....	73
2.9 Body corporate versus business shareholders.....	76
2.10 The concept of property ownership in South Africa	80
2.11 Joint property ownership not unique to South Africa.....	83
2.12 Residential title properties and similar properties.....	86
2.13 International experiences of sectional title ownership.....	91
2.13.1 Introduction.....	91
2.13.2. Communal living experiences.....	91
2.13.3 Conclusion.....	120

CHAPTER 3: THEORETICAL FRAMEWORK

3.1 Introduction.....	122
-----------------------	-----

CHAPTER 4: RESEARCH APPROACH, DESIGN & METHODOLOGY

4.1 Introduction.....	130
4.2 Research approach.....	130
4.3 Research design.....	132
4.4 Research methodology.....	134
4.4.1 Sampling.....	135
4.4.2 Research methods.....	140
4.4.2.1 Observation.....	140
4.4.2.2 Interviewing.....	143
4.4.2.3 Accessing research subjects.....	147
4.4.2.4 Research procedures.....	147
4.4.2.5 Data analysis.....	153
4.5 Ethical considerations.....	154

CHAPTER 5: DISCUSSING OF CASE STUDIES

5. Empirical analysis of discussions.....	156
5.1 Introduction.....	156
5.2 Analysis of the case studies.....	157

5.2.1 Kwezi-Mansion (Case study 1)	157
a. Access into the scheme.....	158
b. Owners refusing to pay their levies.....	159
c. Appointment of the crisis committee.....	161
d. Dismissal of the managing agent and the trustees.....	163
e. Levy defaulters on the increase.....	164
f. The appointment of Zenzele.....	166
g. Different board of trustees is in power.....	171
h. Insufficient budget and poor budget management.....	174
i. Managing agents protect their job.....	175
j. Previous trustees made serious blunders.....	178
k. I am simply protecting my investment.....	181
l. Conclusion.....	182

5.2.2 Pan Villa Court (Case study 2)

a. Access into the scheme.....	188
b. Children's bad behavior in the scheme.....	191
c. Inconsistency in the application of the rules.....	194
d. Payment and collection of levies.....	198
e. Disregarding of the owners' restrictions and directions.....	201
f. New trustees uncover serious financial problems.....	204
g. Body corporate faces financial crisis again.....	210
h. Body corporate in the hands of the bullies.....	214
i. Poor or lack of understanding of how the schemes functions.....	215
j. Misappropriation of the body corporate funds.....	218
k. Conflict of interest.....	223
l. Special levy continues beyond its deadline.....	225
m. Appointment of wrong managing agents.....	226
n. Body corporate runs its own bank account.....	229
o. Conclusion.....	231

5.2.3 Castel Villa (Case study 3)

a. Access into the scheme.....	237
--------------------------------	-----

b. Children are vandalising our facilities.....	239
c. Restrictions of access into the scheme.....	241
d. Application of the rules of the scheme.....	243
e. The current managing agent is the best.....	247
f. Payment and collection of levies.....	251
g. Conclusion.....	252

5.2.4 Khanya Palace and Jozi Place (Case studies 4 and 5)

a. Access into the scheme.....	256
b. Two schemes in one.....	260
c. Absence of recreational facilities.....	263
d. It is racism not location.....	264
e. The developer is taken to task.....	266
f. Erosion of the conduct rules.....	270
g. Payment and collection of levies.....	271
h. Misrepresentation to prospective buyers.....	274
i. The operation of the scheme is under threat.....	276
j. The concept of residential sectional title schemes is foreign to owne.....	277
k. Conclusion.....	280

5.2.5 Paving Heights (Case study 6)

a. Access into the scheme.....	285
b. Right to manage the scheme taken away from the body corporate..	286
c. Owners are seeking answers at the general meeting.....	288
d. Battle for the management of the scheme.....	290
e. Lack of trust in the managing agents.....	293
f. Failure to comply with the rules of the schemes.....	294
g. Conclusion.....	295

5.2.6 Jason's View Place (Case study 7)

a. Access into the scheme.....	299
b. Financial crisis.....	300
c. Disregarding rules of the schemes.....	303.

d. Body corporate chased by the creditors.....	305
e. Functioning of the residential sectional title schemes not known.....	306
f. Conclusion	308
5.2.7 Adelaide Court (Case study 8)	
a. Access into the scheme.....	312
b. Potential conflict of interest.....	313
c. The danger of the majority ownership.....	314
d. Constant violation of the conduct rules.....	317
e. Conclusion.....	319
5.2.8 Zacharia Park and Klein Fountain Village (Case studies 9 and 10)	
a. Access into the scheme.....	321
b. Unhappiness with the management of the scheme.....	323
c. Conclusion.....	324
5.2.9 Mamba Village and Desborough Heights (Case studies 11 and 12)	
a. Access into the scheme.....	325
b. Enforcement of the rules.....	325
c. Payments and collection of levies.....	327
d. Conclusion	328
5.2.10 Olivier Gardens (Case study 13)	
a. Access into the scheme.....	329
b. Enforcement of the conduct rules.....	330
c. Facilities in the scheme and their conditions.....	330
d. Payment and levy collection.....	332
e. Manipulation of the trustees election process.....	333
f. Conclusion.....	336
5.2.11 Miami Gardens and Peter Palace (Case studies 14 and 15)	
a. Access into the scheme.....	337
b. Conflict over available facilities.....	337
c. Conclusion.....	339



5.3 Summary.....	340
CHAPTER 6: FINDINGS, CONCLUSIONS & SUGGESTIONS	
6. Findings and conclusions of the study.....	341
6.1 Introduction.....	341
6.2 Findings of the study.....	342
6.3 Nature of the conflicts.....	345
6.4 Conclusion.....	348
6.5 Suggestions.....	353
6.6 Recommendations for further study.....	357
6.7 Limitations of study.....	358
List of References	364
Appendix A.....	364
Appendix B.....	372
Appendix C.....	377

ACKNOWLEDGEMENTS

First and foremost, I would like to thank God Almighty, the creator of heaven and earth for the strength, wisdom and courage He gave me throughout the duration of this study.

I would also like to express my sincere thanks to my study leader, Dr. D. Boshoff, for his guidance and to thank all the respondents that participated in this study because without their participation this study would have not been possible.

Finally, I would like to extend my gratitude to my wife, Tiny, and our children, Siyanda, Thato, Khanyisile and Sibahle for understanding my decision to be a full-time student at my age and their patience throughout this study.

DECLARATION

I declare that the dissertation, which I hereby submit for the degree Master of Science in Real Estate at the University of Pretoria, is my own work and has not previously been submitted by me for a degree at this or any other tertiary institution.

Nathaniel Ndala-Ka Dlamini

Name of Candidate

Signature

30 Day of January 2017

ETHICS STATEMENT

The author, whose name appears on the title page of this dissertation, has obtained, for the research described in this work, the applicable research ethics approval.

The author declares that he has observed the ethical standards required in terms of the University of Pretoria's *Code of ethics for researchers* and the *Policy guidelines for responsible research*.

SYNOPSIS OF THE DISSERTATION

The aim of this study was to establish whether or not conflict existed in residential sectional title schemes and if so the causes thereof. Residential sectional title properties, unlike conventional residential freehold properties, imposed co-ownership, co-management and expense sharing amongst owners in this type of development. This means that owners in this development are not just owners of sections that they purchased and exclusively occupied, but they were also jointly responsible for the administering, controlling and managing of the common property in the scheme in which they had become owners.

This dissertation revealed that, despite their popularity, sectional title properties might be marked by conflict which can affect the smooth and efficient operation of this type of property ownership. Causes of conflict include violation of the scheme rules by owners or residents, trustees' failure and/or refusal to adhere to their bodies' corporate rules, conditions or restrictions, financial mismanagement or misappropriation by the trustees and managing agents, power struggle amongst individuals over the control of the body' corporate resources, lack or poor understanding, amongst owners and their trustees, of how this type of development works, and disrespect of the bodies corporate and its members by their managing agents.

This study suggests compulsory information disclosure to prospective and current owners regarding the requirements and obligations of owners in this type of development. Further, that there should be regular and compulsory trainings for the trustees. Accordingly, the study suggests how conflict in multi-owned properties can be mitigated and ensured that the ownership of this type of property can be protected.

DEFINITIONS

- AGM** : Annual General Meeting of the body corporate.
- Body Corporate** : ‘body corporate’, in relation to a building and the land on which such building is situated, means the body corporate of that building. It controls, manages and administers the scheme. It comes into existence when the developer transfers a unit to any other person. It is made up of all owners in a scheme.
- Building** : ‘building’ means a structure of a permanent nature erected or to be erected and which is shown on a sectional plan as part of a scheme.
- Common Property** : It refers to all parts of the scheme that cannot be exclusively owned by any one person individually. It includes all the land and those parts of the buildings that are not sections.
- Condominium** : ‘condominium’ referred to “a large property complex that is divided into individual units and sold. Ownership usually includes a non-exclusive interest in certain “common properties” controlled by the condominium management”. This development is found in the United States of America and most of Canada.
- Conduct Rules** : rules of the scheme that regulate the conducts of owners and other occupants of sections and set out the limitations they must observe in their behavior both within their sections and on the common property.
- Development Scheme**: ‘development scheme’ means a scheme in terms of which a building or buildings situated or to be erected on land within the area of jurisdiction of a local authority is or are, for the purposes of selling, letting or otherwise dealing therewith, to be divided into two or more sections.
- Exclusive Use Area** : ‘exclusive use area’ means a part of the common property for the exclusive use by the owner or owners of one or more sections.

- Levy** : the money paid to the body corporate, normally in monthly installments, as an owner's contribution to the estimated common expenses.
- Local authority** : refers to local municipality that provides services such water, electricity and waste removal to the schemes.
- Management rules** : rules of the scheme that regulate the operation of the body corporate and the behavior of trustees.
- Managing agent** : individual or an entity that is appointed by the trustees to exercise the functions and powers of the body corporate; which is mainly to control, administer and manage the scheme.
- Owner** : The person registered as an owner or holder thereof and includes the trustee in an insolvent estate, a liquidator or a trustee elected or appointed in terms of the Agricultural Credit Act, 1966(Act No. 28 of 1966).
- Participation Quota** : 'participation quota', in relation to a section or the owner of a section, means the percentage determined in accordance with the provision of section 32(1) or (2) in respect of that section for the purposes referred to in section 32(3), and shown on a sectional plan in accordance with the provisions of section 5(3)(g).
- Rules** : 'rules', in relation to a building or buildings which has or have been divided into a section or sections and common property, means the management rules and conduct rules referred to in section 35(2) for the control, management and administration, use and enjoyment of the sections and common property.
- Scheme** : 'scheme' means a development scheme. It refers to the entire development within the boundary walls of a particular development. This includes sections, common property and the land on which the building is situated.
- Section** : A 'section' is a part of a building shown on a sectional plan and it can be individually owned. As a general rule, a section must be an area confined by walls, a floor and a ceiling, but a section

can also include an atrium, a porch, a balcony or other projection.

- Special levy** : additional owner's contribution that is raised by the trustees for unforeseen and unbudgeted expense of the body corporate. This contribution is paid by owners over and above normal levies.
- Strata Scheme** : 'strata scheme' refers to a development that is similar to sectional titles scheme which exists in countries such as Australia.
- The Act** : 'the act' refers to the Sectional Titles Act, 95 of 1986 as amended.
- Trustees** : 'Trustees' are the managers of a scheme appointed or elected in terms of the management rules.
- Unit** : 'unit' means a section together with its undivided share in common property apportioned to that section in accordance with the quota of the section.

CHAPTER 1: ORIENTATION OF THE STUDY

1.1 Introduction

The introduction of the *Sectional Titles Act, 66 of 1971* in South Africa 'revolutionised' the South Africa's property industry (Van der Merwe, 1981). It radically changed the manner in which people knew and understood property ownership in an apartment complex in South Africa. In terms of this change, individuals could now own immovable property in an apartment complex.

The aforementioned individualised ownership in apartment complexes became possible when the complexes were registered as sectional title schemes. There were three types of sectional title schemes, namely, residential, commercial and industrial. In this dissertation, however, the focus is only on residential sectional title properties, which come in the form of flats, townhouses, semi-detached houses, duet houses and holiday apartments (Pienaar, G. 2010). Furthermore, only two forms, namely, flats and townhouses were examined in the present study.

Prior to the introduction of the *Sectional Titles Act* referred to above, individuals could not directly be an owner in an apartment complex unless the individual was a joint owner of the whole building or he /she was a shareholder in a company that owned the entire building. As one of the owners of the entire building or a shareholder in a company that owned the whole building, an individual could occupy a section of the property that he/she owned with the permission of his/her partners

(Carter, 1986; Pienaar, 2010). An individual could also occupy an apartment in the complex as a tenant. This changed with the introduction of the *Sectional Titles Act, 66 of 1971*.

Since 1971, individuals have been able to purchase, directly own and occupy a section in a sectional title scheme without having to obtain permission from anyone else. This new and unique way of property ownership in apartment complexes brought with it the concept of joint ownership and management amongst all the individuals who became owners in sectional title schemes (Horwitz, 1985, Pienaar, 2010; Shandling, 1983). In other words, all the owners in the schemes in question by virtue of their ownership in those schemes became jointly responsible for the management of their schemes and its resources irrespective of their unique backgrounds.

1.2 Problem statement

According to the literature (Harwitz, 1985; Pienaar, 2010), residential sectional titles schemes model is a unique or a special form of property ownership. Unlike the conventional property ownership of freehold properties, this new form of property ownership brings with it the elements of co-ownership, co-management and interdependence amongst all the owners (Harwitz, 1985; Pienaar, 2010). Owners in these developments are expected to cooperate and collaborate with one another for the smooth and efficient operation of the schemes in which they own.

Residential sectional titles schemes, however, are known for attracting individuals, as owners, from different or unique backgrounds. For example, under the apartheid regime in South Africa for decades residential settlements were structured along racial and/or ethnics groups which made members of the groups in question strangers to one another. In other words, members of these groups grew up knowing little or nothing about one another. This was exacerbated by an apartheid ideology which promoted and perpetuated the belief that racial and ethnics groups were not the same and thus could not be permitted to reside in the same areas, let alone co-owning and co-managing their residential areas.

Following the demise of the apartheid regime in South Africa in 1994, however, members of the above mentioned groups were 'forced' to live together in residential settlements such as the sectional titles schemes. Irrespective of their unique backgrounds in terms of socialisation processes and beliefs, these individuals are expected, to live harmoniously as neighbours, co-owners and co-managers of their schemes and be financially interdependent in certain aspects that relate to their schemes. Since individual owners /residents in these developments are products of unique backgrounds, the researcher believed that these schemes are likely to be characterised by conflict and thus compromising their envisaged smooth and efficient operation.

Further, given the above situation, the researcher was of the opinion that the future of the residential sectional title properties was at risk because of the fact that the success and viability of these schemes were designed to depend mainly on the collaboration and cooperation of ‘strangers’ who were made to be partners not by choice but by default as their partnership was imposed on them by the legislations that govern this model of development.

1.3 Purpose statement

The purpose of this qualitative study therefore was to investigate if residential sectional titles schemes were not characterised by conflict in light of the fact that this model of development demanded co-ownership, co-management amongst all the owners and further imposed on them financial interdependence in certain areas of the scheme, irrespective of the fact that owners in the schemes in question were often products of unique socialisation processes.

The assumption made in this qualitative study is that the existence of conflict in the residential sectional title schemes may compromise the smooth and efficient operations of the schemes in question and thus, render this model of development or ownership unworkable.

1.4 Aims and objectives of the study

The aim of this study was to investigate if conflict existed in residential sectional titles properties and its causes if it was discovered that indeed conflict existed in the schemes in question. These aims were supported by objectives which intended to establish how the model of multi-owned properties in the form of residential sectional titles schemes, under study, works in practice following its first theoretical introduction in *Sectional Titles Act 66 of 1971* and its subsequent discussions in various literature by scholars such as Horwitz, 1985; Kaplan, 1986 and Pienaar 2010, among others.

Further the objective of the study was to try to understand the experiences of the owners in multi-owned developments in particular residential sectional titles schemes with regard to the daily management of their schemes. The preceding objectives of the study were to be achieved by looking at the day-to-day operation and management of the schemes that were to be selected as case studies in this research study.

1.5 Significance of the study

Much of the literature has seemed to focus mainly on the legal individual ownership in residential sectional title schemes, which makes the focus more theoretical and conceptual and thus, pays little attention to the practical operations of the sectional title properties. More attention has been given to the interpretation of the *Sectional*

Titles Act, 66 of 1971 and the subsequent Acts regarding how sectional title schemes ought to operate, but little attention has been given to the practical operations of the schemes. In other words, the day-to-day functioning of the schemes does not seem to be important in much of the literature.

In light of the above, it was the intention of the study to establish how the conceptual model of residential sectional title schemes works in practice. Furthermore, the researcher intended to explore the daily experiences of owners in the schemes regarding joint ownership and management of the common property, and the interaction and collaboration amongst those who found ownership in these developments.

The findings of the study, therefore, will provide the practitioners with a clear understanding of how the schemes operate practically and thus, guide them on future developments of the same or similar types. The findings will also assist practitioners to decide on proper and relevant interventions for the survival or smooth operations of current residential sectional title properties.

1.6 Rationale

The researcher as one of the owners in the three residential sectional titles schemes that form part of this study constantly came across information which suggested that

the viability of the schemes in question was under threat due to possible ongoing conflict, which involved owners, managing agents, trustees and service providers.

In addition to other information that the researcher came across prior to embarking on the study were allegations of non-compliance to the rules of the body corporate by owners, refusal to pay levies by other owners, letters of demands to the bodies corporate from service providers' lawyers, on-going dismissals of managing agents, continual resignations of trustees, and financial crises facing bodies corporate.

The above mentioned factors led the researcher to believe that the three schemes mentioned above that faced challenges were experiencing some sort of conflict, which demanded empirical investigation; hence, the present study. The researcher believed that the effective and efficient operations of the schemes were compromised due to conflict that existed in residential sectional title schemes.

1.7 Research questions

In light of the scenario described and against the background outlined above, the researcher articulated the following primary research question to help him visualise the research goal. The research question is supported by sub-questions.

Main question:

Does conflict exist in residential sectional title properties and if so what causes it?

Sub-questions:

- (a) What is the nature of the conflict that exists in residential sectional titles schemes?
- (b) To what extent, if any, does the fact that owners in residential sectional titles schemes come from unique backgrounds contribute to the existence of conflict?
- (c) Which parties are involved in the conflict?
- (d) Who is affected by conflict in these schemes?
- (e) How does the scheme deal with or resolve the conflict?
- (f) What impact does conflict have on the operations of the schemes?

There were 15 case studies that were employed in the present study to answer the research question and its sub-questions. The full findings of this study are discussed in subsequent chapters.

1.8 Background information

During the last century, shortage of accommodation became a serious problem in many parts of the world. The situation was attributed to rapid population growth and massive urbanisation (Horwitz, 1985). The abnormal prices of land and building construction at the time also exacerbated the situation as it made it extremely difficult, if not impossible, for families with an 'average' income to own properties (Horwitz, 1985). The metropolitan centres seemed to be the most affected by this

shortage of accommodation and/or ownership of immovable property (Howirtz, 1985; Pienaar, 2010).

The response to the above situation came in various forms including the introduction of the 'condominium' in other countries; this is described later. The introduction of condominium ownership made it possible for occupants of "multi-unit developments to achieve more concomitants of ownership than those which were available to the renter, or holder of shares in a share-block scheme" (Horwitz, 1985:x). In addition to addressing the problem of shortage of accommodation referred to above, this ownership meant that an individual home owner "has an asset which he may mortgage and alienate" (Horwitz, 1985:x).

Since condominium ownership was conspicuously beneficial to the state in terms of addressing the shortage of accommodation and to individuals in terms of providing property ownership, the proponents of the ownership in question "encouraged the promulgation of enabling legislation throughout the Western World" (Howirtz, 1985:x-x1). In other words, while condominium ownership in the Western World started informally, it later found support in the form of legislation in order to recognise and legitimise this form of property ownership.

While condominium ownership was significant in terms of mitigating the challenges referred to above, this type of ownership did not seem to contain all the elements of

ownership. According to its critics, this type of ownership is not true ownership because of the element of sharing ownership with others (Pienaar, 2010). For instance, Voet and Grotius (in Horwitz, 1985: xii) described “plenary ownership as embracing the total legal interest in a thing”.

Furthermore, in the case of *Dadoo Limited v The Krugersdorp Municipality Council*, the court described ownership as “all rights of use and abuse and unrestricted and exclusive control which a person has over a thing” (Horwitz, 1985:xii). In other words while the introduction of condominiums managed to address the question of shortage of accommodation, its critics observed and/or argued that this form of ownership failed to bring about true ownership as illustrated in the two case laws mentioned above.

Despite its criticism, this new and unique form of ownership spread to other parts of the world such as South Africa. This was evident in the promulgation of the *Sectional Titles Act, 66 of 1971* by the then government. The Act in question was based largely on the *Australian Strata Titles Act* (Horwitz, 1985; Easthope, Randolph & Judd, 2009), which, in turn, was greatly influenced by the German *Wohnungseigentums-gesetz* (Horwitz, 1985).

This new system, namely, individual property ownership in residential sectional title schemes did not only change the model of ownership in the complex apartments, but

it also challenged the long standing conventional or traditional way, that is, freehold property ownership, which individuals had used for centuries to own residential properties in South Africa (Carter, 1986).

Equally important, the introduction of sectional title property ownership challenged individualised property ownership that had found its support mainly in case laws and literature for many centuries (Pienaar, 2010). As discussed in detail in the literature review, sectional title properties are based on the principle of joint management, interaction and collaboration amongst individuals who own in this type of development (Pienaar, 2010), irrespective of their backgrounds, expertise or skills. In other words, the model of sectional title schemes does not only bring individuals together as neighbours, but also demands joint ownership and management of the common property from all the owners.

Furthermore, ownership in sectional titles properties includes a body corporate membership. A body corporate is formed as soon as anyone other than the developer becomes an owner in a particular scheme (Horwitz, 1985). Thus, a body corporate is formed by all the individuals who own at least a unit in a particular scheme. In other words, individual ownership in a particular scheme qualifies that individual to be a member of that body corporate. Accordingly, all owners of sectional titles units are members of the body corporate until the day they dispose of their units or cease to be owners in the scheme (Pienaar, 2010).

Membership of the body corporate, however, comes with some obligations towards the body corporate itself and towards other sectional owners in terms of the use of the common property by individual owners. “These obligations and restrictions mean that sectional ownership is to a great extent limited by the rules of the sectional titles scheme and by the obligations towards other sectional owners as stated in the Sectional Titles Act as well as neighbours’ law restrictions” (Pienaar, 2010:88). One cannot do as one pleases in the sectional title properties because of the obligations and rules that govern individual owners in such properties.

Once established, the body corporate is expected to fulfill certain responsibilities. Among others, the body corporate is responsible for the enforcement of the rules that apply to the scheme, and for the control, administration and management of the common property for the benefit of all owners in terms of section 36(4) of the Act. Furthermore, the Act proceeds to outline functions of the body corporate in section 37. The body corporate’s functions include ensuring that there are sufficient funds for the repair, upkeep, control, management and administration of the common property and creating a financial reserve for future maintenance and repairs.

The body corporate is also expected to ensure that rates and taxes and other services that are rendered to the scheme by various service providers including those of the local authority that supplies water and electricity are paid timeously (section 37(a)). In other words, all being members of the body corporate is not the

only legal relationship among the owners of units in the scheme. Owners of units are also legally bound together by co-ownership and the management of their scheme.

In addition to the above mentioned functions, the body corporate is empowered to impose levies on individual unit owners for the purpose of the expenses referred to above (section 37(b)(c)). This means the owners' contributions or levies towards the body corporate's expenses are obligatory.

Based on the brief background outlined above, one may deduce that owners in sectional title properties are not just co-owners and managers of their schemes, but they also have obligations towards their bodies corporate including a financial obligation. In other words, owners in these schemes are interdependent on one another for different aspects. In light of this background, the researcher believed that the success of the sectional titles properties depends on collaboration and cooperation among the owners. Since ownership in residential sectional title properties is likely to attract individuals as owners from different socialisation processes or strangers from unique backgrounds, the researcher believed that residential sectional title schemes are likely to be characterised by conflict.

If owners in the schemes fail to cooperate or collaborate with one another, conflict may occur in the schemes in question. In this regard, conflict is defined as "the process which begins when one party perceives that another has frustrated, or is

about to frustrate, some concern of his” (Thomas, 1992:891). This means that an action does not have to materialise in order for it to produce conflict. A mere perception of one party about another is sufficient to trigger conflict between the parties concerned.

The term, conflict comes from the Latin word, ‘*conflictus*’ and it means, “hitting together with force”, which means “disagreements and tensions between the members of the group, interaction in speech, emotions and affection” (Elida-Tomita, 2010: 721). In other words, conflict does not necessarily refer to physical fights. When disagreement and tensions exist between the members of a group, conflict is present.

It is apparent from the above definitions of conflict that for conflict to exist there should be more than one party, individual or group involved. These definitions highlight a situation that lacks harmony, and is characterised by contradictions and fights by two or more parties. As already referred to above, there are more than one owners or parties in residential sectional title properties who are “forced” to leave and work together by a piece of legislation.

Therefore, since the nature of residential sectional title properties demands joint management, interaction and collaboration amongst owners who are strangers to one another, the researcher was of the view that such an environment is likely to produce conflict.

In order to establish whether conflict existed in residential sectional title properties, this qualitative study involved 15 residential sectional titles schemes, which were employed in the study as case studies. The schemes in question were studied separately from one another and they were situated in the provinces of Gauteng and Limpopo.

There were three prominent tools that were used in this study to collect data: *participant observation, semi-structured interviews and documentary analysis*. Details on where and how these tools were used in respect of each of the case studies are presented and discussed in Chapter 4; the research design and methodology employed in this study are also discussed in Chapter 4. The details in question also include how access was gained into each of these schemes.

1.9 Case studies and their selection

As previously stated, there were 15 residential sectional title schemes that were employed as case studies in the study. The four residential sectional titles schemes

that are listed in Table 1.1 below were initially the only schemes that were identified as case studies. The names of the case studies are all pseudo names. These four schemes captured the attention of the researcher because of the constant and repeated tension between their bodies corporate and respective service providers, especially local authorities over non-payment of services that had already been rendered to the schemes by their service providers.

Table 1.1

Scheme (Pseudo Names)	Number of units	Location
1.Pan Villa Court	222	Gauteng
2.Kwezi-Mansion	51	Gauteng
3.Castel Villa	183	Gauteng
4.Paving Heights	177	Gauteng

The researcher was familiar with the first three schemes listed in Table 1.1. He was an investor in these three schemes at the time of the study he owned at least one rental unit in each of them. The bodies corporate in the three schemes often experienced financial problems, found themselves in conflict with individual owners, trustees and managing agents, received letters of demands and/or were threatened with legal action by service providers for non-payment of already rendered services, among other things.

Threats of legal action against the bodies corporate by their service providers, reports of some owners refusing to pay their levies or complying with bodies' corporate rules suggested that the schemes were experiencing some form of conflict.

The researcher as an investor-owner in the schemes learned various concerns through his tenants: the security company had been dismissed; the common property was dirty because the cleaners did not come to work for days; the local authority had disconnected power to the entire scheme because of non-payment by the body corporate; the owners received levy statements that were issued by a different company from the previous one; the tenants themselves had been accused of violating the rules of the body corporate; and so forth.

The frequency in which the managing agents were replaced in these three schemes, stepping down of the trustees voluntarily or by force, constant violations of the rules by the owners or tenants, blaming the of disconnection of power to the schemes on owners that refused or were unable to pay their levies and implementing one special levy after another were factors that suggested that relationship among owners or residents in the three schemes was not as harmonious as anticipated in the Act. The events or incidences above suggested the possibility of conflict in the three schemes in question.

The fourth and the last scheme in Table 1 above is Paving Heights. Unlike the first three schemes, the researcher was not an investor in this scheme. He came to know about the scheme through his lawyer who was assisting the trustees of the scheme with legal matters that involved their scheme.

Upon listening to the trustees of the scheme in question, the researcher was struck by similarities between the first three schemes and the fourth scheme. The four schemes were similar in terms of letters of demands from local authorities, refusal by some owners to pay their levies and a lack of compliance by residents regarding the conduct rules of the schemes. The situation at the fourth scheme, Paving Heights, had been already escalated to another level; the local authority had already disconnected both the crucial services of water and electricity to the scheme.

The other remaining eleven case studies, in Table 1.2 below, were included in the study for two reasons: firstly, to increase the size of the study and secondly, to extend the study to schemes of which the researcher knew little or nothing.

Table 1.2

Scheme (Pseudo Names)	Number of units	Location
1. Adelaide Court	36	Limpopo
2. Klein Fountain Village	207	Limpopo
3. Zacharia Park	190	Limpopo
4. Miami Gardens	72	Gauteng

5. Peter Palace	180	Gauteng
6. Desborough Heights	169	Gauteng
7. Mamba Village	208	Gauteng
8. Olivier Gardens	177	Gauteng
9. Jason's View Place	139	Gauteng
10. Jozi Place	276	Gauteng
11. Khaya Palace	206	Gauteng

The procedures that were used to select these additional schemes are discussed in Chapter 4.

While this study was influenced by the suspicion of the existence of conflict in the three residential sectional titles schemes discussed above, it was equally influenced by the general nature of residential sectional title properties. Residential sectional title properties by their nature, especially after the demise of the apartheid regime in South Africa, have attracted individuals as owners, among other differences, from unique socio-economic, political, religious and cultural backgrounds. The lifestyles and nurturing experiences of individuals that become owners in residential sectional titles schemes are different.

Despite owners' diverse backgrounds, the *Sectional Titles Act* imposes joint ownership and management on all the owners in the scheme. These owners are

expected to control, administer and manage the scheme through the body corporate jointly. Since the model of residential sectional titles properties demands interaction and collaboration amongst 'strangers' living and/or owning in these schemes, the researcher believed that residential sectional titles schemes were likely to be characterised by conflict, thus, affecting the smooth and efficient operations of the schemes in question.

The study discovered that conflict existed in the four schemes that were initially identified as case studies, namely, Kwezi-Mansion, Pan Villa Court, Castel Villa and Paving Heights. Furthermore, conflict was also found in seven of the 11 schemes that were included as additional case studies. The researcher, thus, found that conflict existed in the majority of the schemes that were employed as case studies. The remaining schemes, however, had potential conflict as well.

While it is true that the majority of the schemes that formed part of this study were characterised by conflict, no evidence was found in the study that could link any of the conflict in the schemes to the diversity of the backgrounds of the owners with an exception of Adelaide Court. This finding, therefore, refuted the researcher's initial belief that the unique backgrounds of the owners in the residential sectional title properties would be the source of conflict.

In terms of the findings of this study, factors that lead to conflict in residential sectional titles properties include failure to comply with the rules of the schemes by owners or residents, financial mismanagement and/or misappropriation of funds by the trustees or managing agents, abuse of power by the trustees, poor or lack of maintenance of the scheme by the body corporate, poor or lack of understanding by owners of how the sectional title model works, lack of respect for one another in the scheme, inability of the body corporate to meet its financial obligations, enforcement of one special levy after another, owners' negative perceptions towards one another, inconsistency in applying the rules of the scheme by the trustees and the disregard of the rules of the scheme by the trustees.

It is noteworthy, however, regarding the above causes of conflict that not all the causes of conflict were found across all the schemes that were found to have conflict. The causes of conflict that were found to be common across all the schemes were failure by owners to adhere to the rules of the body corporate, potential or actual failure by the body corporate to meet all its financial obligations, owners' perception or actual experiences of the managing agents to manage the scheme properly, and the undermining of the body corporate or its trustees by the managing agents.

Empirical evidence revealed that conflict in the residential sectional title properties in question involved bodies corporate, service providers, members of the bodies

corporate and boards of trustees. Consequently, the conflict in these situations were categorised as either internal or external. Internal conflict refers to conflict that involves only owners in the scheme (insiders), while external conflict refers to conflict that takes place between owners (body corporate) and service providers (outsiders). Both external and internal conflict affected and/or had a potential to affect the smooth operation of the schemes.

Furthermore, the conflict in the schemes was found to affect the body corporate and its individual members as well as the future of individual bodies corporate. The bodies corporate did not have any co-ordinated strategies or approaches to deal with the conflict that was found to exist within their schemes. The response to the conflict depended mainly on the leadership at the time such as that of the board of trustees. One may add that the general response to conflict was spontaneous.

Furthermore, the conflict could be classified into three categories: social, political and economical. Social conflict involves members of the bodies corporate at social level. In other words, it is a conflict that takes places as a result of owners' interaction as neighbours. Political conflict refers to a leadership battle or control over bodies corporate resources such as funds; and economical refers to conflict that emerged because of financial issues such failure by the body corporate to meet some or all its financial obligations.

1.10 Conclusion

The study found conflict existed in 11 out of 15 schemes that formed part of this study, while there was potential conflict in the other four. The conflict in these schemes was between the bodies corporate and their service providers such as the local authority, maintenance providers and managing agents; between the bodies corporate and their respective board of trustees; among members of the bodies corporate themselves; and among members of the board of trustees themselves.

The conflict in question could be classified as either internal or external. Internal conflict involved members of the body corporate as individuals or collectively, or the board of trustees (insiders). External conflict involved service providers (outsiders). Furthermore, the conflict could be classified into three categories: social, political and economical. Social refers to conflict amongst members of the body corporate over social matters; political conflict refers to a leadership battle; and economical refers to conflict that emerged because of financial issues such failure by the body corporate to meet all its financial obligations.

As already mentioned above, conflict in residential sectional title schemes cannot be attributed to a single factor. There are various factors that lead to conflict in residential sectional title schemes. Conflict involve different parties, which include individual members of the body corporate, the body corporate, board of trustees, managing agents, local authorities and maintenance service providers.

Finally, because of conflict, the smooth operation of the schemes becomes negatively affected. Owners and/or residents are deprived the use and enjoyment of their schemes. In some instances, facilities such as swimming pools are not properly

maintained, records of the schemes such as the minutes are not kept, general meetings are not held regularly, funds go missing, and there are frequent interruption of supply of services to the schemes; the latter are examples of evidence that the schemes are not operating smoothly.

CHAPTER 2: LITERATURE REVIEW

2.1 Literature review

The literature review forms a critical part of any study undertaken by a researcher. This assertion was confirmed by Fox and Saheed (2007:14) who believed that it is essential that the literature applied in the area of research be reviewed to ensure whether the problem has been addressed or resolved previously. In order to avoid conducting research on a problem that has already been addressed or resolved, the researcher should consult and review various sources of literature that will help him/her to find the right point of departure for his/her research study (Fox & Saheed, 2007).

It is only through reviewing relevant literature that the researcher is able to establish relevant facts and background information about the subject under study (Welman, Kruger & Mitchell, 2005:38-39). Furthermore, a literature review affords the researcher the opportunity to come into contact with the work of other researchers in his/her area of study. The literature review can also lead the researcher to individuals who the researcher may wish to contact for advice or feedback (Leedy, 1989:56).

The importance of reviewing literature was also shared by McMillian and Schumacher (2010:72) who believed that through the literature review the researcher can establish important relations between existing information and the

current study. Accordingly, in this chapter of the study, the focus is on the literature review in order to provide the researcher with a better understanding of the study at hand.

2.2 What is a sectional title scheme?

In order for one to understand conflict in sectional titles properties, one first needs to understand what is meant by sectional title properties. Hence, a discussion of the various literature on the subject and relevant legislation follows.

During the last century, South Africa embraced fragmented property ownership; one of these fragmented ownerships came in the form of sectional title properties which include industrial, commercial and residential properties (Pienaar, 2010). This dissertation, however, focuses only on the latter.

This fragmented property ownership was formalised through legislation such as the *Sectional Titles Act, 66 of 1971*, which made it possible for individuals to have direct ownership of immovable property in an apartment complex. In other words, the new Act (*Sectional Titles Act of 1971*) introduced a new and unique concept of property ownership in an apartment complex (Van der Merwe, 1981).

The introduction of the *Sectional Titles Act 66 of 1971* allowed fragmented ownership in apartment complexes which some scholars have referred to as new and unique

Horwitz, 1985; Pienaar, 2010; Van der Merwe, 1981). In terms of the Act, for the first time individuals could be joint owners directly in apartment complexes.

Furthermore, the Act did not only made it possible for individuals to have a share in the ownership of immovable property in the then existing single form of property ownership, but also made it possible for future developments of sectional titles schemes properties (Shandling, 1983).

Prior to 1971, individual ownership in apartment complexes was only possible through joint ownership of the entire building or through shareholding. In other words, one could only be an owner if one was a joint owner of the whole building or one was a shareholder in a company that owned the whole building. As an owner through either of these preceding methods, if one wished to occupy a section of the building one could only do so with the permission of his/her partners (Carter, 1986; Delport, 2004; Shandling, 1983).

Fragmented ownership in apartment complexes was not possible prior to the introduction of the 1971 Act. In other words, one was only permitted to own the entire building and its land, not a portion of the building; that is, it was not possible or permitted to divide ownership of the building amongst different individuals.

As previously mentioned, the *Sectional Titles Act* was first introduced in 1971 and made it possible for fragmented ownership in apartment complexes, and the registering of complexes as sectional title schemes and development of future sectional titles schemes (Shandling, 1983). Sectional title properties, unlike apartment complexes, permit fragmented ownership in the scheme and thus, allow individuals to purchase and directly own in the sectional titles schemes; hence, the ownership is referred to as special or unique (Horwitz, 1985).

Owners in sectional titles schemes are not just owners of the sections that they purchase and exclusively occupy, but they are also joint owners of the common property found in the scheme. This joint ownership also comes with the responsibility of sharing expenses for the upkeep and improvement of the same common property (Joubert, 1999).

In addition, in the sectional titles model, different people each own a portion of a building or buildings, and it is not a requirement that the buildings be physically joined together (Kaplan, 1988; Pienaar, 2010). In other words, a sectional titles scheme can comprise of freestanding units on a property.

Sectional title schemes, therefore, can be summarised as the building or buildings that is/are divided into sections and the common property in which acquisition of separate property ownership in sections coupled with joint ownership in common

property exist (Preamble of *Sectional Titles Act, 95 of 1986*). What needs to be noted in this model of property ownership is the fact that the sectional title scheme brings with it the element of fragmented property ownership, which is established in terms of the Act.

2.3 Sectional title schemes are products of legislation

As partly revealed in the discussion above, sectional title schemes are products of legislation. This conclusion is informed by the fact that the existence and operations of sectional titles schemes are governed by the *Sectional Titles Act, 95 of 1986 (as amended)*, which replaced the *Sectional Titles Act, 66 of 1971*.

Sections 4 to 14 of the *Sectional Titles Act, 95 of 1986 (as amended)* outline the procedure a developer needs to follow when he intends developing and registering a sectional title scheme. Once the scheme is established, the Act proceeds to prescript, in sections 15 to 19, among other things, on how to deal with the registration of transfer of ownership and common property. This further confirms that the existence and the operations of the sectional title schemes are subject to statutory law.

The scheme is also governed by management and conduct rules respectively. Management and conduct rules form part of the Act as annexures 8 and 9

respectively. Both management and conduct rules form part of the key elements of residential sectional title schemes as illustrated shortly.

2.4 Key elements of residential sectional titles schemes

In order to understand residential sectional titles schemes and how they ought to operate, one first needs to understand their elements. There are six key elements of residential sectional title schemes, namely, the body corporate, board of trustees, managing agents, levies, rules and common property. These six key elements also distinguish the model of residential sectional title scheme properties from the conventional or traditional residential freehold properties.

The six key elements do not only distinguish residential sectional title schemes from conventional/traditional freehold properties, but they are also important in the operation and survival of residential sectional title properties. The first element discussed is the body corporate.

2.4.1 The body corporate

One of the key features that distinguish the residential sectional title schemes from traditional freehold property ownership is the existence of the body corporate. The bodies corporates in residential sectional titles schemes come into existence immediately when property ownership is extended to a third party as substantiated

below; that is, when someone other than the developer becomes an owner in a particular scheme.

The above argument is based on section 36 (1) of the *Sectional Titles Act 95 of 1986 (as amended)* which stipulates that “With effect from the date on which any person other than the developer becomes an owner of a unit in a scheme, there shall be deemed to be established for that scheme a body corporate of which a developer and such person are members, and every person thereafter who becomes an owner of a unit in that scheme shall be a member of that body corporate”.

Accordingly, a body corporate is formed by individuals who own at least one unit in a particular scheme. Thus, individual ownership in a particular scheme qualifies that individual to be a member of that body corporate. In other words, all owners of sectional titles units are members of the body corporate until the day they sell their units or cease to be owners in the scheme (Pienaar, 2010).

On a few occasions, membership of the body corporate may include a lessee depending on the lease agreement concluded between a lessee and a lessor. A lessee qualifies to be a member of a body corporate if he or she has concluded at least a 99-year lease agreement with a lessor in a scheme and such lease must be registered in the Deeds Office (Carter, 1986). In this situation, a lessee replaces an

owner as a member of the body corporate for the period of the lease agreement (Carter, 1986).

Furthermore, membership of the body corporate includes the developer provided the developer is still an owner in the scheme (Pienaar, 2010). Body corporate membership is obligatory for all the owners in the scheme. The membership in question cannot be revoked as it is linked to ownership of a unit and “ceases only when a person loses her ownership or when the developer ceases to have a share in the common property” (Pienaar, 2010:91).

The above mentioned membership of the body corporate, comes with some obligations towards the body corporate itself and towards other sectional title owners regarding the use of the unit by individual owners. “These obligations and restrictions mean that sectional ownership is to a great extent limited by the rules of the sectional title scheme and by the obligations towards other sectional owners as stated in the *Sectional Titles Act* as well as neighbours’ law restrictions” (Pienaar, G 2010:88). Hence, one cannot do as one pleases in sectional title properties because of the obligations and rules that govern individual owners in such properties.

As previously stated, body corporate membership is linked to ownership in the scheme, and this means that one cannot be forced to remain a member of a particular body corporate when one has ceased to be an owner of a unit in a

particular scheme. Losing ownership in the scheme does not only release one from the body corporate membership, but it also automatically releases one from the obligations that come with that membership.

Once established, the body corporate is expected to fulfill certain responsibilities. Among other responsibilities, the body corporate is responsible for the enforcement of the rules that apply to the scheme, and for the control, administration and management of the common property for the benefit of all owners in terms of section 36(4) of the Act. The body corporate is required “to do all things reasonably necessary for the enforcement of the rules and for the control, management and administration of the common property” (section 38(a)(j)).

In addition, the Act outlines functions of the body corporate in section 37. The body corporate’s functions include ensuring that there are sufficient funds for the repair, upkeep, control, management and administration of the common property, and to create a financial reserve for future maintenance and repairs (section 37).

Furthermore, the body corporate is expected to ensure that rates and taxes, and other services that are rendered to the scheme by various service providers including the local authority that supplies water and electricity are paid timeously (section 37(a)). Therefore, being members of the body corporate is not the only legal relationship among the owners of units in the scheme. Owners of units are also

legally bound together by co-ownership and management of their scheme (Horwitz, 1985; Pienaar, 2010).

The body corporate is also empowered to impose levies on individual unit owners for the purpose of the expenses referred to above (section 37(b)(c)). This means the owners' contribution or levies towards the body's corporate expenses is obligatory as stipulated in the Act.

Besides responsibilities and functions, the body corporate is further vested with some powers. These include the power to appoint the managing agents and employees as it deems fit. In other words, the body corporate does not only have the power to manage the scheme, but also to enter into contractual agreements with service providers.

Moreover, the body corporate is vested with the power to appoint the trustees, who are subsequently discussed in detail, to perform and exercise its functions and powers. That is, "the functions and powers of the body corporate are exercised mainly by the trustees as management and administrative organ who derive their authorities from the provisions of the Act, the rules and the resolutions passed at the general meetings of sectional owners" (Pienaar, 2010: 94).

Therefore, the body corporate consists of two organs, namely, the sectional owners as members, the members' organ, and the trustees as the management and administrative organ (Pienaar, 2010). The trustees are appointed or elected to carry out the functions and responsibilities of the body corporate.

As demonstrated above through reference to specific sections of the Act, the actions of the body corporate and the trustees is limited by the Act. They derive their functions and power from the Act. In addition to the Act, the two organs also derive their powers from the rules, which are discussed in detail below, and the resolutions passed at the general meetings of the owners.

The body corporate's or owners' meetings

As stated previously, besides the Act and the rules, the actions of the administrative organ of the body corporate are restricted by the resolutions taken at the general meetings of the owners. The first meeting of the body corporate is convened by the developer.

In terms of section 36(7)(a) of the Act, the developer is obliged to convene a meeting of the owners within 60 days of the establishment of the body corporate. For this first meeting at least seven days' written notice must be given with a prescribed agenda attached to the notice.

At the meeting in question, the developer is obliged to furnish the members of the body corporate with the following documents: a copy of the sectional plan; a certificate from the local authority that all rates due by the developer until the establishment of the body corporate have been paid; and proof of revenue and expenditure in respect of the management of the scheme until the establishment of the body corporate (section 36(7)(a)(i)-(iii)).

The Act further states that any balance of the revenue, after the expenditure has been settled, must be paid over to the body corporate. A developer who fails to comply with any of these provisions is guilty of an offence and can be fined or imprisoned for a period not exceeding two years (section 36(7)(b) and *Sectional Titles Schemes Management Bill 20 of 2010* s 2(10). (Pienaar, 2010: 167).

After the meeting convened by the developer, the Act makes provision for only two meetings of the body corporate: an Annual General Meeting (AGM) and Special General Meeting (SGM). The annual general meeting must be held within four months of the end of each financial year (rule 51(1)). Unless otherwise decided at a general meeting or by the trustees, the financial year of the body corporate runs from the first day of March until the last day of February of each year (rule 51(2)).

On the other hand, SGMs as provided for in terms of rule 52, may be convened by the trustees at any time they think fit, or upon a request in writing by owners entitled

to 25 per cent of the total participation quotas, or by any mortgagee holding mortgage bonds of over at least 25 per cent in number of the units (rule 53). This means there may be a number of SGMs in a year.

The Act stipulates that if the trustees fail to convene a SGM on request by those who are entitled to do so, those who requested the meeting and are entitled to do so may convene such a meeting themselves (rule 53). Except in the case of the first meeting of owners, written notice of at least 14 days must be given to all owners, mortgagees who have advised the body of their interest, and the managing agent (rule 54(1); Pienaar, 2010).

According to rule 54(1), the notice of the meeting must specify the place of the meeting, within the magisterial district where the scheme is situated or such other place determined by special resolution, the date of the meeting and the special business to be attended at the meeting.

While general meetings require at least 14 days' notice, a general meeting may be convened at a shorter notice if all persons entitled to attend the meeting have agreed thereto (rule 54(6)). The notice of the meeting must be delivered to the address, which is legally referred to as *domicilium citandi et executandi* of each owner or the addresses of mortgagees as reflected in the documents of the body corporate (rule 39(2)). The fact that the notice of the meeting, however, did not reach an owner

who was entitled to such notice due to inadvertent omission (except a mortgagee) or the non-receipt of such notice shall not invalidate any proceedings at such a meeting (rule 54(5)).

On the other hand, the notices of AGMs must be accompanied by all documents prescribed in rule 39(1). The documents in question include the schedules of the replacement value of buildings and sections for insurance purposes (rule 29(1)(c)); the budget (rule 36); the financial statements for the preceding year (rule 37); and the chairperson's report (rule 38) (Pienaar, 2010).

While general meetings require at least 14 days' notice, a notice of at least 30 days is required for the purposes of passing a unanimous or special resolution at a general meeting, and the notice of the meeting intended for the purpose of passing a resolution must specify the proposed resolution (rule 54(7)). Trustees, however, are permitted to convene an urgent SGM, with less than 30 days' notice, for the purpose of passing a resolution if in their opinion the matter is urgent or given the specific nature of the matter to which a resolution is required (rule 54(7)).

For any general meeting to begin to discuss the business of the day, a quorum must be present. Without the quorum, no business may be transacted or resolution passed (rule 57(1)). The quorum required for a general meeting differs in accordance with the number of units in the scheme. For instance, in schemes where there are 10

or fewer units, the number of owners holding 50 per cent of the votes form a quorum in that particular scheme. In schemes that have between 11 and 49 units, the quorum is formed by the number of owners holding at least 35 per cent of the votes. In the case of schemes that have 50 or more units, the number of owners holding at least 20 per cent of the vote forms a quorum (rule 57(1)).

In terms of the aforementioned quorums, owners must be present in person, by proxy or by any representative recognised by law and entitled to vote. This rule applies to all the schemes irrespective of the size of the scheme in terms of the number of units in the scheme (rule 57).

In the event that there is not a quorum at such a meeting within 30 minutes of the appointed time, the meeting is to be adjourned to the same day in the next week at the same place and time, and if at the adjourned meeting a quorum is not present within 30 minutes of the appointed time, the owners present or by proxy and entitled to vote will form a quorum (rule 58).

In terms of rule 59(1), the general meetings discussed above are to be chaired by the chairperson of the trustees unless members of the body corporate decide otherwise at the meeting. If at the time of the meeting, the trustees have not yet chosen their chairperson or in the event that the chairperson of the trustees is not present at the general meeting within 15 minutes after the appointed time, or is

unwilling or unable to act as chairperson, the members present are empowered to appoint a chairperson for such meeting (rule 59(2)). Apart from convening the general meetings of the body corporate, the trustees are expected to perform the functions and powers of their respective body corporate.

The general meetings discussed above are not only crucial to provide owners with an opportunity to participate in the management of their schemes, but they are also crucial in providing the administrative organ (trustees) with directions and restrictions as envisaged in section 39(1) of the Act. In terms of the preceding section of the Act, members of the body corporate at an AGM are given an opportunity to impose restrictions or directions they deem necessary on the trustees. This is one of the compulsory items on the agenda.

2.4.2 The trustees of the body corporate

As outlined previously, the body corporate appoints or elects trustees to exercise its functions and powers. Trustees are elected at the first general meeting and thereafter, at every subsequent AGM. In terms of the rule, trustees must be nominated and elected by the members of the body corporate. Once elected, trustees hold office until the next AGM (Pienaar, 2010).

While the body corporate is allowed to determine its own number of trustees to hold office, the minimum number of trustees at the time must not be less than two (rule

4(1)). Collectively, these individuals are commonly referred to as the committee, board or an executive of the trustees (Paddocks, 2008; Pienaar, 2010).

While membership of the body corporate is limited only to owners, qualification to be a trustee is not only limited to members of the body corporate. Anyone can be a trustee provided the majority of the trustees are owners or spouses of owners (Rule 5(a)(b)). On the other side, the managing agent or his or her employees or an employee of the body corporate cannot be a trustee unless the individual concerned is an also owner in the scheme (Rule 5(a)(b)). In other words, while anyone can be a trustee, managing agent, his/her employees and employees of the body corporate are excluded from being trustees if they are not owners in the scheme.

The most important things to note about the board of trustees are that the majority on the board must be owners or spouses of the owners, and the managing agents or their employees, and the employees of the body corporate can only become trustees if they are owners in the scheme (Howitz, 1985; Pienaar, 2010).

Prior to the first general meeting of the body corporate convened by the developer, all owners in the scheme are regarded as trustees. As stipulated in Management Rule 4(2) “with effect from the date of the establishment of the body corporate, all owners shall be trustees who shall hold office until the first general meeting of the members of the body corporate as contemplated in Rule 50(1) whereupon they shall

retire but shall be eligible for re-election”. The chairperson of the body corporate from the date of the establishment of the body corporate until the first general meeting is the developer (Section 36 (7) of the Act).

The rule states further that “Any trustee so appointed shall hold office until the next annual general meeting when he shall retire and be eligible for re-election as though he had been elected at the previous general meeting” (rule 8). In the event of a vacancy, Rule 8 empowers the trustees to fill any vacancy that occurs during their term of office. In terms of the said rule, the remaining trustees may appoint an individual to fill any vacancy that exists on the board at the time.

In the event that a trustee is unable to fulfill his or her duties, for whatever reason, such trustee, may appoint an alternate trustee, being an owner or non-owner, to fulfill his duties and functions during his absence or inability to act as a trustee, and the alternate trustee will hold office until his or her appointment is revoked or the trustee who appointed him or her ceases to be a trustee (Pienaar, 2010:172).

Rule 13 also outlines six grounds on which trustees may cease to be trustees. In terms of the rule, trustees shall cease to be trustees: (i) if by notice in writing to the body corporate he/she resigns his office; (ii) if he/she is or becomes of unsound mind; (iii) if he/she surrenders his estate as insolvent or his/her estate is sequestrated; (iv) if he/she is convicted of an offence which involves dishonesty; (v)

if by resolution of the general meeting of the body corporate, he/she is removed from office and has been specified in the notice convening the meeting; (vi) if he/she is or becomes disqualified in terms of section 218 or 219 of the Companies Act of 1973, from being appointed or acting as a director of a company.

Furthermore, the body corporate may at a general meeting appoint another trustee in the place of any trustee who has ceased to hold office in terms of rule 13 referred to above. The trustees in question shall hold office for the unexpired part of the term of the trustee that has been replaced (rule 14).

In terms of rule 10(1), trustees who are owners are not entitled to remuneration for their duties unless otherwise determined by a special resolution of the owners. The body corporate, however, is expected to reimburse to “the trustees all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers” (rule 10 (1)).

While trustees who are owners may not be remunerated, trustees who are non-owners may be remunerated at such a rate as agreed between the body corporate and such trustees, and they are entitled to be refunded all disbursements and expenses incurred in carrying out their duties as trustees. According to Pienaar (2010:175), “This is to ensure that the body corporate may elect experienced and

skillful non-owners as trustees in circumstances where such skills are lacking among owners”.

According to rule 12(1)(b), any trustee or other officer or servant of the body corporate is indemnified by the body corporate for all costs, losses, expenses or claims caused by the *mala fide* or grossly negligent act or omission of such person. It is the duty of the trustee to pay such indemnity out of the funds of the body corporate (rule 12(1)(b)).

While trustees are empowered to enter into contracts with a third party such as the managing agent, “when contracting with the third party, the trustees are often regarded as agents of the body corporate acting within the scope of their actual or ostensible authority. It is submitted that the trustees act as the executive and management organ of the body corporate in internal and external matters and not as agents by representation” (Pienaar, 2010:97).

It is noted that trustees, “when contracting with outsiders, the application of section 39(1) and the *Turquand* (indoor management) rule determines the validity of the contract. According to Section 39(1), the trustees are empowered only to conclude an agreement binding the body corporate when such agreement falls within the functions and powers of the body corporate as determined by the Act, and the rules and/or a resolution of the members of the body corporate” (Pienaar, 2010:97-98).

As alluded to above, the trustees of the body corporate are appointed to perform and exercise the functions and powers of the body corporate. Trustees often do not have the time, skills or knowledge to perform and exercise the functions and powers the body corporate conferred upon them (Horwitz, 1985). In this regard, trustees often appoint a managing agent to execute administrative functions, and fulfil certain specific agreed functions and powers of the body corporate and the trustees (Pienaar, 2010: 184).

2.4.3 Managing agents

As noted previously, the functions and powers of the body corporate are performed and exercised by its executive better known as the board of trustees. In turn, this executive is also empowered to subcontract all or part of its functions and powers to a third party known as the managing agent. In other words, the managing agent is appointed to exercise and perform the functions and powers the body corporate entrusted to its trustees.

The managing agent can be a juristic or natural person; thus, it can be an individual or a company (Management rule 47). The conduct of the managing agent is regulated by the *Estate Agent's Act 112 of 1976*. Woudberg (1996) stated that Act prescribes, "In order for the managing agent to practise, and to operate a trust account, i.e. an account of the body corporate funds, he must be in possession of a fidelity fund certificate. This protects the body corporate from financial losses that

could be caused by his or her staff's negligence or fraudulent activities" (in Joubert, 1999:107).

As long as there is no restriction imposed on the trustees in terms of section 39(1) of the Act, "The trustees may from time to time, and shall if required by a registered mortgagee of 25 per cent of the units or by the members of the body corporate in general meeting, appoint in terms of a written contract a managing agent to control, manage and administer the common property and the obligations to any public or local authority by the body corporate on behalf of the unit owners, and to exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor or caretaker".

In terms of the preceding quote: (1) trustees may appoint the managing agent as and when the need arises, which means it is their prerogative decision to appoint the managing agent; (2) they may appoint the managing agent when requested by the financial institution that has registered at least 25 per cent of the units in that scheme; (3) or they may appoint the managing agent when they are requested to do so by members of the body corporate in a general meeting.

It is important to note that in all the three scenarios that involve the appointment of a managing agent the trustees are the only ones who are authorised to appoint a managing agent. In other words, the responsibility to appoint the managing agent is

entrusted to the board of trustees only. Another important point to note is that the appointment of the managing agent must be in writing; that is, there must be a written contract between the two parties.

Managing agents are initially appointed for a period of a year and if the trustees, acting on behalf of the body corporate, do not terminate the contract, “The contract shall automatically be renewed from year to year” (Management rule 46(1)(b)). The trustees, however, can only terminate the contract of the managing agent if there was such a resolution taken by them in their meeting or if there was an ordinary resolution taken by the body corporate at its general meeting (Management rule 46(1)(b)).

As previously stated, the contract between the managing agent and the body corporate must be in writing. This written contract is expected to include mandatory provisions which are outlined in Management Rule 47. The rule states, “The contract with the managing agent shall further provide for the appointment to be revoked, and such managing agent shall cease to hold office if:

- (i) Where the managing agent is a juristic person, an order is made for its provisional or final liquidation or, where the managing is a natural person, he applies for the surrender of his estate as insolvent or his estate is sequestrated either provisionally or finally or, where the managing agent is a company, it is placed under judicial management; or

- (ii) The managing agent is convicted of an offence involving an element of fraud or an element of dishonesty or, where the managing agent is a company or a closed corporation, any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty; or
- (iii) A special resolution of the members of the body corporate is passed to that effect: Provided that in such event the managing agent so removed from office shall not be deprived of any right he may have to claim compensation or damages for breach of contract”.

The above rule does not only mean that the managing agents should always be in good legal and financial standing, but it also means that trustees do not have to wait until the end of the contract to remove their managing agents. Trustees may remove managing agents at any time if a special resolution to that effect is taken by the body corporate. If the body corporate deems that the services of the managing agent are no longer needed, it may instruct its board of trustees to terminate the contract of the managing agent.

While the body corporate has the power to terminate the services of its managing agent, this power or right comes with a caution to the body corporate to ensure that the termination is within the law or else the body may be sued by the managing agent for breach of contract and thus, liable for damages. Despite this negative reflection on the managing agent, the managing agent remains one of the key

players in residential sectional title schemes (Delpport 2004; Horwitz, 1985; Pienaar, 2010).

In addition to the fact that managing agents need to comply with the contract signed between them and the body corporate, managing agents are also required to satisfy the requirements of the Estate Agent Affairs Board (EAAB). After undergoing all the necessary training, the managing agent is issued with a Fidelity Fund Certificate by the EAAB that is valid for one year (Delpport, 2004; Paddocks, 2008).

Managing Agents are required by the rules of the EAAB to renew their Fidelity Fund Certificate by paying a certain fee to the board so as to continue to operate legally as estate agents. If the estate agent, however, is not in good standing, his/her fidelity fund certificate will be withdrawn or suspended or a fine imposed, depending on the severity of the offence committed by the estate agent (Horwitz, 1985; Paddocks, 2008).

It is apparent from the above discussion that the body corporate, trustees and the managing agents are important role players in the management of residential sectional title schemes. The primary responsibility to manage the scheme rests with the body corporate. The body corporate, however, in terms of the powers conferred on it by the Act, confers both its functions and powers to its board of trustees (Delpport, 2004).

The board of trustees, in turn, subcontracts the body corporate's functions and powers to a managing agent. While it is true that the trustees when appointing a managing agent are exercising powers conferred upon them in the Act, the appointment of a managing agent is necessary for the efficient functioning of the scheme (Horwitz, 1985). She argued, "If a development scheme is to function successfully, provision must be made for effective organs and agencies of management that should include people who have both the time and knowledge to do the necessary work" (Horwitz, 1985:90).

According to scholars such as Horwitz (1985), trustees do not often possess the necessary time, skills and expertise to manage their scheme; hence, the need for them to appoint a managing agent. Apart from its important role, the body corporate may be compelled by interested parties such as mortgage lenders to appoint a managing agent, which is not the case in traditional freehold properties. For this reason, a managing agent is one of the elements of sectional titles properties. Another element of sectional titles properties is levies.

2.4.4 Levies

The financial survival of the schemes depends on the owners' mandatory financial contribution, which is also referred to as levies (section 37(a)). The funds raised by the body corporate are for its administrative expenses.

According to section 37 (1)(a) of the Act, there should be enough funds to cover (i) the repair, upkeep, control, management and administration of the common property and this should include reasonable provision for future maintenance and repairs; (ii) the repayment of rates and taxes and other local authority charges in connection with the supply of electricity, gas, water, fuel, sanitation and other services to the building or buildings and land; (iii) any premiums of insurance; and (iv) the discharge of any duty of fulfillment of any other obligation of the body corporate.

As envisaged in section 37(1)(c), the amount to cover the above expenses is determined by the body corporate from time to time. The exact amount to be paid is normally decided at an AGM of the body corporate. Trustees with the assistance of the managing agent draft and present a proposed budget to be considered and approved by the owners at an AGM. If the current levies are not sufficient to cover the expenses discussed above, levies are likely to be increased at the AGM, thus, increasing the income of the body corporate.

The starting point for the body corporate to raise levies is to draft a budget that covers the actual and/or potential expenses of the body corporate including the expenses referred to above. Accordingly, the body corporate must first determine its annual estimate of administrative expenses (Delport, 2004; Horwitz, 1985; Kaplan, 1988). This is detailed in section 37(1)(d) of the Act, which states that the body corporate shall “determine from time to time the amounts to be raised for the

purposes aforesaid”. The exact levies each owner in the scheme will be required to pay depends on the ownership of the owner’s concern in that scheme (Pienaar, 2010).

In other words, an individual owner’s contribution towards the expenses of the body corporate is in proportion to the quotas of their respective sections or in accordance with the provisions of the rules (section 37(1)(d)) (Pienaar, 2010). The levies of those owners who are entitled to exclusive rights will include the areas that are exclusively used by them (Pienaar, 2010).

The preceding discussion indicates the levies of the bodies corporate should be calculated annually. In other words, the budget is based on an annual calculation. Despite this annual calculation, levies are generally collected in equal monthly installments and the expenses of the body corporate are divided into monthly expenses (Pienaar, 2010).

Again, levies due by owners are fixed for the entire financial year. As argued by Pienaar (2010:158), “For the period between the expiry of the previous financial year and the time owners become liable by written notice from the trustees for amended contributions for the new financial year, owners are liable for levies in the same amount and payable in the same installments as were due and payable during the

preceding financial year” Pienaar’s argument confirms that each sectional owner is liable for his/her entire levies raised in a particular financial year.

The above argument, however, should not be construed as saying that trustees cannot amend levies during the financial year. If they deem it necessary, trustees may increase levies any time during the financial year up to the maximum of 10 per cent. Trustees, however, are required first to inform sectional owners in writing of such an increase or changes in the levy payment (Pienaar, 2010). Trustees are not required to seek permission from the owners for such an increase, but they are only required to inform them about the anticipated increase or about their new financial liability towards the body corporate.

Any member of the body corporate, however, has the right to declare a dispute against the decision of the trustees to introduce a special levy or to increase levies. Even if such a dispute is launched, the payment of such a levy cannot be suspended until the dispute has been resolved (Pienaar, 2010). In other words, payment of levy that is in dispute will continue until the matter is resolved.

In essence, the levies of the body corporate are determined by the anticipated expenses or budget of the body corporate, and consequently, if any of the owners fails to pay his or her levy the budget of the body corporate becomes affected. As a result of individual owners’ failure to pay their levies, the body corporate might not be

able to meet its monthly expenses; thus, putting a serious strain on the budget of the body corporate. The situation described above confirms the argument that sectional owners are financially interdependent (Horwitz, 1985; Paddocks, 2008).

In terms of annexure 8 rule (31)(3), the trustees must notify each member of the body corporate within 14 days after each AGM of the actual levy amount to be paid by the owner concerned, and the manner of payment, which has been determined by the trustees (Pienaar, 2010). It is the responsibility of the trustees to raise and collect levies. Levies that are raised by the trustees, as empowered by section 37(1) of the Act, are due and payable as soon as the trustees have passed a resolution to that effect (Pienaar, 2010).

The above argument reveals that paying of levies is one of the sectional owners' obligations towards their bodies corporate. If, for whatever reason, a sectional owner defaults in his or her levy payment, the body corporate through its board of trustees may approach any competent court, including a magistrate's court, to recover the outstanding levies from the owner concerned or from any "persons who were owners of units at the time when the resolution was passed" (Pienaar, 2010:158). This means former owners may also be pursued for outstanding levies.

Furthermore, an individual sectional owner may be prevented from participating in the affairs of the body corporate if the individual owner is not in good standing with

his or her levies. “Except in the case where a special resolution or unanimous resolution is required under the Act, an owner who fails to pay his contributions will have no voice in the affairs of the body corporate” (Horwitz, 1985:134; rule 26 of Schedule 1 of the Act).

Pursuing of current or former sectional owners for arrear levies through legal action as suggested above, may result in the body corporate incurring unnecessary legal expenses. In order to understand whether or not body corporate is entitled to recover legal expenses incurred while trying to recover outstanding levies, Pienaar (2010) resorted to the interpretation of the court in the case of *Barnard NO v Regspersoon van Aminie en ‘n Ander*.

In the above mentioned case, “the grammatical meaning of the word ‘all moneys due to the body corporate’ is wide enough to include not only arrear levies but also legal costs incurred in the recovery of the levies either before sequestration or by way of sequestration proceedings, as well as interest on arrear levies, to use other means to collect them (such as settlement procedures) or to write them off” (Pienaar, 2010:158). Therefore, the body corporate may recover, from the sectional owner, all the expenses it incurred relating to the processes of the recovery of arrear levies.

The trustees of the body corporate are required and empowered to open and operate an account or accounts into which levies are to be deposited. The account

or accounts in question must be opened with the financial institution in the name of the body corporate (section 37(1) and *Sectional Titles Schemes Management Bill 20 of 2010 s3(1)(f)*). According to annexure 8 rule 41, the financial institution at which an account of the body corporate is held must be a commercial bank or building society.

In addition, the type of account to be opened by the trustees must be a current account, which will be used mainly for the running costs and payment of expenses (rule 41). Should there be any money that trustees may not require immediately for body corporate expenses, such money can be invested in any of the registered banks or building societies provided the investment is risk free ((section 38(g); *Sectional Titles Management Bill 20 of 2010 s4(g)* and annexure 8 rule 43) (Pienaar, 2010). .

As noted previously, all funds that that the body corporate intends to invest should not be invested in high-risk financial instruments unless management rule 43 has been amended by the body corporate (Pienaar, 2010). Rule 43, however, may not be amended by the developer. It may only be amended by the body corporate after 50 per cent of the units have been transferred to sectional owners; reg. 30(1) and (4) (Pienaar, 2010).

Furthermore, in terms of *Sectional Titles Schemes Management Bill 20 of 2010* s 3(2), the new owner in the sectional titles scheme becomes liable from the date of transfer of ownership of the unit for the pro rata payment of levies and contributions (Pienaar, 2010). The notice in terms of rule 31(3) concerns only the extent and frequency of the payment of the installments, which becomes payable after passing the resolution to such effect by the trustees in terms of s 37(2).

One of the ways in which the body corporate can meet its financial obligations is through borrowing. As noted by Pienaar (2010:159), “The body corporate may borrow money to perform its functions and exercise its powers and secure repayment of money borrowed (section 38(e) and (f); *Sectional Titles Schemes Management Bill 20 of 2010* s 5(1)(d)). This includes repayment of interest on the borrowed money, and repayment may be secured by hypothecation (cession) of unpaid contributions (whether levied or not) or by mortgaging any property vested in the body corporate”. This way of raising money through borrowing is hardly if ever used by bodies corporate. .

While the body corporate is allowed to secure loans and use levies as collateral, the body corporate, however, cannot use the common property as collateral in securing a loan because “the common property does not vest in the body corporate but in the sectional owners (section 16(1)” (Pienaar, 2010: 159). The sectional owners are

deemed to be common owners of such land in accordance with their respective participation quotas (s 5(2)(b) (Pienaar, 2010).

The body corporate, however, can use any additional land that is registered in its name in terms of section 26(1) and the *Sectional Titles Management Bill 20 s 5(2)(a)*. The land in question can be used as collateral by the body corporate in the event of securing a loan subject to a unanimous resolution by members of the body corporate in securing such a loan (section 38(f) and *Sectional Titles Management Bill 20 of 2010 s (4)(f)*) (Pienaar, 2010). In other words, the body corporate has the land registered in its name and levies at its disposal that it could use as collateral in securing a loan.

The above discussion reveals four ways in which the body corporate can raise income when confronted by financial challenges. Firstly, the body corporate can raise its income through a levy increase. Levies, however, cannot be increased simply because other owners are not paying. Trustees can raise levies when they realise that the current levies do not cover all the expenses of the body corporate.

Secondly, the body corporate, through its board of trustees, can raise its income by introducing a 'special levy'. It is important to note, however, that, "The introduction of the special levy does not suspend the payment of the normal monthly levies. A special levy is a contribution that is made over and above the normal monthly levies.

In other words, in the event that a special levy is raised owners will be required to pay both their normal monthly levies and a special levy” (Pienaar, 2010: 159).

While trustees of the body corporate, in terms of prescribed management rule 31(4), are empowered to raise a special levy, there are two important requirements that need to be taken into account when raising a special levy. Firstly, the special levy must be necessary and secondly, a special levy cannot be raised to pay an expense that was already included in the budget approved at the previous AGM (Paddocks; 2008).

Special levies are for emergencies only. Accordingly, a special levy cannot be enforced for an expense that could wait for inclusion in the budget for the next financial year. Mismanagement and/or misappropriation of funds by the trustees or the managing agent does not constitute an emergency (Paddocks 2008).

In terms of both the *Sectional Titles Act* and the prescribed rules, the enforcement of a special levy is at the sole discretion of the trustees. The Act states that a special contribution becomes due on the passing of a resolution; in this regard by the trustees (section 37(2)). The rules, on the other hand, state that the trustees may enforce special levies upon the owners (Management rule 30). Owners in this case do not necessarily have a say in the raising of a special levy. They just have to pay when trustees ask them to do so.

Thirdly, the body corporate can increase its income by cutting down on its expenses. For instance, the body corporate can have their insurance premiums reviewed regularly. The trustees can look for cheaper insurance. They can also reduce their management fee by looking for a cheaper managing agent, and further negotiate with other service providers such as maintenance providers for cheaper prices, among other things.

Fourthly, the body corporate can raise income through borrowing. Bodies corporate can borrow money in accordance with the restrictions of the Act. The four strategies can be employed one at a time or a combination of two, depending on the circumstances. In terms of the above discussion, sectional properties and the owners within them are subject to rules to ensure the smooth and efficient operation thereof.

2.4.5 Rules of the schemes

As discussed previously, another important element of residential sectional title schemes are rules that are intended for the smooth and efficient running of the schemes. This view is shared by Horwitz (1985:133) who stated, “The success of a development scheme in the medium and long term is dependent on the body corporate ensuring that owners observe the provisions contained in the Schedule Rules”. This means rules alone are not sufficient. They need to be enforced in order to be effective.

Section 35(1) of the Act states, “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”.

The Act, in section 35(2), states, “The rules shall provide for the control, management, administration, use and enjoyment of the sections and the common property...”. This means rules referred to in the above sections of the Act shall apply to all bodies corporate.

Furthermore, in section 35(1)(a) and (b), the Act outlines management and conduct rules, which form part of the Act as annexures 8 and 9 respectively. Since the Act, however, does not dictate that the provisions of the management rules must relate to management issues only and that those of the conduct rules must relate to conduct issues, the main difference between these two rules is the way they can be amended (Paddocks, 2008:9-2).

Management rules can be amended through a unanimous resolution while conduct rules can be amended through a special resolution of the body corporate or by the developer when submitting an application for the opening of the scheme (section 35(a) and (b) respectively) (Horwitz, 1985, Paddocks, 2008; Pienaar, 2010).

Both the conduct and management rules are binding on the body corporate and the owners of the sections and on any person occupying a section in a scheme (section 35(4)) (Pienaar, 2010). This means not only owners in the scheme must comply with the rules, but tenants as well are bound by the rules of the body corporate. The rules of the schemes, however, do not bind the managing agent or other employees of the body corporate and visitors. Section 35(4) identifies those that are bound by the rules as owners of the sections and any occupiers of the sections, which could be tenants (Pienaar, 2010).

The only time that the managing agent and the body corporate will be bound by the rules of the scheme is when they are owners or occupiers of the sections in the scheme. The managing agent may further be bound by the rules when his managing agent's contract dictates that he must manage the scheme in accordance with the rules of the scheme (Pienaar, 2010).

It is required by the Act that the rules of the bodies corporate are reasonable and are applied equally to all the owners of the units in the scheme (section 35(3)). This simply means that the rules must be applied fairly and consistently to everyone that is bound by them (Paddocks, 2008; Pienaar, 2010). For example, the body corporate cannot prevent one owner from hosting a party, but allow another one to do so.

The rules of the body corporate are important to ensure that the scheme operates effectively and efficiently. Accordingly, Paddocks (2008:9-1) noted, “Rules regulate the operations of the body corporate and the behavior of the trustees. They are designed to ensure that owners can participate in the management of the scheme in an orderly fashion and that proper management and control protects them all”.

The rules are also important in order “to regulate the conduct of owners and other occupants of sections and set out the limitations they must observe in their behavior both within their sections and on the common property. Because the occupants of sections all live close to one another and share the use and enjoyment of the common property, it is important that they are aware and considerate of the rights” (Paddocks, 2008:9-1).

While others may perceive the rules of bodies corporate as restrictions of individual liberties, Paddocks (2008:9-1) argued that rules “exist to protect the common right of all occupants of sections to peaceful and unobstructed use and enjoyment of their sections and the common property”. Therefore, rules compel owners and residents in the scheme to be considerate of one another’s rights and to ensure that residents and owners have access to and enjoy the resources available in the scheme.

In the case of *Spoetra J in Wiljay Investments (Proprietary Limited) v the Body Corporate, Bryanston Crescent* and another it was held that:

The rules set out in Schedule 1 of the Sectional Titles Act 66 of 1971 are not intended to define or limit the ownership of individual owners of sections, units, or common property. The rules, read with the provisions of the Act, contain a constitution or the domestic statute of the Body Corporate. In this sense, it could properly be construed as containing the terms of an agreement, between owners inter se, and between owners on the one hand, and the Body Corporate on the other hand, providing for the use, enjoyment and maintenance of the property which forms the object of the hybrid rights of ownership created by the Act. Arrangements of this nature have never been considered as servitudes of any nature (Horwitz, 1985:124-125).

The preceding quote does not only portray rules in sectional properties as significant for the smooth operation of sectional properties, but the court above also expressed the view that rules are a mutual agreement between the owners. The rules in the case in question are described as being contractual in nature. The view expressed above was shared by the Supreme Court of New South Wales in which the court held that “by-laws of the body corporate constitute covenant between the proprietors inter se and between the proprietors and the body corporate” (Horwitz, 1985:128).

Since sectional ownership is dependent upon the co-operation and participation of the owners, enforcement of the rules by the body corporate becomes crucial. As indicated above, the body corporate should do all things reasonably necessary to ensure the enforcement of the rules (rule 26 of Schedule 1 of the Act). Among other sanctions, the body corporate may suspend an owner's right to participate in the body corporate matters, debit the owner with the costs in the event that the owner has failed to maintain his section in a state of good repair or approach the court for appropriate relief.

For Cowen, (in Horwitz, 1985:133), "The notion that men can effect great reforms by the simple process of prohibiting conduct by a law is no doubt attractive to human vanity, but unless the prohibition of law reflects the real conviction and habits of the people, the law itself will soon become a dead letter". In other words, the law must succeed in achieving its results or else it will be useless. In the case of bodies corporate, the law must be able to prevent unwanted conduct of the owners.

Failure by the body corporate to enforce the rules prescribed by the Act and owners' non-compliance with both the Act and the rules may render the scheme unworkable. It may lead to constant conflict amongst owners and/or residents living in the scheme. Disgruntled owners may resist complying with their obligations such as paying levies timeously and complying with other rules of the scheme.

In addition to the rules and other elements discussed above, sectional properties differ to traditional freehold properties in terms of the ownership of the common property.

2.4.6 Common property and ownership

Individual ownership in residential sectional title schemes comes with joint ownership of the common property. Common property comprises of a building or buildings in a scheme and the land on which the building or buildings is or are situated (Pienaar, 2010).

The buildings may be divided into sections (Section 2 of the Act). Further examples of common property include areas like staircases, lifts, corridors, communal washrooms, driveways, roads, recreation facilities, entrance areas and the exterior of the buildings (Shandling, 1983).

The ownership of the common property in residential sectional titles schemes rests with all the owners in the scheme. Paddocks (2008:12-7) noted, “Ownership of the common property is shared jointly by the owners of sections. This joint ownership is of an undivided nature in that no owner of a section can identify part of the common property as representing the share allocated to his section”. For this reason, any owner in the scheme has the right to use any part of the common property as

prescribed by the Act unless the common property is registered or allocated to an individual owner as an exclusive use area for that owner.

Examples of exclusive use areas in residential sectional title schemes include parking bays, balconies, carports, staff quarters and storerooms (Shandling, 1983).

Exclusive use areas are used solely by the individuals who have these areas registered in their names or allocated exclusively to them by the developer or the body corporate.

The six elements which were discussed previously, distinguish residential sectional title properties from conventional freehold properties. Owners in conventional freehold properties are sole owners of their properties. They have full rights over their properties, and with the exception of the local authority do not have to answer to a governing body, have no rules regulating their conduct, and do not pay levies. They own the land and all its permanent structures. The owner is solely responsible for the maintenance of his property including the common property and for the payment of rates and taxes to the local authority (Horwitz, 1985; Pienaar, 2010).

Failure by the body corporate to control, administer and manage the scheme properly may result in the appointment of an administrator.

2.5. Appointment of an administrator

According to section 34(2)(a) of the Act, the body corporate, the local authority, a judgement creditor of the body corporate for an amount of not less than R500, and an owner or any person having a registered real right in or over a unit may apply to court for the appointment of an administrator. The court has the sole discretion to appoint an administrator for an indefinite or a fixed period, or on such terms and conditions as to remuneration as it deems fit (Horwitz, 1985).

If appointed, the administrator takes over the responsibility of the body corporate or will perform any such duties and exercise powers as directed by the court (section 34(3) of the Act). The appointment of the administrator can be triggered by factors such as maladministration, a failure by the body corporate to perform its statutory duties and the inability of the body corporate to pay its debt (Horwitz, 1985).

The administrator is not obliged to account to anyone during or after his/her term as an administrator has expired. Furthermore, there is no provision in the Act that compels the administrator to apply formally to court for him/her to be discharged from his duties after the expiry of his appointment date if the appointment had a fixed period or where the period is indefinite (Horwitz, 1985). The court, however, may, or on application of any person or by the administrator himself/herself remove such administrator from office or replace him/her.

2.6. Brief summary of sectional title properties

From the above discussion, there is no doubt that interaction and collaboration form a critical part of residential sectional title schemes. Owners and/or residents need to work together in order for the scheme to operate effectively.

In the author's view, interaction and collaboration of the owners in residential sectional title schemes are required at least at three significant levels, namely: social, economical and legal. At a social level, owners and/or residents need to respect one another as interaction among them is inevitable. They use and share the same facilities that exist in the scheme such as swimming pools, club houses, children's play areas, tennis courts, and braai facilities. The Act demands that they regularly convene general meetings to deliberate on issues that involve their scheme. This situation forces all owners and/or residents to interact in one way or another.

At an economic level, the Act imposes on all the owners that they fund their own scheme financially. In terms of the Act, all owners in the scheme are expected to contribute towards the maintenance and upkeep of the common property that exists in the scheme. Therefore, since the budget of the scheme is based on the assumption that all owners will be making some monetary contribution towards the maintenance and upkeep of their scheme, failure by some owners to make the

required contribution may result in a negative financial effect for the scheme concerned.

If some owners do not pay their levies, the body corporate may not be able to comply with all its financial obligations, thus, affecting the effective operation of the scheme. This means that for the scheme to be financially viable every owner must pay his or her levies timeously and this demands nothing, but collaboration or cooperation amongst the owners in the scheme. In other words, owners are economically depended on one another.

At a legal level, residential sectional titles schemes are products of legislation. They are established and governed by legislation such as the *Sectional Titles Act, 95 of 1986 (as amended)*, and its management and conduct rules. Owners in the scheme are expected in terms of the Act to co-operate with one another by complying with the laws and rules that apply to their schemes.

It is apparent from all the sources employed above, from legislation to individual authors that the literature on the subject of residential sectional title properties focuses only on the legal ownership in these developments and hence, ignores the operational side of these properties. The literature focuses on how the schemes in question ought to operate in terms of the legislation. Consequently, little or nothing is known about the practical operations of residential sectional titles properties.

Therefore, the day-to-day operations of the owners in the schemes in questions are ignored. Consequently, the researcher hoped to establish the actual experiences of the owners in residential sectional title properties.

Since the introduction of the *Sectional Titles Acts* in the 1970s and 1980s, the residential sectional title schemes have been gradually growing across the country.

2.7 The rising of residential sectional title properties

While traditional or conventional residential freehold property ownership dominated and continues to dominate South Africa's property market, the rise of residential sectional title properties cannot be disputed. Since the 1980s, this form of property ownership "has been drawing more and more people into the system" (Carter, 1986:70): this confirms both its attractiveness and the increase of this form of ownership.

Property ownership in South Africa also comes in the form of residential sectional titles properties. This model of property ownership has provided both homes and ownership to individuals and families across the country over the years. The growth or rise of residential sectional title properties captured the attention of various practitioners in the property sector as demonstrated in various editions of Body Corporate News (BCN) compiled by various practitioners in this property area.

Sectional titles properties have been on the rise for a number of years. In April 2009, Body Corporate News (BCN) noted that there were 41,653 registered schemes in the country. This figure had grown by 10% from the previous year (BCN, Issue 33, 2009).

In addition, in March 2009, the number of registered sectional titles schemes in the country had increased to 58,187, an increase of almost 40% in two years (BCN, Issue 33, 2009). These schemes are found in many parts of the country and registered in different deeds offices as reflected in Table 2.1 below.

Deeds Office	Number of registered schemes
Pretoria	20,401
Pietermaritzburg	13,430
Cape Town	12,203
Johannesburg	6,467
Bloemfontein	3,888
Mpumalanga	1,245
King Williamstown	446
Kimberley	74
Umtata/Vryburg	43
Total	58,197

Table 2.1 (Source: BCN Issue 33 of March /April 2009)

The above table does not only confirm that currently there are many residential sectional title schemes in South Africa but it also confirms that residential sectional title schemes are spread across the country. In fact these schemes are found in all nine provinces in South Africa. .

The records of all the deeds offices in South Africa, which are listed in Table 2.1 above, confirms the registration of residential sectional title schemes in various parts of the country. In 2009, the majority of these schemes were registered in the Pretoria deeds office followed by the Pietermaritzburg deeds office. One, however, needs to understand that the deeds offices of these towns include registrations of properties from other towns (BCN, Issue 33, 2009).

For instance, the Pretoria deeds office includes most of Johannesburg's registrations while the Pietermaritzburg deeds office includes Durban registrations. On the other hand, the deeds office of Cape Town includes Port Elizabeth while King Williams Town includes East London (BCN, Issue 33,2009). In March/April of 2009, a total of 58,197 residential sectional titles schemes were registered in South Africa.

2.8 Factors that led to the rise of residential sectional title properties

As previously indicated, the supply and demand of sectional title properties are on the rise. As already noted, in some instances, the growth of sectional title properties was estimated at 40% over a period of two years (BCN, 2009). The increase in

demand for residential sectional title properties seems to support public opinion that the best way to own property at present is through sectional title schemes.

The popularity of residential sectional title schemes could be attributed to various facts or beliefs. Both the government and individuals welcomed the residential sectional title schemes with open arms when it was introduced in the 1970s in South Africa, not only because the system was a new and unique way of owning the property, but equally important it was also seen as a system that would bring advantages to both individuals and the economy (Carter, 1986).

As Kurland (in Carter, 1986:1) argued, the system promised to “provide stability for the economy, and for the individual, security tenure, cheaper home-ownership because of the advantages of mass production, increased availability of homes amongst the middle income group, social stability flowing from home ownership”. In other words, this new system was going to provide a solution to South Africa’s historical housing problems and contribute to economic growth, among other advantages. Unsurprisingly, both the state and many of its citizens, particularly the middle income groups, looked forward to the implementation of this system.

The increase in residential sectional title schemes in South Africa can also be attributed to the economic reality of our modern society. “Mass urbanization and limited available urban land are characteristics of all modern cities, and the demands

of overpopulation and dwindling and non-renewal natural resources necessitate economic adaptation” (Pienaar, 2010: 8).

Following the demise of apartheid and the repeal of the *Group Areas Act 36 of 1966* in South Africa, the demands for housing in urban areas increased due to a population explosion, housing shortage, the rising costs of material and land, and the shortage of available land within commuting distance of city centres. The preceding economic situation, therefore, provided for the necessity for fragmented property ownership (Pienaar, 2010).

At first, fragmented land ownership was not intended to address the shortage of housing for the lower income market. Many modern developments suggested that the initial fragmented ownership was intended for the higher income market as evident in most of the developments, which came in the form of upmarket townhouses, retirement villages and golf estates (Pienaar, 2010:9).

With time, however, fragmented property ownership became a tool to develop housing for the middle and lower income sectors (Pienaar, 2010:9). Given the circumstances surrounding fragmented property ownership, this type of ownership was regarded as necessary for modern development.

While this residential sectional titles system was open to all people irrespective of their social status, it mainly attracted unmarried individuals and young couples. It did not only promise to offer communal ownership to these people, but it also promised to offer them security, reasonable amount maintenance if any at all, and constant interaction amongst owners. The system was also to provide the owners with an opportunity to share expenses for the areas that were commonly used (Carter, 1986).

The high production of sectional properties can also be attributed to a shortage of accommodation as the result of high population growth and massive urbanisation, which was exacerbated by an abnormal increase in the price of land and building construction (Horwitz, 1985). These prices made home ownership beyond the reach of 'average' individuals and families. Consequently, ownership through sectional title schemes was seen as the solution to the aforementioned challenges.

2.9 Body Corporate versus Business Shareholders

A closer look at business and the body corporate reveals some similarities. Like business shareholders, members of the body corporate are expected to ensure that their schemes are run efficiently and operate in accordance with the prescribed legislation. Shareholders and investors in the business world share the same principle because they are also expected to ensure that their investments are well-managed and profitable (BCN, Issue 11, 2005).

Like business, property values are maximised when a body corporate is run efficiently. Shareholders in business need to ensure that their investment provides maximum returns (BCN, Issue 11, 2005). In business, shareholders acting in unison have the power to hire and fire the board of directors. The body corporate also, has the power, when they act in unison, to appoint and dismiss trustees, employees, managing agents and other service providers.

As stated previously, trustees are appointed by the owners, that is, the body corporate and are the servants of the body corporate. Shareholders appoint the directors in the business world to ensure the maximisation of their investments (Annexure 8, Management Rules 4 and 6 of the *Sectional Titles Act of 1986*). (BCN, Issue 11, 2005).

In both cases, these appointments are made within the concept of delegation; in other words, the functions and powers of the body corporate, namely, the stakeholders are carried out on a day-to-day basis by the trustees. In the business world, shareholders and investors entrust and delegate the activity associated with maximizing their investment to qualified individuals who engage in activities, which add value to their investment.

The preceding argument suggests that a body corporate can benefit owners greatly if it is run professionally (see Table 2.2 below). If this is done properly, property

values will be maximised and will increase. Trustees, like business directors, have powers which allow them to seek outside help to enable them to meet their performance responsibilities. Businesses seek assistance from private lawyers, retailers require the assistance of advertising agents, and wholesalers need the services of outsourced contributors and sales agents.

On the other hand, trustees representing the body corporate, that is the owners or stakeholders, often need and appoint agents to help them meet performance responsibilities. Body corporates in larger schemes invariably require assistance from managing agents, security companies, garden services, levy financiers and maintenance providers (BCN, Issue 11, 2005). All of these specialised service providers report to the body corporate through the trustees, and their performance is monitored by the trustees, whose performance is, in turn, monitored by the body corporate. In the business world, shareholders keep a check on their board of directors who, in turn, monitor the performance of their outsourced service providers (BCN, Issue 11,2005) (see Table 2.2 below).

Sectional Title

Business

Owners / Stakeholders	Shareholders /Investors
Are the central role players who collectively appoint and delegate powers and functions to trustees to ensure that the complex is run	Are the central role players who entrust their investment (money) to others (usually directors) whose powers and functions are to

efficiently.	maximise investment growth.
--------------	-----------------------------

<p>Trustees</p> <p>Act in the interest of owners / stakeholders and have the power to seek outside help.</p>	<p>Directors</p> <p>Act in the interest of shareholders / investors and have the power to seek outside help.</p>
---	---

<p>Service Providers</p> <p>Managing agents, Levy Financiers, Accountants, Garden Services, Caretakers, Maintenance, Security Staff.</p>	<p>Service Providers</p> <p>Lawyers, Advertising Agents, Distributors, Sales Agents</p>
---	--

Table 2.2 Table of reporting responsibility levels (Source: Body Corporate News, Issue 11, 2005).

In terms of this discussion, the board of trustees has more power than the managing agents. Trustees have the power to hire and fire the managing agent. However, trustees do not seem to be able to exercise their powers in some instances. Managing agents seem to dictate to the bodies corporate what and how to do things. This, in turn, has made the managing agents appear more powerful than the bodies corporates and their respective board of trustees. Lack of time and expertise on the part of the trustees exacerbate the situation (Horwitz, 1985). This results in managing agents taking full control of the residential sectional title schemes.

The above similarities between a body corporate and directors, however, should not be construed as saying there are no differences between bodies corporates and companies. While the body corporate is a juristic person, it differs in several respects from other statutory or common-law juristic persons. “According to section 36(5), the provisions of the Companies Act 61 of 1973 are not applicable to the body corporate. It is [body corporate] not established by registration, like other statutory juristic persons such as companies, close corporations or cooperatives, or by acceptance of a constitution, like common-law juristic persons” (Pienaar, 2010:149).

Another significant difference between the body corporate and other juristic persons is the liability of individual members. The liability of individual members for the financial obligations of the body corporate is not excluded as judgement creditors. The body corporate by application to a competent court may join sectional owners in their personal capacities as joint judgement debtors in respect of the outstanding debt (Pienaar, 2010).

2.10 The concept of property ownership in South Africa

Prior to the concept of fragmented property ownership that came into existence in South Africa in the previous century, South African land ownership was based on the idea of individualised ownership (Pienaar, 2010:1). This idea of individualised land ownership was promoted and supported by case laws and literature. As a result, the idea of fragmented property ownership was often “criticized as historically and

doctrinally unsound and predominantly aimed at the more luxurious sector of the property market” (Pienaar, 2010:1).

The concept of individualised land ownership was also embraced by the then South African apartheid regime for economic and political reasons. “Over centuries the belief has been nurtured and developed that individualized ownership of land is the basis of a sound and political economy. The belief was most evident in apartheid land laws and practices, reserving most of available surveyed land in South Africa for white ownership in order to retain economic and political supremacy in South Africa” (Pienaar, 2010:3).

The aforementioned concept of individualised property ownership in South Africa “has been regarded as a bastion of liberal capitalism, often more carefully protected than in most other western economies” (Pienaar, 2010:3). In this regard, landownership in South Africa could be viewed in two ways, namely, absolute and individualistic “By ‘absolute’ is meant that ownership is in principle unrestricted and, although it may be limited by public and private law measures, such limitations are generally temporary and do not permanently restrict a land owner’s absolute entitlements to do with her property as she likes” (Pienaar, 2010:4).

On the other hand, “the ‘individuality’ (or exclusivity) of ownership means that there is only one kind of ownership and that ownership is not fragmented” (Pienaar, 2010:

4). This view of individualised ownership was influenced by Roman and Roman-Dutch law and modern South African concepts of private ownership. Individualised property ownership is regarded, therefore, by its protagonists as the only proper way of owning a property.

Any other view of owning a property in a fragmented manner is rejected by protagonists of individualised property ownership. “The idea that an owner or occupier of urban property may be subjected to the rules and regulations of a property community raised intense criticism by supporters of the ‘traditional’ individualised property concept in South Africa” (Pienaar, 2010: 4). The traditional view of property ownership, however, goes against the view that ownership is an individualised and undivided right that should not be fragmented (Pienaar, 2010:4).

Despite its criticism by traditional individualised property ownership, fragmented property ownership today parades itself in the South African property market in various forms including the form of residential sectional title schemes. This joint ownership of immovable property existed in various parts of the world long before South Africa embraced the concept.

2.11 Joint property ownership not unique to South Africa

While joint ownership of immovable property in South Africa became popular in the last century with the introduction of the *Sectional Titles Act no. 66 of 1971*, by this time, however, separation of a part of a building to allow co-ownership by various owners was long in practice in various parts of the world.

In a study conducted by Ferrer and Stecher (in Carter, 1986), selling of a part or section of a building could be traced back to Ancient Babylon. In Ancient Babylon, the separation and ownership of part of a building was common; this suggests that separation and joint ownership of a building are not unique phenomena of South Africa.

Besides Ancient Babylon, there were other countries that were practising the separation of a building and joint ownership long before South Africa embraced the notion. This system came at different times and took different forms in other parts of the world as it was witnessed under the Roman Empire (Carter, 1986).

Under the Roman Empire, separation of a building and joint ownership was regarded as informal because there was no law that governed its existence (Carter, 1986). Instead, “there existed an informal pattern of ‘apartment’ ownership where relations between the co-owners were governed by usage and tradition rather than legal rules” (Carter, 1986:5). In other words, the system of joint ownership of a building

under the Roman Empire was based on usage and tradition as opposed to legal rules. Despite the fact that this system was not legally recognised under the Roman Empire, it did exist which further confirms that the system was not a South African invention.

The system of separation of buildings and joint ownership was also practiced in other parts of Europe. As was the case in Rome, the system existed in France during the Middle Ages informally. The system was also based on usage and tradition as opposed to written law. It was only at a later stage, in 1804, that the system was formalised. Ferrer and Stecher noted that the system was legally recognised through its inclusion in the 664 Code of Napoleon in 1804 (in Carter, 1986).

Belgium, on the other hand, started embracing the system as early as 1657. In 1924, the Belgium system was formally adopted when it was legally recognised through the Belgium Legal Code. In 1951, German and Holland adopted the system legally (Carter, 1986).

In Italy, the system was also evident. In this country, it went through three phases. The first phase was its introduction in 1865, the second phase was when the system was augmented in 1932, and the third and final stage was when it was finalised in 1942. Spain also embraced this system through its Civil Code of 1889 (Carter, 1986).

The South American countries were also not an exception to the introduction of the separation of a building and its joint ownership. It was evident in South American countries such as Brazil in 1928, Venezuela in 1958, Argentina in 1948 and Columbia in 1948 (Carter, 1986).

Furthermore, in England the system prevailed for many years without being legally formalised. In other words, it existed informally for many years as there was no legislation that governed it. It depended on the variety of schemes that were used. It is also noted that many other states in America adopted the system during the period of 1961 to 1986 (Carter, 1986).

The above discussion illustrates that the separation of a building and joint ownership of immovable property that came to parade itself in South Africa's property market in the 1970s was not a South African innovation. By the time South Africa embraced this system in the 1970s, other parts of the world such as Ancient Babylon, Rome and various parts of Europe had already experienced this system informally or formally. This means, therefore, that the system might have been new and unique in South Africa when it was introduced in the 1970s, but in other parts of the world the system was old as in some instances it dated back many centuries.

2.12 Residential sectional titles properties and similar properties

While South Africa prides itself on its special type of development known as sectional title schemes, other countries such as the United States of America (USA), Taiwan and most of Canada among others labeled their special type of development, condominiums. This type of development can simply be defined as “multi-family constructions resembling one or more apartment or townhouse buildings, each buyer acquires ownership of individual units consisting of just the airspace demarcated by the inner finished surface of the interior walls” (McKenzie, 2010:55). Like sectional titles development, ownership in condominiums includes common property and individual units.

The ownership of a unit and joint ownership of the common property in a specific complex is one of the clear signs of commonality between sectional title development and condominium development. Shared ownership has become a very significant housing type and the construction of this type of housing is believed to be on the increase each year in countries such as the USA (McKenzie, 2010).

In addition to condominium development, the USA has another less common form of shared ownership known as housing cooperatives, which are mainly found in New York and Chicago (McKenzie, 2010). Housing cooperatives “give each owner a corporate share interest in the building or buildings, along with exclusive right to occupy a particular unit secured through a lease” (Mackenzie 2010:55).

While anyone can easily buy a unit in a condominium, buying a unit in a co-operative can be very difficult. Prospective buyers of units in a cooperative often have to have an interview and be screened by the other unit owners, who have the right to approve or reject the sale (McKenzie 2010). In addition, there is less conflict among the owners of cooperatives compared to the owners of condominiums due to the fact that cooperative boards routinely interview and screen prospective owners to ensure that prospective buyers understand and accept the premises of shared ownership (McKenzie, 2010). This means that buyers become fully aware of what is expected of them prior to their purchase in the co-operatives.

On the contrary, condominium sales are treated as other private property sales between seller and buyer. There is no intervention by the governing body representing the collectivity. The interviewing step “contributes to cooperatives being more animated by a spirit of voluntary collectivism than condominiums, where many owners seem to bring with them expectations of dominion and control more suitable to detached single family ownership ...” (McKenzie 2010: 55). Given the above situation, conflict in shared ownership such as condominiums is inevitable.

Strata Schemes

A similar type of sectional title scheme is also found in countries such as Australia bearing the term, strata schemes. A strata scheme is defined as a “legally recognized community of lot owners, occupiers and other persons having an interest

in lots as illustrated in a strata plan who have imposed or conferred on them numerous duties, restrictions and rights as detailed in the management Act, regulations and by laws. It therefore comprises both lots and common property (if any) in the strata plan and the people who have interests in the lots and common property” (Ilkin 2007:10). The same principle of shared ownership that prevails in sectional title schemes and condominiums applies in strata schemes.

Like sectional title schemes, strata schemes enable shared ownership of a property. Strata schemes generally comprise units or lots as they are referred to in Australia, which are owned and managed by individuals or companies, and common property, which is communally owned and managed by the unit owners and their representatives or agents (Ilkin, 2007). Common property ownership is the principle that governs the following three types of developments: sectional title schemes, strata schemes and condominiums.

Despite the fact that Australia comprises of states and territories, strata schemes are found in both systems. This shows how popular the system is in Australia. However, each state and territory has its own legislation that applies to strata schemes. Accordingly, the legislation that governs strata schemes in Australia varies from state to state and from territory to territory (Ilkin, 2007). The fact that strata schemes are found in both states and territories does not necessarily mean that the system is embraced in the same way in these territories and states.

As stated, the laws that govern strata schemes in Australia differ from state to state and from territory to territory. This is also evident in the names given to strata schemes in this country; The names of the governing bodies of the strata schemes depend on the state or territory where the scheme is situated. In some states or territories, the governing body is called an owners' committee while in others, it is called an executive committee, the committee of management or the council (Ilkin, 2007).

As is the case in sectional title schemes, the owners in strata schemes are expected to make vital decisions regarding the management and maintenance of their entire scheme. Unfortunately, the representatives of the owners often have limited knowledge regarding how the schemes operate especially with regard to the development and management of the budget (Horwitz, 1985).

While it is true that the names given to the management bodies in Australia are different, the management bodies are responsible for the administration of the strata schemes. At each AGM of the strata schemes, a small group of owners are elected from the owners to manage the scheme on behalf of other owners (Ilkin 1996). This committee is the same as the board of trustees in South Africa, which is also mainly made up of owners. The functions and responsibilities of the two bodies, the board of trustees and the Australian governing bodies, are the same. Both bodies are responsible for the management and administration of their respective schemes.

Furthermore, commonalities between the strata schemes and sectional title schemes relate to ownership. The ownership of these two schemes consists of a unit and joint ownership of the common property among other things. Owners in these schemes do not only own the unit they occupy, but also the common property shared by all of them. This simply confirms that sectional title developments are not unique to South Africa. They are found in many other parts of the world as illustrated above, and have different names such as strata schemes and condominiums.

Condominiums, strata schemes and sectional titles schemes are all relatively new forms of property titles, which enable multi-ownership of a building. Communal ownership also comes in the form of gated community. A gated community is defined as “a walled or fenced housing development to which public access is restricted, often guarded using CCTV and/or security personnel, and characterised by legal agreements which tie the residents to a common code of conduct and involvement in management of the development” (Blandy et al., 2006:2366).

This, however, should not be construed as saying that sectional title properties and gated communities are the same in all aspects. The two developments are the same mainly in as far as compelling residents to subscribe to common code of conduct within that particular development. The common code of conduct prevents individuals from doing as they pleased in these developments and reinforces the notion of communal living amongst them.

2.13 International experiences of sectional ownership

2.13.1 Introduction

As noted in the previous discussion, the concept of joint or sectional property ownership is not unique to South Africa and it is not only about ownership of immovable assets, but this model of ownership brings with it the element of communal living amongst owners and/or residents as well as various responsibilities and obligations in many instances. The following section focuses on the daily experiences of the residents and/or owners in sectional title properties or similar type of properties.

2.13.2 Communal living experiences

In a study conducted by Gifford (2007), it was discovered that owners and residents had different experiences of living in a communal environment. There were mixed feelings about communal living. Some owners and/or residents were not happy with communal living while others embraced this type of environment for various reasons.

In some studies that explored satisfaction in living in high-rise buildings, Moore found that “British flat-dwellers were less satisfied than house-dwellers, and complained more about privacy, isolation, loneliness, and noise” (in Gifford, R. 2007:5). In another study in Chicago, it was discovered that young people without children preferred living in a high-rise building to another form of housing because this environment afforded them time to work on their social lives (Gifford, 2007).

The experiences of young and unmarried people of communal living in high-rise buildings, however, differed from the experiences of married people with children in the same set-up. Wekerle and Hall revealed that married people with children experienced this type of dwelling as unfriendly for their children and thus, were dissatisfied with high-rise buildings (in Gifford, 2007).

Other studies, however, revealed satisfaction among residents and/or owners in high-rise buildings. For instance, in a study in New York, Mackintosh found that residents who lived in “three middle-income high-rise sites located in a good neighborhood showed high level of satisfaction with the city, housing development, and apartments” (in Gifford, 2007:6). The residents were compared to residents that lived in the newest development that “embodied features illustrating the latest in design theory”. This second demographic group was found to be the most satisfied group.

The two demographic groups that were most “attracted to urban high-rise living were families with employed women and people who had grown up in apartments” (Gifford, 2007: 6). In the light of this, “Mackintosh concluded that well-designed middle-income high-rise buildings could provide a satisfying housing option and have a positive impact on family dynamics” (Gifford, 2007:6). The preceding discussion reveals mixed feelings amongst residents about communal living, particularly in high-rise buildings. Factors such as the location of the building, old or new developments,

and social implications all contributed to the experiences of the residents in communal living.

Communal living has received criticism from other scholars such as Wilner, Walkley, Pinkerton and Tayback, (in Gifford, 2007) who argued that this type of living impacts negatively on different aspects of residents including their health. The scholars in question noted that, among other negative things associated with communal living in high-rise buildings, were noise, gloomy and depressing conditions, inadequate size, a lack of security and a lack of a friendly atmosphere (Gifford, 2007). The preceding argument shows that some residents /owners have negative experiences or perceptions regarding communal living.

Communal living, particularly high-rise buildings, has also been criticised because it causes strain, a high rate of suicide, behavioural problems for children as a result of restrictions within the residence and very little supervision of activity outside it, and crime in cases where there is inadequate security access control (Gifford, 2007). Communal living can also result in an unfriendly environment. For instance, some of its critics have argued that high-rise buildings lead to anti-social behaviour in that it “supports anonymity and depersonalization of one’s neighbours” (Gifford, 2007:13). This preceding argument reveals the bad experiences of communal living, in particular, high-rise buildings.

Furthermore, as already alluded to above, communal living, particularly in high-rise buildings is not suitable for children and this experience or perception makes high-rise buildings unattractive to married people or parents with children (Gifford, 2007). Various studies in Gifford (2007) found that children were better off in low-rise housing due to the fact that high-rise buildings either restricted their outdoor activities or left them relatively unsupervised outdoors, which may be why children who live in high-rise buildings have, on average, more behaviour problems. As a result of this factor, among others, many people prefer a low-rise to a high-rise living environment (Gifford, 2007).

Communal living such as living in a high-rise building can bring about 'loneliness' because of poor or lack of proper interaction amongst owners or residents. As noted by Gifford (2007), residents of high-rise buildings hardly make friends with one another because they meet mainly in the elevators. Residents who are likely to make friends in this environment are those who live on the same floor as they are likely to interact with one another as they watch children playing and so forth (Gifford, 2007).

Another challenge facing communal living such as condominiums and strata schemes (Horwitz, 1985; Ilkin, 1996; Easthope et al., 2009) is conflict. According to Ilkin (1996), communal living and/or ownership such as in condominiums and strata schemes are marked by conflict because rules in these developments take precedence over communication. Owners in these developments feel that rules are

more important than their opinion and thus, find themselves in conflict situations with those who are enforcing the rules (Ilkin, 1996)

According to Ilkin (1996), the board or management company in strata schemes or condominiums tends to use the rules to suppress the opinions of the owners. Ilkin (1996) argued that this leads to resentment and hostility among members. When this happens, members ignore the fact that the rules might be clear and reasonable. Tension between them and the board becomes the order of the day (Ilkin, 1996). One can, therefore, argue that the rules in a communal environment are one of the factors that trigger conflict.

Like sectional title properties in South Africa, the management of the strata schemes and condominiums are the responsibility of the owners in those developments in terms of the laws that govern the developments in question (Ilkin, 1996). In terms of practical experiences, however, owners in condominiums and strata schemes feel powerless when it comes to the management of their own schemes (Ilkin, 1996).

For example, in New Zealand and in England, studies have found that “many of the individual owners in such developments report that they lack control over the management of the site and its facilities, despite their rights of legal ownership” (Blandy, Dixon & Dumpuis, 2006:2366). In other words, despite the fact that owners in these developments are perceived to be powerful because of the managing role

they should be playing in respect of their development, in practice they are powerless.

According to Blandy et al. (2006), owners in these developments feel powerless because some housing professionals have managed to use gaps and confusions that exist in the legal framework to acquire powers that disadvantage the owners. The powers in question are acquired mainly during the development process prior to the owners' involvement in the running of the developments.

Professional managing agents are often assisted by the developers in acquiring the powers referred to above. For instance, "a study of English gated communities found that large development companies had close and long standing relationships with professional managing agents, who would be appointed as soon as development of the site started" (Blandy et. al., 2006: 2367). In other words, developers appoint their own professional managing agents and thus, deprive owners of the right to appoint their own managing agents. One can also argue that the professional managing agent appointed in this manner is likely to be more loyal to the developer than to the owners.

Furthermore, the relationship between the developer and the professional managing agents seems to be mutually beneficial. According to Atkinson et al. (in Blandy et al., 2006), managing agents usually assist the developer with legal documentation

during the development process and this puts them in a better position to be appointed as the company secretary when the resident management company is established. As argued previously, this situation takes the owners' power away from them because the management of their development is given to an outsider such as the company secretary.

Lack of knowledge or understanding of how communal ownership works was another factor that triggered dissatisfaction or conflict within the developments in question. The study that was conducted in both New Zealand and England revealed that many residents felt powerless and/or lacked knowledge, "both with respect to the developer and with respect to the professional managing agent. (This emerged more strongly from New Zealand research; in England, it was more common to find that purchasers simply did not realise the legal implications of moving into a gated community" (Blandy, et. al., 2006:1269). Owners felt that they did not have control over the management of their developments and/or lacked proper knowledge regarding the legal implications of living and/or owning in communal living.

Capitalising from the legal weakness referred to above, developers in both England and New Zealand ensured that they had control over the development even after the physical completion of their project. In other words, developers ensured that their power was "extended beyond the design and quality aspects of the development to

on-going internal governance” (Blandy, et al., 2006: 2369). Managing agents through the weakness of the law, thus, deprived owners of control over their development.

The situation described above led to conflict between the owners and managing agents. The owners felt excluded from the management of their own developments. For this reason, in many developments, the benefits of multi-ownership and self-management by residents were outweighed by the problems experienced by owners with their managing agents (Blandy, et al., 2006:2370).

Consequently, the owners were deprived of meaningful participation in the developments which were known to provide multi-ownership and self-management to residents. According to Yip and Forrest, the power of ordinary owners was limited to participation in the AGM because the executive of owners’ corporation could not deal with the powerful managing agents (in Blandy et al., 2006). This reduced the role of owners’ corporation to one of ‘marginal advisory’ (Blandy et al., 2006).

Blandy, et al. (2006) noted that the systems of both the gated community that is found in England and the strata scheme that is found in New Zealand comes with the right for owners to manage the development. The management includes the right “to enforce obligations against individual owners, as well as the right to collect service charges and to determine how they should be spent” (Blandy et al., 2006: 2371). In reality, this unfortunately was not the case.

It was noted that the management right in practice ended up invested in the managing agent because “continuing relationships between agents and particular developers result in contractual agreements being set up which ensure that the agent will continue to be employed by the new owners once the developer has left the site” (Blandy et al., 2006: 2371). Again, this confirms that the developer and the managing agents strategically and legally deprive owners of their right to manage their own schemes.

The aforementioned situation means that the right to manage, particularly in gated communities is invested in the managing agent by the developer at the early stages of development. It is noted that, “this bilateral relationship enables the agent to continue from a position of power even after the developer’s property interests have been transferred to the owners collectively” (Blandy et al., 2006:2371).

Depriving the owners of the right to manage their own developments is done within the legal framework as Blandy et al., (2006:2374) argued:

“We suggest that, because developers and agents can employ specialists in the juridical field, they are able to use the power of the law to their advantage. This, for example, gives them control over drawing up legal documents, over appointing directors and secretaries of bodies corporate and of residents’ management companies, and

control over changing the legal rules to suit their interests. Lawyers for the developer (or the managing agent acting on their behalf) set up the residents' management company, construct its internal voting rules and often provide the first company officers in conjunction with the managing agent”.

The above situation illustrates the management power that managing agents acquire through their close relationship with the developer as most of the big developers are noted to “have longstanding relationships with one or two large managing agent firms with whom they habitually work” (Blandy, et al., 2006: 2374). Due to the fact that the process described above excludes owners, they find themselves inheriting rules with no room for negotiation and thus, dissatisfaction amongst owners' results.

Therefore, the developer is invested with power, which has the possibility of shaping the lives of others and often producing conflict as a consequence, long after completion of the development project (Blandy et al., 2006: 2375).

The special relationship between the developer and body corporate management was also evident in New Zealand in which the developer received frequent advice from the body corporate management regarding body corporate rules prior to depositing the unit title (Blandy et al., 2006). In some instances, companies that advised the developer on the body corporate rules were rewarded with long-term

contracts as a body corporate's management or secretary and this made it extremely difficult for such companies' contracts to be terminated (Blandy et al., 2006). In other words, developers ensured that their powers were exerted when the body corporate was established.

Regrettably, future buyers had no legal recourse against the body corporate upon discovering that the rules of the development were actually manipulated to favour the developer and/or the body corporate's managing agent or secretary (Blandy et al. 2006). An example of manipulated rules is the situation where a developer makes changes to the rules to include a clause in which a particular body corporate's managing company is appointed as the secretary for a period of 10 years (Blandy et al., 2006). The inclusion of such a clause deprives owners of the right to make decisions regarding the management of their own developments.

Often, purchasers are unaware of the legal implications of living and/or owning in communal set-ups. They hardly understand the legal structure of the developments into which they are purchasing let alone understand their own rights and obligations in such developments (Blandy et. al., 2006).

Lack of knowledge about the day-to-day operations of the developments in New Zealand is exacerbated by the fact that people who are involved in the daily operation of the developments such as professional managers are not involved in

the sale negotiation between the buyer and the seller (Blandy et al., 2006). Consequently, the purchaser discovers the reality about the day-to-day operations of the development after the finalisation of the agreement of sale.

According to Atkinson et al. a similar situation also exists in England as “neither sales agents (for new developments where purchase is direct from the developer / freeholder) nor estate agents (for subsequent purchasers from a previous owner) were able to provide information about the legal framework; they did not think this was important” (in Blandy et al., 2006:2376). Furthermore, in New Zealand, real estate agents avoided providing advice to purchasers because of inadequate knowledge on their part regarding the operations of communal developments (Blandy et al., 2006).

As the result of the situation described above, many people purchase in the developments in question with sketchy or no information at all about how the development will be managed. The situation is further exacerbated by the fact that documents used in setting up such developments are written in legal terminology that ordinary people can hardly understand such as the documents used in setting up gated communities in England (Blandy et al., 2006). It was further noted that a typical gated community lease contained approximately 20pages; purchasers were also expected to read and understand the residents’ management company’s

memorandum and article, which consisted of six and 14 pages respectively (Blandy et al., 2006).

Given the above situation, owners in communal developments hardly understand the management's roles and responsibilities. For instance, the majority of residents that were interviewed in England hardly knew the role and responsibilities of the residents' management company, of which they themselves were, often unknowingly, members and that of the professional managing agent appointed by the developer (Blandy et al., 2006). The same situation of ignorance regarding the management of communal developments prevailed in New Zealand.

As noted by Blandy et al. (2006:2378), the study in New Zealand revealed that "neither purchasers, nor longer-term owners were well informed about the functions and rules of the body corporate and about the legislation that underpins these functions". In fact, residents and/or owners did not know that they were the body corporate. For them, a body corporate was an external entity (Blandy et al., 2006) 2006). This situation revealed the owners' poor understanding of the body corporate and its matters.

In some cases, the managing agents appeared to be more powerful than owners or their representative structures such as the bodies corporate. For instance, in New Zealand, "the body corporate's members expressed frustration over the extent of

control exerted by their body corporate secretaries” (Blandy et al., 2006:2378). Among other things, communication was found to be poor and one-way; that is, owners were not given any opportunity by their managing agents to participate in the running of their developments. In other words, the managing agents took decisions on behalf of the body corporate.

The exerted power of professional body corporate managers is also evident in situations where residents are relatively informed about how the development ought to operate. For example, residents that are organised and determined find themselves powerless when they are confronted by the power of the body corporate’s managing agent as in the case in New Zealand (Blandy et al., 2006). For example, residents that tried to oust the body corporate’s managing agent not only found themselves in conflict with the managing agent in question, but they were also threatened with legal action and other legal means at the managing agent’s disposal (Blandy et al., 2006).

The body corporate’s managing agents also seem to derive their power from the weaknesses of the owners such as a lack of information regarding the operation of the developments and the owners’ short association with each other (Blandy, et al., 2006). This situation allows the managing agents to assume and exercise control over the operation of the development.

Scholars have noted further that the situation subsequently have led to “power struggles in some developments between the agents and the residents. Even then, when owners were combining effectively to work together, they faced problems due to the inflexibility of the legal framework which had been initially set up by lawyers for the developer and managing agents” (Blandy et al., 2006:2379). This means that multi-ownership is faced with power struggles and legal constraints among other challenges.

Residents’ actions in both England and New Zealand were constrained by a legal framework which made it difficult if not impossible for residents to take action such as dismissing unsatisfactory professional managing agents (Blandy et al., 2006). This creates an imbalance of power and knowledge between role players such as the owners and managing agents.

The imbalance of power in communal developments is mainly established by the managing agents and the developers, and such power was perpetuated through use of the legal frameworks supported by “the UTA provisions in New Zealand and by company law in England. Developers and agents are able to control the juridical field, as Bourdieu describes it, because they are knowledgeable about legal processes and can afford to employ specialists who work with the magic words of law, a powerful discourse from which most lay people are excluded” (Blandy et al., 2006:2381).

The above discussion regarding the study conducted by Blandy et al. (2006:2382) in New Zealand and England revealed that “neutral instruments of property, contract and company law can be manipulated to favour the long-term interests of developers and of the professional managing agents whom they appoint”. They argued that in a situation like this, residents find themselves powerless. This situation, therefore, is likely to produce conflict.

Furthermore, according to Easthope and Randolph (2009), multi-ownership developments or density cities are faced with governance problems. Governance refers to different stakeholders in these type of developments. It includes resident owners; investor owners; the resident unit manager who is also known as a residential properties manager, site manager or building manager; strata managers; maintenance and repair companies; real estate agents; letting agents; management rights brokers; legal practitioners; developers; financiers; local governments involved in planning, infrastructure and tourism; state management responsible for legislation, titles, dispute resolutions, tourism, health, age care; and various others such as telecommunication service providers, tourists, local residents, tourism retailers, hotel and motel operators, media and health aged care industries (Easthope & Randolph, 2009).

Easthope and Randolph (2009) attributed the challenges facing high density cities to governance. In the view of a number of scholars, high density cities cannot be

governed successfully until the implications of regulation, representation and termination in strata schemes are properly understood.

According to Easthope and Randolph (2009), unequal power distribution in governance is a potential for conflict. In their study of strata schemes in New South Wales (NSW), they discovered that governance power that was acquired through negotiation between multiple stakeholders was distributed unequally among different stakeholders and thus, created potential for conflict.

Another source of conflict in multi-ownership is a lack or poor maintenance of the development; a situation which may lead to conflict (Easthope & Randolph, 2009). Poor or lack of maintenance leads to owners' dissatisfaction and ultimately to conflict between owners and those who are who are responsible for maintenance.

According to Easthope and Randolph (2009), the growth of the strata sector, will lead to more governance problems because of ineffective management and regulation. They also stated that managing agents will not be able to cope as more blocks age, and values and investment incentives decrease.

The growth of the strata sector is also anticipated to bring with it more and new players such as strata owners and managing agents. This situation is likely to lead to problems because the new entrants are anticipated to join the system without the

relevant knowledge required to be successful within the sector (Easthope & Randolph, 2009).

As the strata sector grows, powers imbalances among the role players is also anticipated to grow because new players, which include strata owners and managing agents, will not only lack the knowledge required to be “successful lobbyists in a system based on governance through negotiation, but also the wealth required to have influence in a system where ‘denizenship’ is based purchasing power” (Easthope & Randolph, 2009). This situation is likely to benefit the major players such as major developers and professional strata managers, thus, perpetuating and/or increasing inequality within the sector (Easthope & Randolph, 2009).

The growth in urban consolidation is anticipated not only to bring problems to a large proportion of the population associated with the governance of the strata schemes, but the growth in the sector is also anticipated to worsen as the proportion of new entrants with little knowledge of the system join the system (Easthope and Randolph, 2009). It is believed that as the system fails to cope with the demand of skilled strata professionals such as strata managers and building managers, problems relating to regulation, representation and termination are likely to increase (Easthope & Randolph, 2009). “Similarly, if effective legislative protections for new entrants are not implemented in tandem with these changes, inequality within the sector will only intensify” (Easthope & Randolph, 2009).

In addition, as the strata sector grows, conflict is anticipated between resident owners and investment owners because of the conflicting interest between the two parties. On the one hand, the resident owners' primary concern is a building and ground caretaker while on the other hand, investment owners are interested in sub-letting services (Easthope & Randolph, 2009). The conflicting interest between the two parties places strain on the role of the resident manager. In Sydney, the situation is likely to be worse because the majority of new multi-unit developments have been sold to investors (Easthope & Randolph, 2009).

In other instances, conflict is likely to be driven by the different economic positions of the owners. The middle class homeowners might be willing to invest or improve their properties; while other homeowners below this class might not be willing or have financial capacity to improve their properties (Kong Ngai-ming and Forrest, 2002; Easthope and Randolph, 2009). The situation may lead to conflict of classes.

Bugden stated that given the nature of strata living in which interaction amongst residents is inevitable, conflict in this environment is anticipated between residents, both owners and tenants, and community titles in Australia (in Easthope and Randolph, (2009). Strata living implies physically close living conditions in a relatively confined living environment, regular interaction among residents and conforming with standards of conduct such as by-laws.

Since conflict in such an environment is believed to be inevitable amongst residents as opposed to a conventional single home in neighbourhoods, a mechanism to resolve disputes is necessary in order to manage neighbour disputes that are compounded by both close living arrangements and more formal interactions that are of necessity conducted through the owners' corporation (Easthope and Randolph, 2009).

Although strata buildings are governed by a set of by-laws, effective regulation requires effective compliance. Policing compliance with by-laws is the responsibility of the owners' corporation. In NSW, the *Strata Schemes Management Act 1996* enables the owners' corporation, in the case of non-adherence to by-laws, to serve a notice on the offending party requiring compliance. If they do not comply, then it can be enforced through the NSW Consumer, Trade and Tenancy Tribunal and the offender may be penalised. Parties in a dispute are required to attempt mediation before making an application for adjudication (Easthope and Randolph, 2009).

According to Easthope and Randolph (2009), the growth of the strata sector is likely to compromise regulations of developers and owners' corporations. Problems such as conflict of interest between strata managers, owners and developers with regard to the awarding of maintenance contracts and appointment of strata managers were found to be among other problems facing the strata sector.

Enforcement of regulations seems to be another problem facing the strata sector. Strata schemes need to be financially viable. This is evident in the introduction of the *Strata Schemes Management Act of 1986* which requires owners' corporation of any strata scheme comprising more than two lots to establish a sinking fund. In terms of the Act, owners' corporations are given power to levy owners for the purpose of contributing to the sinking fund (Easthope and Randolph, 2009).

In terms of the *Strata Schemes Management Act of 1986*, it was obligatory for all schemes that were coming into existence from February 2005 to prepare a budget for a 10 year sinking plan and levy contributions from the owners of the scheme in accordance with that plan (Easthope and Randolph, 2009).

In addition, in terms of the *Strata Schemes Management Legislation of 2005*, the notion of a 10 year sinking plan was extended to older schemes. Older schemes, staggered according to age were required to have a 10 year sinking fund plan by July 2009 (Easthope and Randolph, 2009). In terms of the above mentioned pieces of legislation, all strata schemes, old and new were required to put in place a 10 year sinking fund. In the event of failure to comply, any lot owner could apply to the Consumer, Trader and Tenancy Tribunal "for an order instructing owners' corporation to meet its obligations" (Easthope and Randolph, 2009). The failure, however, to provide penalties for non-compliance rendered the regulations futile.

The implementation or compliance with the regulations can be affected also by the fact that “the members of an executive committee who are responsible for running a strata scheme are all volunteers and often have limited skills and few resources with which to manage their strata development” (Easthope and Randolph, 2009). The main concern is that owners’ corporation officers may not possess the necessary skills and expertise to ensure that there is compliance with the regulations “especially as schemes get progressively larger and more complex, often including commercial elements” (Easthope and Randolph, 2009).

The above problems regarding compliance may be worse in schemes that are self-managed, without professional assistance. Already it is estimated that 55 per cent of schemes are self-managed nationally (Easthope and Randolph, 2009). This situation suggests that there will be a problem of compliance in the majority of the strata schemes, thus, rendering the regulation futile.

It does not mean, however, that an owners’ corporation that hires strata managers and building managers are immune to problems of compliance. Some of the schemes found themselves in similar situations to those without professional help because of hiring incompetent managers; “despite the fact that strata managers in NSW are required to be licensed under the Property, Stock and Business Agents Act some of them are not registered” (Easthope and Randolph, 2009).

Bugden stated that the situation is compounded by the fact that managers in the sector in question are often poorly remunerated and may lack the professional skills needed to perform their duties, especially in the low value sectors of the market (in Easthope and Randolph, 2009).

The situation is also compounded because building managers are not required to have any qualifications at all which means many of them, if not all, do not have the necessary skills “to cope with the increasing size and complexity of real estate development and the increase in regulation in areas of safety and risk, as well as operational regulations such as the real estate agency legislation” (Easthope and Randolph, 2009). All these challenges make it difficult for the legislation to keep up with pace of change.

Inequality in the representation seems to be another problem in strata schemes, Easthope and Randolph, (2009) noted that:

“The day-to-day administration of strata is carried out by the executive committee of the owners’ corporation (owners liaising with a professional strata managing agent). This executive is made up of owners’ corporation who are elected at each annual general meeting (AGM). All strata owners have a vote at the AGM. However, not all strata owners have equal weight within the owners’ corporation. The

measure of their weight is called their 'unit entitlement' and is based upon the relative value of their strata lot. The unit lot regulates both the voting rights of each unit owner and the levies that they must pay to the owners' corporation for insuring, maintaining, repairing and managing the common property. In other words, the extent to which individuals are represented in their strata relies upon their market share in the strata club".

While owners in a strata scheme usually hold some power based on their market share, renters living within a strata scheme have no right to participate in the representative structures in place in their schemes (they have no vote) and have power only to the extent that they are able to influence the position of the owner of their unit (Easthope and Randolph, 2009). This, therefore, means that renters are excluded in decision-making processes that affect their building. Someone else makes decisions for them.

Even if one has a situation where professionals are employed to ensure compliance with the regulations, the system will still receive criticism for focusing on restrictions and legality rather than democratic rights. Moreover, in terms of the above argument, day-to-day challenges of multi-ownerships include power struggles between role players, lack of compliance with the rules and regulations, financial problems, poor

or lack of maintenance, and lack of relevant skills and expertise amongst some of the managers.

Another source of conflict in communal living such as condominiums and strata schemes can be attributed to owners' attitudes. Owners in strata schemes and condominiums often have conflicting attitudes regarding appropriate costs and standards of major repairs and maintenance (Guilding, Warnken, Ardill & Fredline, 2003). Conflict with regard to spending priorities has been identified between owner-occupiers and investment-owners (Guilding, et al., 2003). In other words, owner-occupiers and investment owners disagree on spending priorities because of their conflicting interests or objectives (Guilding, et al., 2003).

The primary interest of owner-occupiers, for instance, is the cleaning and maintenance of the building and grounds while the interest of investment-owners is mainly in maximising short-term profits because their vision regarding ownership in the building is often short-term (Guilding, et. al., 2003).

The two groups often do not agree on funding repairs, particularly with regard to how levies should be raised (Guilding, et al., 2003). Conflict in this case, therefore, can be attributed to a conflict of interest between the two groups. One group, investment-owners, is driven by short-term profit goals while the other group, owner-occupiers, is driven by the long-term maintenance state of the building goals. Another important

thing to note about this conflict is the fact that this conflict is between owners; it is internal conflict.

Again, another source of conflict can be attributed to what one calls misdirected loyalty. This is evident most of the managers and the administrators that work in condos and strata schemes owe their allegiance to the management company rather than to the condo [and strata schemes] corporation for which they work. In other words, employees in question direct their loyalty to their employers as opposed to directing their loyalty to the owners in the developments where they are assigned or employed to work.

Like board of trustees in sectional titles schemes, boards of directors in condos and strata schemes are in charge of their schemes. They employ and supervise the management companies (Guilding et al., 2003). Management companies are often accused of siding with the boards irrespective of the situation. By siding with the board, they manage to keep their contracts running because the boards have the power to hire and fire management companies (Guilding et al. 2003).

In other words, the managing companies may not reprimand the board if the latter is found not doing the right thing in fear of jeopardising their contracts in that particular development. It has been noted that often the interests of owners/corporation clash with those of an inexperienced or unethical board (Guilding, 2003).

The alleged corrupt relationship between the boards and managers makes life difficult for owners because often when the owners are unhappy with the services of the managers, the boards protect them. As a result, in some instances, managers are found to have “severe problems of incompetence, lack of ethics, dishonesty, and even fraud and kickbacks”, but still the boards protect them (Guilding, et al., 2003). Inevitably, the corrupt relationship between the boards and managers leads to conflict between the boards and ordinary owners on one hand, and conflict between ordinary owners and managers on the other.

Another source of conflict in communal living such as strata schemes and condominiums may be attributed to the questionable relationship that exists between service provider contractors to the schemes such as maintenance and repairs, and those who hired them such as the manager or the managing company. Often contractors that are hired to render services have a direct or indirect relationship with the manager or the management company (Guilding, et al., 2003).

The environment described above, unfortunately, provides fertile grounds for unnecessary maintenance and repairs authorised by corrupt boards, issuing of inflated invoices, at times, and awarding of contracts without adhering to a bidding process (Guilding, et al., 2003). In places such as Ontario, fraud and kickbacks are reported to be costing condo owners millions of dollars (Guilding et al., 2003). This situation does not only reveal conflict of interest by managers or managing

companies, but it also reveals little or lack of power of the owners in the developments in question.

The source of conflict in condo schemes can also be attributed to problems of accountability to the corporation. The previous section has already alluded to this problem. This problem stems from the conflictual interest of the board in managing the scheme for and on behalf of the owners. The situation is exacerbated by the fact that managers in condos often find themselves dealing with inexperienced or unethical or not hands-on boards. This makes it difficult for the boards to manage and/or supervise their service providers such as the managing companies. Given their lack of experience and skills, it becomes difficult for them to act in the best interest of the owners (Guilding et al. 2003).

On the other hand, skilled, ethical and experienced boards will be able to supervise service providers efficiently, in the best interest of all the owners in the scheme. They will ensure that service providers do their job properly and professionally. They will guard against any possible exploitation by service providers and they will be able to keep their schemes in good condition.

For schemes to be viable, they require experienced and skilled boards because inexperienced and unqualified boards give birth to unnecessary conflict within the schemes. Unfortunately, newly built condominiums have found themselves faced

with a shortage of qualified and experienced managers. This situation gives rise to conflict because of poor service delivery by these inexperienced and unqualified managers (Guilding, et al., 2003).

The seriousness of the shortage of qualified and experienced managers reveals itself in the fact that managers that are fired in one condo are easily re-employed by another. Their poor previous management record does not make it difficult for them to be employed by another condo including those condos that are in deep trouble. As a result of a lack of proper skills and expertise, these managers worsen the situation of these condos that require experienced and skilled managers (Guilding et al., 2003).

Managers with little or no experience at all have been found to be detrimental to the condos they have been appointed to manage. These managers often do not know where to begin and this affects the financial viability of the schemes they are employed to manage (Guilding et al., 2003).

The conflict in condos can also be attributed to the perception of owners towards managers. Owners tend to paint the managers with the same brush. For many owners, managers are all the same in terms of skills and expertise. In their eyes, they all possess no skills and/or expertise to manage their schemes. As a result, managers are often given a hard time before they even start working (Guilding, et al.,

2003). Although this perception is not always true, it does lead to conflict between owners and their managers.

2.13.3 Conclusion

The above chapter discussed residential property ownership in South Africa through *Sectional Title schemes*. It looked at historical background of this form of ownership in terms of formation and operation, role players within them, laws that govern this type of ownership, its nature as opposed to traditional property ownership.

The chapter argued that individual property ownership in a complex apartment is relatively new and unique in South Africa as such ownership became only possible in the 1970s. Prior to the 1970s individual ownership in a complex apartment was only possible if individual was a shareholder in a company that owned the entire building or individual owned the entire building himself/herself or individual was a joint owner of the entire building. In other words, fragmented property ownership in an apartment complex, which later became known as the *Sectional Title Scheme*, in South Africa became possible with the introduction of the Sectional Titles Act 66 of 1971.

This new and unique form of immovable property ownership brought with it joint ownership and management of the common property by all the owners in the scheme and financial interdependence amongst all of them. While there is so much literature written on this model of immovable property ownership, there is nothing or

little available on the practical operation of the *Sectional Title Schemes* hence the importance of the current study. The current literature in South Africa focuses mainly on the legal ownership. In other words, it focuses on how the law intended the schemes in question to operate. As a result nothing or little is available on the practical operation and/or experiences of the owners within the schemes.

Accordingly, the current study intends to understand the operation of the *Sectional Title Schemes* from the practical point of view by focusing on the daily experiences of the owners within the schemes. The findings of the study will assist policy makers and property practitioners to plan and legislate accordingly. It will also provide current and prospective owners with a clear understanding of how the scheme functions.

The chapter also looked at similar schemes or forms of ownership in other parts of the world. Having identified such forms of ownership in countries such as Australia, Canada, United States of America, New Zealand and England, among others, the researcher argues that fragmented property ownership is not unique to South Africa. In fact, Sectional Title Schemes in South Africa was based on the Australian model known as strata schemes. The theoretical framework underlying the present study is outlined in chapter 3 below.

CHAPTER 3: THEORETICAL FRAMEWORK

3.1 Introduction

In order to have a better understanding of the existence of conflict and its causes in residential sectional titles schemes, the study at hand employed organisation theory and industrial relations theory. The theories in question were chosen because the researcher strongly believes that conflict in residential sectional titles schemes can be understood and explained better within the context of the two theories.

According to organisation theory, human relationships are characterised by conflict irrespective of their category or level within the organisation (Aldag & Kuzuhara, 2002). This means that buildings or structures on their own are not capable of causing conflict, but individuals who control and manage those buildings are bound to be in conflict. In other words, sectional title schemes are not capable of causing conflict, but individuals who operate within these schemes such as owners and various service providers may be involved in conflict.

Organisation theory argues that conflict in organisations is normal and inevitable because individuals that control and manage these organisations come from different backgrounds in terms of upbringing, culture, education and previous relationships. According to this theory, the unique background of individuals informs the manner in which they see the world, which is different from one another (Aldag &

Kuzuhara, 2002). The fact that human beings in an organisation come from different socialisation processes, their relationships will inevitably be marked by conflict.

Organisations are no different to residential sectional title properties. Residential sectional title properties are not only operated by individuals from different backgrounds, but the individuals in question are expected to live together harmoniously as neighbours, co-owners and joint managers irrespective of their unique backgrounds. The researcher believes that if organisation theory is true, residential sectional title properties are also likely to be characterised by conflict because of the unique backgrounds of owners and residents operating and living in the properties in question.

According to organisation theory, there is no organisation that is immune to conflict including those that seem not to have conflict. The theory submits that, “lack of visible conflict doesn’t imply that there are no tensions, hostilities, uncertainties, disagreements, or pressures. It simply means that they have not been allowed to air” (Aldag & Kuzuhara, 2002: 469). In other words, organisations that are perceived or seen as conflict-free are not necessarily so. Conflict in such organisations, in terms of organisation theory, is suppressed and not necessarily non-existent. Absence of conflict means suppression not non-existence.

In addition, organisation theory argues that conflict is an element or a characteristic of all organisations that are controlled and managed by human beings. It argues that there is a risk of conflict wherever a group of people interact (Mojtahed, 2007).

The theory argues further that conflict is the result of various factors. These factors include perceptions and assumptions. Conflict can also be attributed to scarce resources. It argues that scarce resources have the potential to cause conflict in organisations in that “if it appears that resources are scarce, efforts will be made to secure resources, often to the detriment of the goals of others” (Aldag & Kuzuhara, 2002:467).

Again, in terms of organisation theory, ambiguity over responsibility or jurisdiction can lead to conflict because at times roles and/or responsibilities in organisations are not clearly defined among individuals. It argues that if things or roles are not clearly defined this may result in duplication of efforts and some things may ‘slip through the cracks’ (Aldag & Kuzuhara, 2002). This often leads to people fighting over the same responsibilities and/or distancing themselves from their own responsibilities and thus, fighting with one another.

According to organisation theory, the cause of conflict can also be attributed to task interdependence. Task interdependence is defined as “the nature of the dependence among units for financial material, or human resources. The greater the interdependence among units, the greater the potential for the conflict” (Aldag & Kuzuhara, 2002:468). In other words, conflict is bound to happen if one or more of these role players fail to keep their side of their bargain. This is highly relevant to residential sectional title properties as owners in the properties in question are dependent on one another financially and administratively.

Furthermore, according to organisation theory, conflict can be caused by goal incompatibility. For instance, “different individuals or units may have different and perhaps incompatible goals. Such differences may lead to conflict even when both parties agree on the overall goal for the organisation” (Aldag & Kuzuhara, 2002:468). In the case of the residential sectional title properties, individual owners, the body corporate and its trustees, managing agents and service providers may not agree on how the scheme should be governed, among other differences, thus, causing conflict amongst them. Role players within residential properties may not agree on what and how certain goals should be pursued. As a result of these differences, conflict may emerge.

Having outlined and discussed organisation theory, the researcher is of the opinion that this theory is very relevant for the present study. The study focuses on residential sectional title properties, which, like organisations, are controlled, administered and managed by human beings.

Residential sectional title properties are not only managed and are homes to individuals from unique social lifestyles and nurturing, but the individuals in these properties are expected by the Act to cooperate with one another to ensure effective and efficient operations of their respective sectional properties. If organisation theory is valid, then conflict in residential sectional title properties is also inevitable.

The second theory to be employed in this study is industrial relations theory. This theory is important for the understanding of the conflict between the body corporate and its employees, and conflict between the body corporate and the managing agents. Bendix (1996) identified two key actors in industrial relations, namely, employers and employees. The relationship between these two actors is characterised by conflict, which results from their conflicting interests.

Marshall (1987) observed that employers, on the one side, are motivated by the objective of increasing efficiency and productivity in order to obtain profit and a greater share in the market. These employers' objectives contradict that of the employees. Employees have a pragmatic objective, which is to better their standard

of living by obtaining higher wages and to have better conditions of employment (Marshall, 1987). Because the interests of the employer and that of the employee contradict each other, conflict between the two parties becomes inevitable; this is coupled with the fact that neither of the party is prepared to give up its objective.

The relationship between the employer and the employee is also characterised by a conflictual power relationship. Hyman (1975:27) noted, “Because the interests of employers and employees conflicts so radically and systematically, the power relationship between them is also necessarily conflictual”. It is conflictual and unequal in favour of the employers (Hyman, 1975). Employers have the power to employ and dismiss their employees. Furthermore, they find their power in their ability to subordinate their employees through state institutions such as the army, the police and the prisons.

Industrial relations theory is relevant for this study because of the contractual relationship that exists between the body corporate through its board of trustees and its employees on the one hand, and between the body corporate and the managing agents on the other. The relationship between the body corporate and its employees is an employer and employee relationship, which is governed by the *Labour Relations Act*. Industrial relations theory is, therefore, important in understanding the relationship between the two parties.

While the relationship between the body corporate and that of the managing agent does not fall within the ambit of the *Labour Relations Act*, the two parties are governed by a contractual relationship, which is similar to that of an employer and employee. Like the relationship between an employer and an employee, one party, the managing agent, provides service/s to another party, the body corporate, in exchange for remuneration. In both a conventional employment relationship and the body corporate and managing agent's relationship, failure to deliver as per contract may lead to the termination of the contract. Like employees in industrial relations, the managing agent wants to maximise his remuneration in order to grow his business or better his life.

On the other hand, the body corporate's objective is to keep the expenses of the body corporate as low as possible in order to avoid higher levies for individual owners. In light of this argument, the conflict between the managing agent and the body corporate could be understood within the theory of industrial relations.

Both organisation theory and industrial relations theory provided the researcher with a clear theoretical framework to understand, interpret and explain conflict in residential sectional title properties. Conflict and its sources, however, cannot be explained without first understanding what is meant by conflict. The term, conflict comes from the Latin word, '*conflictus*' and it means, "hitting together with force",

which means “disagreements and tensions between the members of the group, interaction in speech, emotions and affection” (Elida-Tomita, 2010: 721). In other words, conflict does not necessarily refer to physical fights. When disagreement and tensions exist between the members of a group, this may indicate the existence of conflict.

For conflict to exist there should be more than one party involved, be they individuals or groups. The definition further explains the situation as one that lacks harmony, and is characterised by contradictions and fights by two or more parties.

The theoretical framework employed in this study is organisation theory and industrial relations theory. The research methodology employed in this study is discussed in chapter 4.

CHAPTER 4: RESEARCH APPROACH, DESIGN AND METHODOLOGY

4.1 Introduction

Research methodology is the process that involves a set of decisions by the researcher regarding the subject to be studied (De Vos et al (2012:142). The decisions include the population from which the sampling should come, the research method to be used, the general research approach, and the collection and analysis of data. De Vos et al. also referred to the decisions regarding the logical arrangement of the study.

According to De Vos, Strydom, Fouche and Delport (2012:142), Research design includes “all those decisions a researcher makes in the planning of the study”. Briggs, Coleman and Morrison (2012:75) stated that research design is a scheme or a plan that contains the research study. In this section of the study, the steps that were followed in an attempt to answer the research question are outlined.

4.2 Research approach

The research approach employed in this study is known as a qualitative approach. The researcher chose this approach because he wanted to conduct a detailed description of the actual daily experiences of the owners in residential sectional title schemes in respect of the operations of their schemes. According to Fraenkel and Wallen (1996:440), this approach enables the researcher to investigate the quality of relationships, activities, situations and/or materials.

The qualitative approach is highly relevant for “a researcher who wants to obtain an in-depth look at a particular individual, situation or set of materials” (Fraenkel & Wallen, 1996:440). This method explores the way people act, the way of doing things or the meaning people give to their lives (Fraenkel & Wallen, 1996).

In line with the above argument, Mouton and Marais (1994:75) argued that, “human beings do not only react to stimuli – they interpret, define, and behave proactively. They do not merely behave in a reasoned manner, but reasoned in terms of what they regard as desirable and proper”. Maree (2011:50) also expressed the view that qualitative research aims at collecting rich descriptive data.

The qualitative approach was, therefore, relevant for this study because it enabled the researcher to investigate if conflict exists in residential sectional title schemes and what are the causes thereof by studying the actual operation of the schemes in question and the relationships among all role players within them. In other words, this approach would assist the researcher to examine the true perceptions, experiences, relations, attitudes and feelings of participants towards the daily operation of these residential sectional title properties.

Although the qualitative approach was employed in this study, the researcher wanted to observe and study the activities, situations and materials closely that are relevant

to the bodies corporate in order to understand conflict and its causes in the residential sectional title schemes that formed part of this study.

4.3 Research design

Research design is defined as a scheme or plan that contains the research study (Briggs et al., 2012:75). McMillan and Schumacher (2010:19) defined research design as a procedure for conducting a study which includes the general plan of the project. This study took the form of a case study in which a total of 15 residential sectional titles schemes listed in Table 4.1 below were studied.

Table 4.1

Scheme (Pseudo Names)	Number of units	Location
1.Pan Villa Court	222	Gauteng
2.Kwezi-Mansion	51	Gauteng
3.Castel Villa	183	Gauteng
4.Paving Heights	177	Gauteng
5.Adelaide Court	36	Limpopo
6. Klein Fountain Village	207	Limpopo
7. Zacharia Park	190	Limpopo
8. Miami Gardens	72	Gauteng
9. Peter Palace	180	Gauteng
10. Desborough Heights	169	Gauteng

11. Mamba Village	208	Gauteng
12. Olivier Gardens	177	Gauteng
13. Jason's View Place	139	Gauteng
14. Jozi Place	276	Gauteng
15. Khaya Palace	206	Gauteng

A case study can be defined as a form of qualitative research in which the researcher “explores a single entity or phenomenon (the case) bounded by time and activity (a program, events, process, institution, or social group) and collects detailed information by using a variety of data collection procedures during a sustained period of time” (Leedy, 1989:157). Welman et al. (2005:109) also observed that the objective of the case study is to investigate a single bounded system.

According to Dornyei (2007:151), “almost anything can serve as a case study as long as it constitutes a single entity with clearly defined boundaries. Research studies sometimes describe a series of ‘multiple cases’; this is fine as long as each individual case is considered the target of a separate study”. In line with the preceding arguments, this study focused on multiple case studies (residential sectional title schemes), which were each defined by boundaries. Each of these case studies were studied and discussed independently from one another.

There are three words, according to Hamel (1993), that are important in the use of a case study, namely, describe, understand and explain. By focusing on specific residential sectional title schemes, the researcher hoped to understand, describe and explain conflict, if it existed, in the schemes in question, as well as its causes and its nature. This approach, therefore, provided the researcher with an opportunity to get detailed information about the conflict, its causes and the nature it took in the schemes in question.

4.4 Research methodology

Research methodology contains a set of decisions regarding the topic to be studied. The decisions involve the population from which sampling will be collected, research methods, research approach, collection and analysis of data (De Vos et al., 2012:142). The decisions also refer to the planning of the study.

Briggs et al. (2012:75) argued that “methodology provides a rationale for the ways in which a researcher conducts research activities”. In the present study, the researcher took into account epistemology as the aim of the researcher was to understand conflict and its cause in residential sectional titles schemes. Briggs et al. (2012:15) described epistemology as the “central research endeavor which compels the researcher to seek to know the reality about the study”. Prior to venturing into the field to collect data, the researcher informed himself about the study through the

literature review and through casual conversations with participants in the field of study.

4.4.1 Sampling

While there are many sampling methods that are at the disposal of qualitative researchers, this study employed only three methods: purposive or judgement sampling, haphazard or convenient sampling, and snowball sampling.

(i) *Purposive / judgement sampling*

According to De Vos et al. (2012:232), purposive or judgement sampling is founded on the judgement of the researcher, where the researcher looks for the elements that are relevant to the project. It is based on selecting individuals or entities with certain characteristics (McMillan et al., 2010:127); therefore, this method was employed in the selection of the first three case studies, namely, Pan Villa Court, Kwezi-Mansion and Castel Villa.

The researcher was very familiar with the three schemes mentioned above as he owned at least one rental unit in each of them. He observed that the schemes in question possessed elements that were relevant to the study. The schemes were frequently in financial trouble, frequently dismissed their managing agents and replaced their trustees. Moreover, from time to time the schemes were threatened with legal action by their service providers. These factors proved that there was

some form of conflict that was going on within the schemes in question; hence, their inclusion in the study.

Purposive or judgement sampling gives the researcher an advantage of choosing the participants who have the potential of providing valuable data based on their competence, knowledge and skills in their various fields (McMillan et al., 2006:319). In other words, unless the respondent possesses the information that the researcher wants, the respondent will not be approached by the researcher irrespective of whether the respondent forms part of the community where the researcher is conducting his or her research study or not. (Bernard, 1994).

Consequently, the researcher, in this case, targeted respondents that were currently or previously involved in the management of their schemes such as trustees or any current or former committee members and the managing agents. This sampling method was used in all the schemes that formed part of this study.

Furthermore, in purposive or judgment sampling there is no overall sampling design that tells the researcher how many of each type of respondent the researcher needs for a study. It is also not necessary for the researcher to decide in advance the kinds of units of analysis to study (Bernard, 1994). Instead, “you learn in the field, as you go along, to select the units of analysis (people, court records, whatever) that will provide the information you need” (Bernard, 1994:95). It is for this reason that the

number of respondents and if interviews were used, differed from one case study to the next. Furthermore, records that were analysed, in cases where the researcher managed to access them, differed from one scheme to another.

The purposive or judgement sampling method was used together with haphazard or convenience sampling in some instances.

(ii) *Haphazard / convenience sampling*

Haphazard or convenience sampling is one of the methods that was employed in the present study. This method simply refers to a situation where the researcher 'grabs' anyone that is willing to listen and answer his/her questions at that time (Bernard, 1994). This method was employed in the following case studies: Klein Fountain Village, Zacharia Park, Desborough Heights and Mamba Village. These schemes were selected haphazardly simply to increase the size of the study and so that the researcher could investigate cases with which he was not familiar.

Using haphazard or convenience sampling could have been unproductive and a waste of time because the schemes selected might not have had the characteristics or elements that were relevant to the study or the researcher may not have found respondents within the schemes that possessed information that could have benefitted the study.

Bernard (1994:96) argued that “all samples are representative of something. The trick is to make them the representative of what you want them to be”. Therefore, haphazard or convenience sampling was given the benefit of the doubt in the present study.

The last sampling method that was employed in this study was snowball sampling.

(iii) ***Snowball sampling***

Snowball sampling is more organised than haphazard sampling. Bernard (1994:97) indicated, “In snowball sampling you locate one or more key individuals and ask them to name others who would be likely candidates for your research”. In other words, the trick here is to find the first respondent. Once the researcher has found the first respondent it will be easy because the first respondent will lead him/her to the next relevant or suitable respondent/s for the study. The referral continues until the researcher has collected enough for his or her study.

Snowball sampling was employed in the selection of the following schemes: Paving Heights, Olivier Gardens, Adelaide Court, Jason’s View Place, Peter Palace, Miami Gardens, Khaya Palace and Jozi Place.

Given the complexity and the sensitivity of the study, the sampling methods discussed were useful and relevant for this study. In some instances, the researcher

might be compelled to combine two or all of the methods discussed above in one case study. The use of methods in one case study depends on the circumstances of that particular case study. If using one method proves to be inadequate in collecting the relevant data the researcher may combine two or all three methods in one case study in order to achieve the best results.

Qualitative researchers prefer this method because “qualitative inquiry is not concerned with how representative the respondent sample is or how the experience is distributed in the population. Instead, the main goal of sampling is to find individuals who can provide rich and varied insights into the phenomenon under investigation so as to maximise what can be learned” (Dornyei, 2007:126). In other words, the number of case studies and/or respondents to be used in the study at hand does not really matter. What is crucial is that the selected case studies and respondents contain and possess relevant information that will benefit the study at hand.

The above argument suggests that more sampling is not an indication of good quality information in a qualitative study. It does not necessarily mean that the researcher’s question will be addressed adequately when the sample is bigger. In other words, one informed individual about the subject that is being studied is far better than 20 individuals who know little or nothing about the subject under investigation in a qualitative study.

4.4.2 Research methods

Three research methods were adopted in the present study. These research methods were *participant observation*, *semi-structured interviews* and *documentary analysis*. Thus, the method that was adopted is called triangulation. Triangulation is defined as the “use of two or more methods of data collection” (Cohen, Manion & Morrison, 2007:141).

Since the findings of a case study cannot be generalised, the researcher intended to examine the uniqueness of experiences and context of each of the selected residential sectional title schemes. The following methods of data collection were employed:

4.4.2.1 Observation

There are various ways of finding answers to research questions. At times, researchers can find answers to their questions through observation as opposed to asking questions and being answered (Fraenkel & Wallen, 1996). There are different types of observation methods that the researcher can use in case studies. This study, however, adopted three observation tools: complete participation, participant-as-observer and complete observer. The use of a particular method or methods depended on the environment of the scheme that was selected for study.

Complete participation refers to a situation where “a researcher takes on the role of a complete participant in a group, his identity is not known to any of the individuals being observed. The researcher interacts with members of a group as naturally as possible and, for all intents and purposes (so far as they are concerned), is one of them” (Fraenkel & Wallen, 1996:446). By concealing his identity, the researcher ensures that the natural settings of the groups are not disturbed.

The complete participation method was used at Pan Villa Court, Kwezi-Mansion and Castel Villa. As stated previously, the researcher was an owner in each of these three schemes. This gave the researcher easy access in and out of the schemes and allowed him to participate in all the activities that involved the owners in these schemes.

In addition, the researcher, by virtue of his ownership in the above three schemes, was entitled to the information and records of the bodies corporate. Since the complete participation method raises some ethical questions because the researcher conceals his identity to the subjects (Fraenkel & Wallen, 1996:446), this method was combined with observe-as-participant, which is discussed subsequently.

The second observer method used in this study is called the participant-as-observer *method*. This method means that “the researcher identifies [himself] straight off as a researcher, but makes no pretense of actually being a member of a group [he] is

observing” (Fraenkel & Wallen,1996:446). Besides, the three schemes mentioned above, this method was also employed at Paving Heights, Olivier Gardens, Jason’s View Place, Peter Palace, Miami Gardens, Khaya Palace and Jozi Place.

The complete observer method was also employed in the study. This refers to the situation where the researcher “observes the activities of a group without in any way becoming a participant in those activities. The subjects of the researcher’s observations may, may not, realize they are being observed” (Fraekel & Wallen, (1996:446). This method was used in the following case studies: Klein Fountain Village, Zacharia Park, Adelaide Court, Desborough Heights and Mamba Village.

The reason for using the complete observer method is to ensure that the natural settings of the subjects are not disturbed. It allows the subjects to behave normally. This, method, however, raises the ethical question of not revealing one’s identity to subjects (Fraenkel & Wallen, 1996). The researcher, therefore, revealed his identity after observation and asked the participants permission to use the information obtained through the complete observer method in the research report. The method in question may also be supplemented by interviews, which will compel the researcher to reveal his identity to the participants.

While complete participation and complete observation methods are useful in obtaining useful data without the researcher disturbing the natural settings of the

participants, it does not give the researcher an opportunity to seek clarity on things that he or she does not understand during the observation. These methods may also deprive the researcher of an opportunity to understand the meaning that participants attach to their behaviour or actions. The preceding weaknesses, however, were not ignored, but mitigated by conducting interviews, which compelled the researcher to reveal his identity to the subjects.

As stated previously, the subjects were advised of the prior observations and permission for the data acquired through complete observation to be included in the report of this study was obtained.

4.4.2.2 Interviewing

Interviews form part of the qualitative method. They are “nothing more or less than a conversation with a purpose” (Fry, 1934:60). Cohen, Manion and Morrison (2000:268) expressed the view that “the interview may be used as the principal means of gathering information having direct bearing on the research objectives”. This method enables a researcher to see the facial expressions, body language and gestures of the participants.

The significance of the interview method as opposed to observation method was expressed by Patton:

“We interview people to find out from them those things we cannot directly observe. The issue is not whether observational data is more desirable, valid, or meaningful than self-report data. The fact of the matter is that we cannot observe everything. We cannot observe feelings, thoughts, and intentions. We cannot observe behaviors that took place at some previous point in time. We cannot observe situations that preclude the presence of an observer. We cannot observe how people have organised the world and the meanings they attach to what goes on in the world. We have to ask people questions about those things” in (Fraenkel & Wallen,1996:447).

The preceding quote does not only emphasise the importance of an interview in a research study, but it also shows that through an interview the researcher is able to investigate areas that he/she cannot through any form of observation such as in the events that took place in the absence of the researcher. Thus, the interview was very relevant for this study. Through interviews the researcher was not only able to uncover relevant information for the study that took place in his absence, but he was also able to explore the history of each case study.

According to De Vos et al. (2012:342), the quality of the interview depends on the skills that the researcher possesses. Before interviewing participants, a researcher should have in-depth knowledge of the outcomes that are aimed at and should be

well able to use the skill of probing information. It is for this reason that the literature relevant to the topic was studied prior to developing the methodology for this study.

Structured and semi-structured interviews

The interviews were conducted by using structured and semi-structured interviews which are also known as verbal questionnaires. According to Briggs et al. (2012:79), semi-structured interviews are used mainly in a qualitative case study, which allows the participants to express themselves in their own way. This means participants will not be directed to specific answers even though follow-up questions may be asked. This method was employed for all 15 case studies.

The researcher conducted the interviews at the end of the study in order to avoid unintended biasness. While the information gathered through interviews is good to test a specific hypothesis, the information gathered at the beginning of the study is likely to shape the perception of the researcher when he/she begins with his/her study (Fraenkel & Wallen, 1996).

Information for this study was also gathered through documentary analysis. Using this method is important because it supplements all the methods that are discussed above.

Documentary analysis

Documents are crucial in a research study because they supplement all the methods discussed above (Briggs et al., (2012:297). Documents, according to Fraenkel and Wallen (1996:497), refer “to any kind of information that exists in some type of written or printed form”. Therefore, the documents the researcher analysed in this study included minutes, annual reports known as the chairperson’s report, financial statements, invoices, correspondence between the respondents and their service providers, records produced by the managing agents, legislation that governs the sectional title schemes, service providers’ contracts, legal records and any other documents that may have been useful for the purpose of this study.

The researcher was fully aware of the limitations of documentary analysis, which include a deliberate omission of certain information. Documents can also not be questioned or interrogated in the event of missing or unclear information (Yow, 1994). Minutes and annual reports can be distorted in favour of the author or the entity represented by the author at the time. The silences or omissions, however, in documents can be addressed through interviews.

The researcher believed that a combination of all the methods that were used for gathering data in this study ensured that the results thereof were of a high quality. The observations, interviews and documentary analysis supplemented one another. Limitations of one method were addressed through one or two of the three methods

referred to above and thus, reduced the biased nature of the data and ensured that the findings were more reliable.

The intention of the researcher was to analyse the documentary records of all the schemes selected as case studies in this study since all the schemes forming part of this study had been established for the same purpose, namely, residential properties, and they were also governed by the same legislation, *Sectional Titles Act, 95 of 1986* (as amended). Analysis of the documents that belong to case studies, however, depend on two things, namely, their accessibility and their relevance to the study at hand.

4.4.2.3 Accessing research subjects

The researcher did not anticipate any difficulty in accessing the selected schemes because of the fact that he was an owner in some of the schemes that formed part of this study. Furthermore, he operated in the same property industry in which the study was conducted. He was an estate agent, property manager and trainer in the property industry. His role in the industry allowed him relatively easy access into many of the schemes.

4.4.2.4 Research procedures

Interviews were identified as the principal tool of the data collection process in this study as the researcher used them in all the case studies that formed part of this

study. Dehaloo and Schulze (2013:234) argued that “interviews included open-ended questions to invite honest, personal comments from respondents”. The researcher used structured and semi-structured interviews as the main collection tools because of their layout and formulation.

Scholars such as Cresswell (2003:216) and McMillan and Schumacher (2010:396) expressed favour for structures or semi-structured interviews because they are an “approach that permitted the authors to identify trends and explore them further to obtain insight into the topic under investigation”. The questions explored the participants’ experiences and perceptions of their schemes. “Interviews allow for in-depth probing and extended responses” (Dehaloo & Schulze, 2013:234).

Questions focused on the daily experiences of the owners in the schemes regarding their operations and whether these operations were perceived as efficient and effective. The questions also dealt with the relationships amongst owners within the schemes in question.

As already illustrated in the discussion of the case studies above, the collection of data in this study involved interviews that varied from one scheme to another. After the revision of the original questionnaire (Annexure C), each interview lasted between 45 and 75 minutes. After the first interview, the original questionnaire had to be revised because it was too long and repetitive. It took about two hours to

complete and the respondent had to provide the same answers to different questions. The revised questionnaire for the body corporate and trustees was as follows:

- (a) Who manages your scheme?
- (b) Is the current managing agent the first managing agent of your scheme and if not, what happened to the previous ones?
- (c) Are you happy with the management of your scheme, and why?
- (d) What do you like or do not like about your scheme?
- (e) What challenges, if any, are currently facing your body corporate?
- (f) Do you know of any conflict or tension that exists in your scheme, and what do you think is the cause of that conflict or tension?
- (g) Do you think members of the body corporate are interested or not interested when it comes to the matters of the body corporate, and why?
- (h) Is there any special levy that is currently running? What is it for and are you happy about it?
- (i) When last did your scheme have an Annual General Meeting (AGM)?
- (j) What are the levies for and are you happy with the current levies? Please elaborate.

These ten questions were applied across all the schemes in which interviews were used as a form of collecting data. The questions, however, were not asked sequentially because some respondents managed to cover many of the questions in

their long detailed answers. Through follow-up questions, the researcher also managed to cover all the questions, even if the questions were not directly asked.

The questions in Annexures A and B were also revised in order to save time and obtain quality information. Instead of two sets of questions that dealt with the managing agents, they were combined as follows:

- (a) Are you the current or previous managing agent of scheme X?
- (b) How long have you been managing the scheme in question? How long did you manage the scheme in question?
- (c) What is the relationship between you as the managing agent and the body corporate or its trustees like? If you were the former managing agent, what was your relationship like?
- (d) How would you describe your relationship with the body corporate or its trustees? Please elaborate
- (e) Have you been threatened with dismissal by the trustees or body corporate? Have you been dismissed by them? Please elaborate
- (f) What is the current status of the body corporate X, which is being managed by you? If you were the former managing agent, what was the status of the body corporate? What is or was the cause of that financial status?
- (g) Is there anything else that you would like to say about the body corporate in question or its trustees?

These were questions that were posed to the participants during the interview sessions. Interviews did not follow the order of the questionnaire that was prepared

in advance as most of the questions in the questionnaire were addressed during follow-up questions. The order of the questions was informed by an area or an issue of which each respondent was passionate. For example, if the respondent started by focusing on an issue that affected him or her directly such as children's bad behavior that would be the starting point of the interview.

Respondents were also allowed to use any language of their choice. Most of the interviews were conducted in IsiZulu, IsiXhosa and Setswana. The benefit of allowing respondents to use their own languages and to begin the interview from the area that the respondents understood better or were passionate about allowed the respondents to relax and they felt that they were in control of the entire interview process. This approach was taken deliberately in order to avoid interfering or disturbing the respondent's flow of thought.

On the request and/or condition for participation, none of the interviews were recorded. Instead the researcher took notes during the interviews. Taking notes and listening at the same time was a great challenge. In some instances, the researcher was forced to request the respondent to pause while he was making the notes. Asking respondents to pause brought another challenge in the sense that some respondents tended to lose the flow of their thoughts while waiting for the researcher to complete his note-taking.

Data that was collected through this method was validated through participant observation and documentary analysis in instances where this was possible. The documents that were analysed included financial records, minutes, levy rolls, chairpersons' reports, rules, and creditors' letters of demands, general memos and contracts.

The combination of all data collection methods ensured that the findings of the study were credible. Furthermore, the findings were validated by the respondents and accordingly, the locations of the schemes were classified in provinces. Respondents felt that the use of the previous locations that specified the side of the city in which the scheme was located was too specific and thus, people would know exactly which scheme the researcher was referring to in the study. Involving respondents in the validation of data is the most crucial way of validating data, according to Lincoln and Guba (1995).

The analysis of the data that was collected using the above methods took the form of coding. According to Moloi (201:626), "Coding data involved labeling passages of text according to content". Content that was identified by the researcher as relevant to a specific topic or theme was highlighted and incorporated under such topic or theme. A similar approach was used in the analysis of the interviews, and themes of the discussions of the findings emerged mainly from the interviews. After each

interview, data were analysed to identify possible topics or themes. Such topics or themes were used as headings in the findings of this study.

4.4.2.5 Data analysis

Document analysis involves the systematic identification of themes (Briggs et al., 2012:302). Documents must be read bearing in mind themes that could be developed from the information contained in them. Gathered data can be analysed by means of the transcription of interviews, coding, validation, interpretation of data and development of themes (Creswell, 2008:244-270).

According to Moloi (2010:626), coding data “involve labeling passages of text according to content”. Once labeling was done, the concepts and themes labeled were categorised by using sub-headings in relation to causes of conflict and its forms. This study, therefore, did not try to generalise, but examined the unique context of each residential sectional title scheme selected.

The researcher made use of a field diary for note-taking; the latter was supplemented with a tape recorder in instances where he was permitted to use a tape recorder. He also requested all the documents that he believed would supplement the information already gathered through observation or interviews.

4.5 Ethical consideration

According to Briggs et al. (2012:90), the purpose of ethics is to assist and keep participants safe from harm, build trust and ensure the trustworthiness of the research. It is, therefore, the duty of the researcher to ensure that the rights of the subjects are not violated by taking ethical issues into consideration throughout the process of collecting data.

McMillan and Schumacher (2010:101) expressed the view that ethical issues concern belief about what is wrong or right from a moral perspective, and according to Briggs et al. (2012:94), ethical issues may also limit the researcher from manipulating the subjects. The researcher was, therefore, obliged to take ethical issues into consideration when conducting the present study.

In order to mitigate the ethical issues raised above, the researcher sought permission from the University of Pretoria's Ethics Committee to conduct the present study. The participants were informed at the start of their respective interviews about its purpose and most importantly that participation was voluntary and that they were free to withdraw from the interview at any time during the course of it.

Furthermore, the participants' permission was first obtained prior to the inclusion of any data in the research report that the researcher would have obtained through

methods such as the observations in which the researcher concealed his identity to the participants while collecting such data.

In conclusion, in this chapter there is a detailed description of the research approach, research design, data collection and data analysis. The results are discussed in detail in Chapter 5.

CHAPTER 5: DISCUSSIONS OF CASE STUDIES

5. Empirical analysis and discussions

5.1 Introduction

As discussed previously, this study took the form of a case study in which 15 residential sectional titles properties were studied independently of each other. In this chapter, each of the case studies that were conducted are analysed and discussed.

In Table 5.1 below, the list of the schemes that formed part of this study in the sequential order in which they are discussed is listed. The sequence in the table is not necessarily the order in which the study was conducted. The list simply reflects the case studies in the sequential order in which they are discussed.

Table 5.1

Case studies discussion sequential order	Name of the scheme (Pseudo Names)	Province
1	Kwezi-Mansion	Gauteng
2	Pan Villa Court	Gauteng
3	Castel Villa	Gauteng
4 & 5	Khaya Palace & Jozi Place	Gauteng
6	Paving Heights	Gauteng

7	Jason's View Place	Gauteng
8	Adelaide Court	Limpopo
9 & 10	Zacharia Park & Klein Fountain Village	Limpopo
11 & 12	Mamba Village & Desborough Heights	Gauteng
13	Olivier Gardens	Gauteng
14 & 15	Miami Gardens & Peter Palace	Gauteng

As indicated in Table 5.1 above, the schemes were based in two provinces, namely, Gauteng and Limpopo.

5.2 Analysis of the case studies

5.2.1 Kwezi-Mansion (Case study 1)

Kwezi-Mansion was a relatively smaller scheme with only 51 units in total in Gauteng. The researcher was an investor in this scheme. He owned one rental unit in the scheme. His ownership of a unit afforded the researcher access into the scheme without any problems. The researcher was known to the security personnel of the scheme as an owner of a particular unit who came around from time to time to visit his tenant/s.

The researcher's visit to Kwezi-Mansion scheme, however, between the period of June 2013 and May 2014, and also in March 2016, was informed by a different purpose, namely, a research study. Besides visiting the scheme as an owner during the period mentioned above, the researcher was also conducting this study. In total, six respondents were interviewed.

a. Access into the scheme

The researcher accessed the scheme on the first day through his first respondent with whom he had an appointment that was arranged for him by his tenant. The researcher's tenant was a friend of the first respondent. During the interview with the first respondent, the names of certain individuals that the researcher identified as potential respondents kept surfacing.

Since the first respondent requested for his identity to be concealed and asked for the interview not to be taped, the first respondent could not introduce the researcher to the individuals in question. The researcher was only pointed in the direction where he could find the individuals in question and with the help of his tenant and the security guards, he managed to locate the individuals.

The respondents' participation was conditionally. They participated on the condition that their actual names would not be revealed in the final report and that their identity

would be kept confidential. It is for this reason that the researcher could not be introduced by respondents to possible respondents.

b. Owners refusing to pay their levies

The respondents were asked if they were satisfied with the current levies, and why or why not. This open-ended question revealed detailed information about the attitudes of the owners in this scheme towards the payment of levies.

In its early years of its establishment, in approximately 2000, the body corporate of Kwezi-Mansion was faced with the problem of owners who refused to pay their levies. Owners refused to pay because “they said they were not tenants but owners of their units. They said as owners they were only responsible for bonds not levies” (Respondent 1: 19 June 2013).

Although the respondent did not know the exact number of owners that refused to pay their levies, the number seems to have been big enough to affect the functioning of the body corporate financially. “We ended up without having enough money to pay municipality for water and electricity, and electricity to our complex was disconnected [by municipality] because we owed them [municipality]” (Respondent 1: 19 June 2013).

The situation described above confirmed two aspects that were dealt with in the literature. Firstly, it confirmed that owners in residential sectional title schemes are financially interdependent. The budget of the body corporate is based on the belief that all owners will be contributing towards the maintenance, upkeep and the payment of services rendered to the scheme. Failure by other owners to pay their levies affects the entire budget of the scheme and the body corporate's ability to satisfy all its financial obligations.

Secondly, the situation confirmed that the model of residential sectional title schemes is unique. The respondent believed that the owners that refused to pay their levies did not know how the residential sectional title model works. It was apparent that they came from the background of freehold properties where levies do not apply. Their assumption that levies were for tenants was a clear indication that they did not understand how residential sectional title schemes operate (Respondent 1: 19 June 2013).

According to Respondent 1, the disconnection of electricity by the municipality to the entire complex of Kwezi-Mansion was because of non-payment, which happened in about 2003. This situation led to tension between the owners that were paying their levies and those who were not paying. "Owners that were up to date with their levies were very angry at those that were not paying their levies" (Respondent 1: 19 June 2013). This revealed the source of tension or conflict between or amongst members

of the body corporate in this particular scheme. It further confirmed organisation theory's argument that "the nature of the dependence among units for financial material" may result in conflict (Aldag & Kuzuhara, 2002:468).

The electricity disconnection at Kwezi-Mansion resulted in difficult for all the owners in the scheme. Owners' lives during this period were described as hard and unbearable. "We were left without power for about two weeks. It was very bad. Some owners left the scheme to stay with their relatives. Some of those that remained behind started making wood fire outside their units in order to cook for their families" (Respondent 2: 10 August 2013). The situation was further exacerbated by the fact that those who wanted to sell and leave could not do so because the banks were not willing to finance anyone who wanted to buy in the scheme then (Respondent 2:10 August 2013).

The situation did not only confirm the existence of conflict in the scheme in question, but it also confirmed organisation theory's argument that task interdependence could be the source of conflict in some instances (Aldag & Kuzuhara, 2002).

c. Appointment of the crisis committee

The disconnection of electricity made the lives of the owners and residents difficult; this is described above. Owners and residents regarded the situation as a crisis and thus, appointed a "crisis committee", which consisted of five members to deal with

the situation. “The crisis committee went from one unit to another collecting donation (money) from residents and/or owners. I do not remember the exact money that led to disconnection but municipality wanted us to make a down payment and enter into an arrangement with it for the remaining balance before power [electricity] could be restored to our complex” (Respondent 2: 10 August 2013).

Instead of raising a special levy as empowered by the Act to deal with the above problem, the body corporate appointed a crisis committee that embarked on a mission of collecting donations from residents irrespective of whether those residents were owners or not. This approach suggested that members of the body corporate knew little or nothing about how residential sectional title schemes operate. There is no provision in the Act for both the appointment of a crisis committee and the collection of donations, especially from individuals who are not owners in the scheme.

The Act refers to the appointment of the trustees (management rule 6) and the owners’ contributions (section 37 (b) of the Act), not the appointment of a crisis committee and the collection of donations. Both the functions of the body corporate, namely, to collect levies and to negotiate with the local municipality are to be performed by its trustees unless the trustees have conferred those rights to the managing agent.

Furthermore, the Act provides that the body corporate shall raise its income through levies or special levies and not through donations. Paddocks (2008:8-2) noted, “The body corporate must require the owners, whenever necessary, to make contributions to the administrative fund for the purposes of satisfying any claims against the body corporate”. The researcher is of the opinion that the appointment of a crisis committee and its function was illegitimate and thus, a potential for conflict as other owners might have refused to cooperate with the crisis committee.

d. Dismissal of the managing agent and the trustees

Owners that were up to date with their levies, following the above situation, were not only angry at those that were not paying levies, but they were also angry at the managing agent and the trustees at the time. They blamed the two parties for not being able to collect levies effectively and timeously. This was evident in the body corporate’s subsequent action when they dismissed both the managing agent and the trustees. “Both managing agent and the trustees were replaced because people were angry at them. Some of us did not even know that there were people who were not paying levies. We thought that the managing agent was taking care of that. Those of us who were paying were very angry at the managing agent” (Respondent 2: 10 August 2013).

The electricity situation in this scheme did not lead to conflict only amongst ordinary members of the body corporate, but the conflict also affected the managing agent

and the board of trustees. The dismissal of the then managing agent and the board of trustees did not only reveal the existence of conflict that involved the managing agent, board of trustees and the body corporate, but it also confirmed organisation theory's argument that "the greater the interdependence among units, the greater the potential for the conflict" (Aldag & Kuzuhara, 2002:468). Both the trustees and the managing agent were tasked with the responsibility of collecting levies, among other responsibilities, and failure by the parties to fulfill their responsibilities resulted in conflict between them and the body corporate.

The dismissal of the managing agents was not new in the scheme in question. The managing agents and board of trustees had changed over the years with the exception of one trustee who had been on the board of trustees for "donkey years" according to the owners (Respondent 2: 10 August 2013). The trustees or managing agents had left or had been dismissed over various allegations, most notably financial mismanagement or misappropriation of funds. One of the respondents could recall about eight managing agents that had been dismissed previously since she had been an owner in the scheme (Respondent 2: 10 August 2013).

e. Levy defaulters on the increase

The restoration of power to the scheme and replacement of the managing agent and the trustees respectively, however, did not solve the cash-flow problem of the body corporate. Soon after power had been restored, other owners started defaulting on

their levies to add to the number of those who were already not paying their levies (Respondent 1: 19 June 2013).

Cash-flow problems in the scheme forced the trustees to take different, but inconsistent measures. “There are many people who are not paying their levies. Instead of collecting from them trustees simply increase levies. They punish people who are paying” (Respondent 1: 19 June 2013).

In some instances, “trustees and managing agent [new trustees and new managing agent] did not know how to deal with owners that were not paying their levies. Owners that were previously paying (before the power cut-off) started defaulting on their levies as well” (Respondent 1: 19 June 2013). The challenge that was facing the body corporate at this time was the poor collection of levies that worsened the cash-flow problem of the body corporate.

The conclusion that one can draw from the situation described by Respondent 1 is that the body corporate did not have effective systems in place to ensure that levies were collected and to deal with those who did not pay. As a result, owners who paid their levies timeously became demoralised.

“Some owners threatened to stop paying as well because they were sick and tired of subsidising other people [owners]. Meetings of the owners were called in the

complex to address the issue of non-payment of levies and the implication it had on the body corporate as a whole but this did not help because we were fighting at those meetings” (Respondent 3: 12 August 2013). Owners fought amongst themselves about a solution to the body’s corporate cash-flow problem.

The respondent recalled further that, “In some instances fights became physically. Owners would point fingers at each other’s faces. It was terrible simply because some people did not want to pay their levies arguing that they were owners not tenants” (Respondent 3: 12 August 2013). Paying levies and repaying mortgage bonds was regarded as double payment by some owners, which also proved that some owners did not understand how the model of residential sectional titles schemes work.

The situation described confirmed the existence of conflict among individual members of the body corporate over levy payments. It also confirmed that some owners failed to realise the financial interdependence of the owners in residential sectional title schemes.

f. The appointment of Zenzele

Realising that the body corporate was not finding a solution to its cash-flow problems, the trustees approached an organisation known as Zenzele (pseudo name) for assistance with the collection of levies. “Zenzele presented itself to us as a

specialist in levy collection. They [Zenzele] promised to collect outstanding levies and future levies from all the owners. They said that they would take legal action against owners who refused to pay their levies (Respondent 4: 5 May 2016).

Zenzele went further to promise, “to pay the body corporate all the levies that were outstanding from the other owners (defaulters). They said they (Zenzele) would recover the money (the money advanced to the body corporate) from those owners (levy defaulters). We were all excited because this meant that financial problem was going to be a thing of the past in our complex” (Respondent 4: 05 May 2016). According to Respondent 4, the discussion between Zenzele and the body corporate took place towards the end of 2003.

In early 2004, the trustees, on behalf of the body corporate, appointed Zenzele through a written contract to be their levy collector. “We were happy to appoint them because they promised to deal with levy defaulters so that we do not have cash- flow problems anymore. They even promised to pay us (body corporate) all the outstanding levies and they (Zenzele) would recover that money from the defaulters. Everyone was happy about this ‘solution’” (Respondent 4: 5 May 2016).

Some owners, however, believed that trustees were not honest with them regarding the appointment of Zenzele. “Mavis (not her real name; Mavis is also Respondent 4) and her friends lied to us about Zenzele. They told us that owners who were paying

their levies were not going to be affected by Zenzele's contract. They said Zenzele's contract was affecting only owners that were in arrears with their levies. They said their units (of those who owed) would be repossessed. Later on we learned that all of us were affected by Zenzele's contract irrespective whether or not you were up to date with your levies" (Respondent 1: 19 June 2013).

The above situation confirmed the existence of conflict between the trustees and members of the body corporate within the scheme. In some instances, the trustees found themselves in situations of conflict with ordinary members of the body corporate over unpopular decisions like that of the appointment of Zenzele.

Mavis did not deny the allegations of Respondent 1 against her and her then board of trustees. "We told them what we understood to be the content of the contract" (Respondent 4: 5 May 2016).

The contract between Zenzele and Kwezi-Mansion Body Corporate was presented to the researcher by Respondent 4 for perusal only. The researcher was not allowed to make copies or take the document home with him. The brief perusal of the contract in question revealed that the body corporate was collectively liable for all the levy defaulters' funds that were advanced to the body corporate by Zenzele, thus, confirming the allegation by Respondent 1 above that the entire body corporate was liable for levy defaulters' debts.

One of the signatories, Respondent 4, of the contract in question confessed that she and her then colleagues did not fully understand the terms and conditions of the contract to which they were attaching their signatures. “To be honest we did not properly read the contract. We relied on Zenzele to explain its content to us. We were desperate to find solution to our financial problems” (Respondent 4: 5 May 2016). In addition, according to Respondent 4, the contract was produced by Zenzele for them to sign on behalf of the body corporate.

The contract signed between Zenzele and Kwezi-Mansion Body Corporate contained more than 200 pages and it was written in legal terminology. The fact that no one was qualified as a lawyer amongst the trustees that concluded the contract with Zenzele meant that trustees had negotiated and concluded the contract without possessing the relevant skills and expertise relevant to the task and thus, indebted members of the body corporate who were unaware of what had happened. This confirmed Horwitz’s (1985) argument that the management of the residential sectional title schemes requires time, skills and expertise.

Furthermore, the content of the contract did not support Mavis’ claim that only owners that owed levies were affected by the contract. In fact, it was the body corporate that was bound by the contract; not individual owners as Mavis and her committee were made to believe by Zenzele. All the levies owed by individual owners were advanced to the body corporate by Zenzele; the body corporate was

liable for the repayment of those funds in the event that Zenzele was unable to recover the funds from the individual owners.

Furthermore, in terms of the content of the Zenzele contract, Kwezi-Mansion Body Corporate gave away its right to collect levies to Zenzele. On the other hand, Zenzele ensured in its contract that it had control over the collection of the body corporate levies so that it would be easy for them to recover any claim it might have had against the body corporate in the future.

Judging by the nature of the contract, collecting levies was not Zenzele's area of specialisation. Zenzele specialised in financing bodies corporate that were experiencing financial problems because of owners who did not pay their levies. It gave those bodies corporate money that was owed by individual owners and it recovered the money from individual owners with interest. In addition, Zenzele charged the body corporate an administration fee for its service. The trick, however, was that the body corporate in question was named as the collateral in the event that Zenzele failed to recover its money from the individual owners. In other words, Zenzele secured its loan to the body corporate through future levies of the body corporate.

The appointment of Zenzele did not really solve Kwezi-Mansion's financial problems in the long term. The 2006 levy roll, which is the document that reflects individuals'

levy status in the scheme at a particular time, revealed that within a period of two years the defaulters' debt had increased from R 275 000 to R 500 000 (Respondent 1: 19 June 2013). This meant the body corporate's financial situation was not getting better despite the appointment of Zenzele. "Yes, that's true Zenzele was not helping us. That's why some owners wanted them to go" (Respondent 4: 5 May 2016). This situation revealed the emergence of conflict between the body corporate and Zenzele.

g. Different board of trustees is in power

The financial situation of Kwezi-Mansion Body Corporate did not change until 2009 when the new board of trustees was appointed. "There was a guy who became a trustee around 2009 and he insisted that we break away from Zenzele because the deal was only favouring them [Zenzele]". (Respondent 4: 5 May 2016).

Respondent 3 also recalled the appointment of the 2009 board of trustees and the reaction of the owners to the new board's decision to break ties with Zenzele: "Many owners were not happy especially Mavis (respondent 4). She has been in the board of trustees for many years and I think she was jealous when she realised that the new trustees were becoming more popular than her. She (Mavis) was influencing us to oppose the board's decision to break away from Zenzele" (12 August 2013).

In response to the above allegation, Mavis stated, “At first I was opposed to the decision because I felt that Sizwe (not his real name and new chairperson) was taking us back to where we started. My worry was about the same problem of failing to collect levies. I was not jealous of Sizwe and other trustees”. (Respondent 4: 5 May 2016). When the body corporate tried to break away from Zenzele as advised by their new chairperson, Sizwe, in 2009, Zenzele demanded that the body corporate settled its R500 thousand rand debts first or they would take legal action against the body corporate (Respondent 3: 12 August 2013; Respondent 4: 5 May 2016).

The reaction by Zenzele to the body corporate’s decision to break away from the contract supported the researcher’s understanding and interpretation of the contract that the body corporate was made collateral to individual owner’s debts. Zenzele and other owners’ reactions did not discourage Sizwe and his fellow trustees. Things became easy for Sizwe and his fellow trustees after winning the support of Mavis (Respondent 3: 12 August 2013).

Mavis went to see Sizwe in his unit and that is where Sizwe managed to convince her about his goal. “So they told you that as well. Yes, I did visit him in his unit. Sizwe showed me exactly what was going on in the complex and with Zenzele’s contract. For the first time I understood what was happening. That is why I decided to support him” (Respondent 4: 5 May 2016).

Mavis' reaction to the new chairperson's (Sizwe) action to break away from Zenzele showed the existence of a power struggle within the board of trustees. Mavis was one of the trustees who, at first, influenced other members of the body corporate to oppose the initiatives that were started by her fellow trustees. If Mavis had not visited Sizwe in his unit, she would have sabotaged them from within the same structure of which she was a part.

The various documents of Kwezi-Mansion, which included the minutes of the body corporate's AGM of 2009, financial report of the 2008 financial year and trustees' report of the 2008 financial year indicated that this scheme had been badly managed in the years before 2009. The body corporate owed for services such as water and electricity; hence, the disconnection of electricity by the authority.

With the help of Sizwe's new board of trustees, Kwezi-Mansion finally broke away from Zenzele in 2009 after settling its debt, which was then approximately R 600 000 (Respondent 4: 5 May 2016). The board managed to raise enough funds to pay the body corporate's debt. It achieved this goal by adopting a zero tolerance approach to the non-payment of levies. The new board disconnected electricity to all the units that owed levies (Respondent 4: 5 May 2016).

At the end of its 2009 financial year, Kwezi-Mansion had settled all its debts (Respondent 4: 5 May 2016). It did not owe any creditors any money, including the

local authorities for services such as water and electricity. In fact, the 2010 body corporate financial record (bank statement) revealed that the body corporate had a credit of about R 180 000 after paying all its creditors.

Therefore, the drastic measures which included the disconnection of electricity to the units that owed their levies seemed to have paid off for the body corporate. The body corporate managed to raise enough funds to deal with its cash-flow problems. The steps taken by the new board of trustees above also showed the response of the body corporate to the constant conflict in the scheme that was triggered by cash-flow problems.

h. Insufficient budget and poor budget management

Besides non-payment of levies by some owners, the board of trustees of 2009 discovered that the cash-flow problems of their scheme had been also caused by under-budgeting and poor budget management by the previous trustees.

The above fact was evident in the Kwezi-Mansion Body Corporate's 2009 budget, which had increased from R 35 000 in 2008 to R 70 000 (Body Corporate 2009 Budget). Thus, the budget of the body corporate in 2009 when Sizwe's committee took office increased by 100 per cent and accordingly, so did individual owner's levies (Respondent 4: 5 May 2016). According to the chairperson's (Sizwe) report of 2010, the body corporate had been operating above budget in the previous years.

The report further stated that “even if everyone was paying his or her levies, the body corporate would still experience financial problems” (Chairperson’s report – October 2010).

The situation, according to the above mentioned report, was exacerbated by the fact that trustees did not adhere to the budget in their spending. In many instances, the trustees’ spending exceeded the budget. For example, the budget for security was X amount, but Y amount was spent. The Y amount was often above the X amount, which meant overspending in many instances.

Failure by the trustees to comply with the budget seems to have contributed to the financial crisis of the Kwezi-Mansion Body Corporate. “Previous trustees were not adhering to the budget. I am not sure if it was deliberate or it was due to ignorance on their part. There are number of instances in the past that suggest that the body corporate was operating under budget” (Respondent 5: 5 May 2016).

i. Managing agents protect their jobs

Given the employment relationship that exists between bodies corporate and managing agents, some managing agents are afraid to reprimand trustees when the trustees are wrong for fear of being dismissed by their bosses, the trustees.

The representative of one of the former managing agents claimed, “We always try to advise trustees but they do not listen to us. Remember that we are employed by them. We carry their instructions even though at times their instructions are wrong. Trustees will terminate your contract if you fight with them” (Respondent 6: 6 May 2016). When asked about their poor track record of collecting levies at Kwezi-Mansion, the managing agent claimed that trustees had not cooperated with them when it came to levy collection because some of the trustees had not paid their levies on time either. In other words, there was also a conflict of interest that involved the trustees in this scheme.

The scheme had had a number of managing agents that had changed over the years. “I became an owner here about eight years ago and since I came here I can count more than 10 managing agents. Managing agents come and go here. We always have problems with them” (Respondent 3: 12 August 2013). This frequent changing of managing agents resulted in managing agents being too scared to confront trustees if they did not comply with the rules of the scheme.

The conflict of interest alluded to above was also encouraged by some managing agents who employed influential trustees in the scheme. “I know that Mavis was working for our managing agent. I found her reconciling our electricity accounts in her unit. I asked the managing agent but he denied that Mavis was working for them

and that is when I realised that she was working for them secretly. I told the managing agent that I was not happy about this” (Respondent 3: 12 August 2013).

The employment of trustees by the managing agents that are appointed in the same scheme is tantamount to a conflict of interest. The situation also complicates the relationship between the managing agent and body corporate. Managing agents are employed as service providers by the trustees, and if the managing agent, in turn, employs trustees to work for them, the implication thereof is that the managing agents and trustees are one another’s bosses and employees.

The repeated dismissal of the managing agents, employees, by the body corporate, employer, in this scheme supports industrial relations theory that the relationship between the employer and employees is not only conflictual but also the power relations between them is unequal in favour of the employer (Hyman, 1975). The employer has the power to employ and dismiss its employees like it is the case with the dismissal of the managing agents in this case.

Although not evident in this study, by employing trustees that employed them, the managing agents might change this power relation in their favour. Trustees might find it difficult, if not impossible, to dismissal managing agents that fail to meet their contractual obligations because they too might be dismissed from the employment of their managing agent concern.

j. Previous trustees made serious blunders

The trustees before Sizwe's board of trustees made serious mistakes, which contributed to the problems that were faced by Kwezi-Mansion Body Corporate. Sizwe noted, "The previous trustees made serious blunders during their term of office. I think they wanted owners to love them for the wrong reasons. Before I was elected, levies had not been increased for the past three years and this made owners happy without realising the implication of low levies that were not in line with the budget" (Respondent 5: 5 May 2016).

The previous trustees worsened the financial situation of the body corporate further by reducing individual levies after the municipality announced the introduction of the new rates and taxes legislation in 2010 (Respondent 4 and 5: 5 May 2016). In terms of the legislation in question, individual owners in the scheme would be responsible for their own rates and taxes account. Prior to this legislation, rates and taxes was the responsibility of the body corporate. "Trustees reduced individual levies without understanding the implication of their action. They were more concerned about pleasing members of the body corporate than facing the reality (Respondent 5: 5 May 2016).

The previous trustees' mistakes in this scheme were also evident in their unilateral conversion of the swimming pool into a children's playground. "The action of the trustees to convert the swimming pool into kids' playground was another serious

blunder. The only reason trustees did this, in my view, was to please owners /residents that had kids. It is a fact that there are many kids in the complex. But the question trustees should have asked themselves is this: whose kids are these? Do these kids belong to the owners or tenants? This exercise was never done. Even if the kids belonged to the owners, kids don't remain kids. They grow up. They will outgrow their play area and then what?" (Respondent 5: 5 May 2016).

After pausing for a few minutes while waiting for the researcher to complete his note-taking, Sizwe went on to explain his response: "Don't get me wrong, my brother. I am not against kids at all. I have kids myself. My problem is that trustees did not consult us when they were converting the swimming pool into kids' playground. Owners were unfairly deprived their swimming pool. My second problem was that their (trustees) project (kids' playground) was not budgeted for. The reason the complex is experiencing financial problems is because of the trustees that are not adhering to the budget" (Respondent 5: 5 May 2016).

Sizwe's concern about the lack of consultation by the previous trustees regarding the swimming pool and the children's playground was correct. Management rule 33 (1) states, "The trustees may, if the owners by unanimous resolution so decide effect or remove improvements of a luxurious nature on the common property". Both a swimming pool and children's playground area are regarded as luxurious improvements. By failing to consult owners when converting the swimming pool into

a children's playground, the previous trustees did not adhere to that section of the Act. Their action also revealed their ignorance about the laws that apply to residential sectional titles schemes, thus, attracting unnecessary conflict.

Kwezi-Mansion Body Corporate managed to turn around its financial situation in 2009 following years of cash-flow problems in the scheme. "Sizwe managed to help us to fix the financials of the body corporate. I personally learned a lot from him. Even after he left in 2010 I continued educating new trustees. When he left, the body corporate was in credit of about R 180 000 from the negative of R 600 000. It was a great improvement..." (Respondent 4: 5 May 2016).

The positive situation, however, was reversed in 2016. "There are new trustees that were elected last year, 2015. They are not adhering to the budget and they want to push me out of the committee so that they can do as they want. The chairperson knows nothing about the body corporate. He wants us to reduce levies because of the credit in the body corporate's account. We had a credit of about R150 000 when they took over last year but now we have only about R 50 000 in our account. Our expenses are more than our income but they do not want to adjust levies" (Respondent 4: 5 May 2016).

The preceding situation did not only substantiate the existence of conflict among members of the same board of trustees, but it also confirmed organisation theory's

argument that “different individuals or units may have different and perhaps incomparable goals. Such differences may lead to conflict even when both parties agree on overall goal for the organisation” (Aldag & Kuzuhara, 2002:468).

k. I am simply protecting my investment

Mavis rejected the claims by other owners that she was clinging to power. “Pity you don’t want to tell me your source. It is true that I have been in office for many years but that does not mean that I do not want to step down from office. People don’t want to participate here. I am simply protecting my investment because people don’t want to be involved in the management of their complex” (Respondent 4: 5 May 2016).

After waiting for the researcher to complete his note-taking, Mavis posed a question: “What should I do if people do not want to be trustees?..... Every time we have an annual general meeting people decline when they are nominated. You also declined to accept the nomination last time (referring to the AGM of 08 November 2015 where the researcher was a complete observer). I understand your reason that you attended the meeting as the researcher but other people declined nomination too even though they were not researchers. It happens all the time. People don’t want to participate in this complex” (Respondent 4: 5 May 2016).

Apathy was one of the challenges facing the scheme in question. The minutes of the AGM of 2014 revealed that many owners declined nominations to be trustees at the

meeting in question. Mavis was one of those that volunteered to be a trustee after 30 minutes of trying to get owners to serve as trustees.

According to the minutes, owners cited various reasons to avoid serving on the board of trustees. Among other things that were cited by owners were prior commitments, commitments at work, and not having time for the meetings. In short, the other owners did not make themselves available to serve as trustees. In fact, many of the owners left the meeting when the chairperson proceeded to an item that dealt with the determination of the number of trustees and their elections to avoid being appointed as trustees (Kwezi-Mansion Body Corporate 2014 AGM minutes). Therefore, the claim that Mavis was clinging to power is questionable.

I. Conclusion

In this scheme, the collection of data involved interviews in which a total of six respondents were interviewed. Each interview lasted between 45 and 75 minutes.

Data that was collected through the interviews was validated, after or in between the interviews, through participant observation and documentary analysis. Documents that were analysed in this scheme were Zenzele's contract, levy rolls, minutes of the AGMs, chairperson's reports, financial reports, bank statements and body corporate budgets.

The researcher also attended one AGM in November 2015 as a complete participant. The combination of all the above mentioned data collection methods ensured that the findings of the study were credible. Furthermore, the findings were validated through Respondents 5 and 6. The two respondents were chosen because of their contribution to the study. They contributed a lot in the interviews and they were the only ones available when the researcher returned to the scheme to validate the findings. According to Lincoln and Guba (1995), involving respondents in the validation of data is the most crucial way of validating data.

The researcher concluded that conflict existed in the residential sectional title scheme in question. The conflict involved various role players in the scheme: the body corporate; service providers, specifically the local authority over unpaid services; the board of trustees for taking unilateral decisions such as converting the swimming pool into a children's playground; the managing agents for failing to collect levies; Zenzele for misrepresenting itself to the body corporate as a levy collection specialist; and individual owners.

Conflict in the scheme took on different forms. It took the form of a power struggle in which members of the board of trustees tried to usurp one another. For instance, Mavis was determined to sabotage the chairperson, Sizwe, so that she would remain influential on the board. It also took the form of physical confrontation when

members of the body corporate threatened one another physically at general meetings.

The conflict in Kwezi-Mension scheme took form of a legal battle when the body corporate found itself in a legal contract with Zenzele and was threatened with legal action by Zenzele and the local authority. It also took the form of confrontation between owners who paid their levies and those who did not pay their levies.

The cause of conflict in the scheme cannot be attributed to a single factor, but to various factors. One of the causes of conflict was failure by some members of the body corporate to pay their levies. The failure by these members to pay their contributions led to conflict between those who paid levies and those that did not pay their levies; the body corporate budget is based on the premise that all members will make a financial contribution towards the expenses of the body corporate. If some members do not pay their contribution, it has a negative effect on budget of the body corporate; thus, affecting the entire body corporate.

The preceding argument validated organisation theory's argument that task interdependence, which refers to "the nature of the dependence among units for financial material" can lead to conflict. It argues that "the greater the interdependence among units, the greater the potential for the conflict" (Aldag & Kuzuhara, 2002:468). As demonstrated in the discussion above, members of the

body corporate were very dependent on one another financially. Failure by some members to pay their levies led to a serious cash-flow problem for the scheme.

The cause of conflict at Kwezi-Mansion scheme could also be attributed to the wrong assumptions made by individual members of the board of trustees. When the new chairperson, Sizwe, was appointed, he took a decision to cut ties with Zenzele; his cost-cutting strategy led Mavis to assume that Sizwe was taking the scheme backward and thus, she planned to sabotage him. Sizwe was first perceived as someone who did not know what he was doing based on the scheme's previous experiences. Mavis' reaction to Sizwe substantiated organisation theory's argument that conflicts in some instances are caused by perceptions and assumptions (Aldag & Kuzuhara, 2002).

The cause of conflict at Kwezi-Mansion could also be attributed to poor and unilateral decisions of the trustees. Among others, trustees in the scheme in question reduced the individual levies of the owners when it was not necessary, they did not adhere to the budget, they converted the swimming pool into a children's playground without consulting the owners and indebted the body corporate through Zenzele's contract. The trustees' decisions resulted in dissatisfaction among other members of the body corporate such as Sizwe who felt that trustees' decisions were not considered properly. This suggested that the trustees did not always share the same goals as other members of the body corporate.

The preceding argument, therefore, supported organisation theory's argument that when individuals or units have incompatible goals conflict is bound to happen. The theory argues that "such differences may lead to conflict even when both parties agree on the overall goal for the organisation" (Aldag & Kuzuhara, 2002:468).

While the cause of conflict can be attributed to various factors including the fact that owners come from different backgrounds in terms of upbringing, culture, education and previous relationships, such evidence could not be found in the scheme in question.

The conflict referred to above affected all the owners in the scheme. Refusal and/or failure by some owners to pay their levies led to a cash-flow problem for the entire scheme and the scheme, in turn, could not pay local authority for its services such as electricity and water. As a result, the local authority disconnected electricity to the entire scheme and consequently, all the owners were disadvantaged. This also affected the smooth operation of the scheme in that the rules of the scheme were neglected when the crisis committee was appointed as opposed to the appointment of the board of trustees. Collection in the form of donations was opted for as opposed to the introduction of a special levy or increasing normal levies.

The response to conflict in the scheme in question was to a large extent spontaneous and haphazard. As already alluded to, the body corporate appointed a

crisis committee and collected donations from residents. The body corporate also responded to the conflict by appointing Zenzele to collect and manage its levies. Furthermore, the body corporate responded to its conflict by dismissing its managing agent and the board of trustees. It also increased its budget as its individual levies by 100 per cent, under Sizwe's board of trustees.

Furthermore, the body corporate responded to its conflict by disconnecting electricity to all the units that owed levies to the body corporate so as to compel owners to pay their levies in order to avoid another cash-flow problem for the scheme. The trustees' decision to disconnect electricity to the units of the owners that owed levies, however, did not only have the potential of creating conflict between them and the defaulters, but their action potentially placed them in a dispute with the authorities.

Section 27(3) of the *Electricity Act of 1987* provides that "any person, who without legal right (the proof of which shall be upon him) cuts off or damages or interferes with any apparatus for generating or supplying electricity, shall be guilty of an offence and liable on conviction to a fine not exceeding the amount which the Minister may from time to time prescribe or imprisonment not exceeding twelve months".

In light of the preceding argument, if the body corporate disconnects electricity to the tenants or owners, for whatever reason, the affected party can approach a lawyer to

bring what is called a spoliation application to court for an order to restore it. Spoliation is a legal term which simply means, to restore peaceful and undisturbed possession of an item.

5.2.2 Pan Villa Court (Case study 2)

Pan Villa Court was situated in Gauteng. This scheme was relatively large with 222 units in total. The researcher was an investor in the scheme in question. He owned two rental units in this scheme which afforded him access into the scheme without any problem. The researcher interviewed eight respondents.

a. Access into the scheme

On 7 September 2013, the researcher visited Pan Villa Court scheme and he identified himself to the security personnel at the entrance as an owner of the specific units, which was verified against the list of the owners that the security guards had with them at the entrance gate. The researcher's visit to the scheme this time, however, had nothing to do with his tenants. He visited the scheme to conduct the present study.

During his visit to the scheme in question, the researcher was armed with a tape recorder, a pen, research questions and a notebook also known as a field diary. He asked the security guards to call one of the trustees for him, preferably the

chairperson. He learned, however, that none of the trustees including the chairperson were present at the time.

The absence of the trustees at the time was a blessing in disguise for the researcher because their absence gave the researcher an opportunity to walk around the complex to begin his study through observation; this proved to a beneficial experience for him.

As the researcher entered Pan Villa Court scheme, he was greeted by children playing on the driveway and in between the cars that were parked in the different parking bays; some of the parking bays were marked with the unit numbers while others were marked with a letter V, which indicated that they were reserved for visitors. The children showed no respect to the motorists who were driving in and out of the complex.

Amongst the children were those that were riding their bicycles and motorbikes in front of the cars that were driving in and out of the complex. It was almost as if the children were competing with the motorists for the use of the driveway. The noise level from the children's playing was incredibly high for a residential sectional title scheme as schemes of this nature are generally governed by rules that prohibit such behaviour.

As the researcher continued to walk around the scheme, he noticed about two motorists that stopped in front of the children and appeared to reprimand them with wagging fingers. As soon as the motorists drove off, the kids, however, continued playing and shouting at one another to participate and to join the “fun”.

The researcher continued observing the relationships in the scheme through the children. As the researcher walked past the first block of units, he saw a woman who was yelling at other children to move out of the way. The children were playing in her parking space and the woman wanted them to move away so that she could park in her parking space. The researcher quickly noticed the problem she was experiencing and offered to instruct the children to move out of the woman’s way.

After the children moved away, the woman managed to park her vehicle and immediately got out of the car to thank the researcher for his assistance and remarked, “Labantwana bayahlupha; meaning “these kids are annoying”. The researcher asked the woman if it was always like this here. The woman replied, “Yes, every day when we come back from work we find them playing like this”.

During the conversation with the woman about the bad behaviour of the children in the complex, the researcher picked up that the woman was not only unhappy about the children, but also about the general management of the scheme. The researcher

saw this as an opportunity to introduce himself to the woman and the reason for him being there in the first place.

The woman agreed to participate in the study on three conditions: (i) that the researcher reschedule the interview for the following day because she was tired from work; (ii) that no recording would be done of the interview; and (iii) that the researcher did not reveal her identity to anyone, especially to other owners in the complex. She said, “I’m helping you with your study because you also helped me with the kids”, and laughed. After agreeing on the above terms, an interview was scheduled for the following day, 8 September 2013.

b. Children’s bad behaviour in the scheme

Pan Villa Court was situated within walking distance from the primary school in the area and this could be one of the reasons why there were so many children in the complex. “Yes, as you saw yesterday, there are many children in this complex and they are annoying as well. Sorry to say that but they are annoying. They always play on the driveway disturbing motorists as you witnessed for yourself yesterday. Some owners complain about their cars being scratched by the kids in this complex. We complained to trustees but nothing happens to solve the problem. You cannot punish them (kids) because you will get into trouble with their parents like Themba (not his really name)” (Respondent 1: 8 September 2013).

In addition to the disturbing behaviour of the children, some sections of the walls of the buildings contained graffiti, which were also a result of the children's bad behaviour in this scheme (Respondent 1: 8 September 2013).

The children that were accused of the bad behaviour were believed to be tenant's children because the scheme was perceived as being "full of tenants and their kids are all over the place. The kids break windows, play in the driveways and make noise" (Respondent 1: 8 September 2013). Consequently, there was tension between owners and tenants over the behaviour of the latter's children.

Themba (Respondent 2) was one of the owners that was annoyed by the disturbing behaviour of the children. He related, "Today, I have a criminal record because of the kids in this complex", and paused before he went on to tell his story. "One day I was sleeping in my unit when I heard disturbing noises outside my bedroom window. I went to investigate and found that children were playing outside my bedroom window. I told them to move away because they were disturbing me but they would not listen. Instead they made fun of me. One of them told his friends that I was fat and I would not be able to catch them if I tried to chase them" (Respondent 2: 10 March 2014).

Themba said he was angry at the children for making a noise outside his bedroom window, but he became angrier when they disregarded his instruction to move away

from his bedroom window coupled with the other child's remark about his body weight. He ran after them and went specifically for the one who had made a remark about his weight. "I caught him and smacked him once or twice on his back and he cried and his friends were laughing at him" (Respondent 2: 10 March 2014).

Later that evening, Themba was arrested by the police following the earlier incident that involved the child. "The police arrested me and told me that the parents of that kid opened an assault case against me because apparently I assaulted their child assaulting their child" (Respondent 2: 10 March 2014). Themba was charged and found guilty of assault. His punishment included a two year suspended sentence, he had to attend a anger management course and do 200 hours of community service (Respondent 2: 10 March 2014).

Themba's incident did not only reveal conflict between him and the parents of the child that got him arrested, but most importantly, it revealed the conflict that existed amongst owners in the scheme. Themba did not see anything wrong in punishing other parents' children. He argued that "in an African culture a child belongs to the community. Any adult in our culture has the right to punish a naughty child" (Respondent 2: 10 March 2014). Themba's belief obviously was not shared by all the parents in the scheme; hence, the other parents got him arrested by the police for "punishing" their child.

The story described above confirmed organisation theory's argument that different backgrounds of individuals may influence their behaviour towards one another. The fact that individuals from different backgrounds inform the manner in which individuals see the world, which is different from one another, may result in conflict amongst individuals when they come together (Aldag & Kuzuhara, 2002). The owners of the child that was "assaulted" by Themba did not share the same background as Themba. This is evident in their understanding that their child could not be punished by any adult as per Themba's cultural belief.

Themba's incident also revealed failure by Pan Villa Court to enforce its conduct rules with regard to children's behaviour. The violation of the rules by the children in this case was overshadowed by the criminal case that was opened against the owner in question. Since all respondents wanted to remain anonymous, the parents of the child that opened a criminal case against Themba were not interviewed to avoid revealing his identity.

c. Inconsistency in the application of the rules

The rules are aimed at ensuring the control, management and administration, use and enjoyment of the sections and the common property by all the owners [and occupiers of the sections] (section 35(2) of the Act). Furthermore, the rules of the schemes in terms of section 35(3) of the Act must be reasonable and applied equally to all the owners.

At Pan Villa Court, however, this did not seem to be the case. An example of this could be found in the respondent's submission that "there are well-known people in this complex that play their music very loud especially on weekends. We complain to the trustees but nothing happens. But when some of us do the same thing we get reprimanded by the trustees or we receive letters from the managing agent threatening us with fines" (Respondent 1: 8 September 2013).

Respondent 1 further argued that "when we bought here we were told that parties were not allowed in the complex but almost every week there are parties in this complex. We tell security and the trustees to stop the noise but nothing happens" (Respondent 1: 8 September 2013). Judging by this assertion, the security guards were also ineffective or powerless in this scheme.

The respondent did not seem to be upset by the fact that he was caught and reprimanded for contravening the conduct rules of the body corporate, but was angry at the trustees for failing and/or refusing to do the same with other owners who are caught doing the same thing. In other words, she felt that the rules were not applied equally across the board. Some residents / owners contravened the rules, but nothing happened to them in terms of punishment (Respondent 1: 8 September 2013).

The body corporate is empowered “to do all things reasonably necessary for the enforcement of the rules and for the control, management and administration of the common property” (section 38(j) of the *Sectional Titles Act 95 of 1986 as amended*).

The Act also states that the rules that govern the schemes must be applied consistently, properly and equally. This, however, did not seem to be the case in the scheme in question.

Further, the allegation against the body corporate that it was not consistent in its application of the rules was confirmed by other owners. One example that was cited involved an owner who was granted permission by the trustees to erect a tent on the common property for her daughter’s graduation party, but a year later another owner was denied permission to erect a tent on the common property for her daughter’s 21st birthday party; this decision was based on the rules of the scheme (Respondent 2: 10 March 2014).

The decision by the trustees to deny the second owner permission to erect a tent for her daughter’s 21st birthday party made her very angry with the trustees of the body corporate and accused them of not treating everyone equally (Respondent 2: 10 March 2014). Despite the trustees’ refusal to grant the owner in question permission to host her daughter’s 21st birthday party on common property, the owner erected a tent on said property and argued that she could not be denied permission to erect

the tent on common property when previously there was an owner who was permitted to do so (Respondent 2: 8 March 2014).

The trustees were angry with the owner who disregarded their instructions and erected a tent on common property; however, there was nothing that the trustees could do as precedence had been set previously. (Respondent 2: 10 March 2014).

The new trustees wanted owners and tenants in the scheme to adhere to the rules, but their task was made difficult by their predecessors' failure to enforce the rules of the scheme consistently.

The inconsistency in the application of the rules does not only contradict sections of the Act, but it also creates conflict between ordinary members of the body corporate and the board of trustees. The incident described above regarding inconsistency in the application of the rules of the scheme by the current and the former trustees substantiated organisation theory's argument that goal incompatibility may lead to conflict. In terms of the preceding theory, differences between individuals or units may result in conflict even when both parties agree on an overall goal for the organisation (Aldag & Kuzuhara, 2002: 468). The failure by the former trustees to enforce the rules of the scheme consistently created tension between their successors and the ordinary members of the body corporate.

d. Payment and collection of levies

Levies form part of the residential sectional titles schemes. All owners in the schemes are obliged to pay levies for the maintenance and upkeep of the common property that is jointly owned by all members of the body corporate (section 37(b) of the *Sectional Titles Act, 95 of 1986 as amended*).

According to the conduct rules of Pan Villa Court, levies due by owners were payable in advance on or before the first day of the month, but no later than the 7th of each month. The rules stated further that any late payment may result in interest being charged on the outstanding balance and/or disconnection of electricity to the unit of the defaulting owner (Pan Villa Court Conduct Body Corporate Rules of 1998).

Despite the rules of the scheme in question regarding the payment of levies, the December 2012 Levy Roll showed that many owners had not been paying their levies timeously and no interest had been charged on their outstanding balances. This was a contravention of the rules of the body corporate, which stipulated that levies were due and payable on or before the first day of every month and interest would be charged on an outstanding balance.

Some owners were allowed by trustees “to pay their levies after the 15th of the month because that is when they get paid. These are mainly government employees” (Respondent 3: 10 December 2013).

The above practice was not only in contravention of the rules of the schemes, but it also revealed inconsistency in the application of the rules of the body corporate by its board of trustees. In terms of the rules, levies were payable in advance; by allowing some owners to pay their levies on the 15th of the month was a contravention of the rules of the scheme and an inconsistency in their application.

The confusion around the deadline for the levy payments was also caused by trustees. Some trustees started disconnecting electricity on the 8th of the month, to the units of the owners that had not paid by then. Other boards of trustees do not take any action against levy defaulters. A respondent noted, “It depends on the trustees that are in office at that time. Some trustees disconnect electricity to the units if people don’t pay; while others do nothing against them” (Respondent 3: 10 December 2013). The 2012 Levy Roll mentioned above showed that the trustees of the time did not act against levy defaulters and were unsuccessful in their attempts to collect levies.

Trustees that compel owners to pay their levies through electricity disconnection may put the body corporate in serious trouble with the law despite the fact that their action

is within the rules of their body corporate. Disconnecting electricity to the units of the levy defaulters is illegal. In terms of section 27(3) of the *Electricity Act of 1987*, no one is permitted to disconnect electricity supply without any legal right. This meant that the electricity disconnection clause in the conduct rules of the scheme in question was unlawful.

The unlawful action of the electricity disconnection was confirmed by an incident that had happened previously in the scheme. “One of the owners threatened to sue the body corporate after learning from his tenant that electricity to his unit was disconnected due to non-payment. ...The trustees paid his lawyers R 10 000 to withdraw the legal action against the body corporate and they immediately reconnected electricity to that unit” (Respondent 3: 10 December 2013). This incident revealed the existence of conflict between the owners and the trustees of the body corporate.

Like the conduct rules, the management rules were also violated. Trustees often act as if there are no rules that govern the schemes. The restrictions or directions given to the trustees in terms of section 39(1) of the Act are not taken seriously by both the trustees and the body corporate (Respondent 3: 10 December 2013). The body corporate is empowered in terms of the preceding section of the Act to give directions or restrictions to the newly elected trustees at every AGM. As demonstrated below, trustees often disregard the said restrictions or directions.

e. Disregarding of the owners' restrictions or directions

Trustees of the body corporate do not have unlimited powers. Their powers are subject to the Act, the rules and any restriction imposed on or direction given to them in terms of section 39(1) of the Act.

One of the compulsory items on the agenda of the bodies' corporate AGMs is an item that deals with giving the elected trustees directions or restrictions in terms of section 39(1) of the Act. In terms of this section of the Act, owners may impose a direction or restriction on the elected trustees to prevent trustees from doing as they please while in office. Since this forms part of the agenda, owners have no option but to deliberate on this item at all their AGMs.

The documents of Pan Villa Court, which included the minutes of the 2010 AGM and the chairperson's annual report, confirmed that owners in the scheme had not been exercising the rights conferred upon them in terms of section 39(1) of the Act for years. Owners had been giving directions or restrictions to their trustees in terms of the preceding section of the Act, but once trustees were elected no one cared to hold the trustees accountable for the conditions and directions imposed on them by the body corporate (Respondent 3: 10 December 2013).

For example, one consistent restriction since 2006 to date was that trustees should not spend more than R 15 000 on any unbudgeted project without having first

obtained permission from the body corporate. In other words, they should obtain permission first from the body corporate if there was a project that would exceed the R 15 000 restriction (Respondent 3: 10 December 2013).

Despite the R 15 000 restriction imposed on the board of trustees year after year at this scheme, the trustees simply disregarded the restrictions and directions imposed on them by their body corporate (Respondent 3: 10 December 2013). In 2007, for instance, the trustees unilaterally started a painting project for the entire scheme despite the fact that the project in question had not been only rejected at the previous general meeting, but the body corporate had reiterated its restriction of R 15 000 for any project not budgeted for at the same general meeting (Chairperson's annual report of 2010).

The project in question was rejected due to financial reasons as it required that a special levy would have to be implemented to cover the expenses relating to the painting (Respondent 3: 10 December 2013). Despite the rejection of the painting project coupled with the restriction mentioned above by the body corporate, the trustees, once in office, embarked on the project (Respondent 3: December 2013).

It appears that the owners did not raise any further objections about the project because the trustees did not raise any special levy when embarking on it. On the contrary, "trustees were praised for the 'good' work. This was because they started

painting without approaching owners for additional payment. So people were happy because the project was not affecting them financially” (Respondent 3: 10 December 2013). Moreover, as a bonus the project promised to increase the value of the properties in the scheme without any further financial contribution from the owners (Respondent 3: 10 December 2013).

The project, however, was not completed until the next AGM, which was held in December of 2008. This meant the project would be the responsibility of the next board of trustees. “The chairperson (outgoing chairperson) in her verbal annual report mentioned that the next trustees should continue with the painting project and that she was available to assist them” (Respondent 3: 10 December 2013). Up until this stage, none of the owners had challenged the trustees for not adhering to the restrictions imposed on them at the time they had taken over office in the previous year.

One of the important things to note about an AGM is that it does not only involve reflecting on the activities of the previous financial year, but it is also the end of the term of office for the incumbent trustees. A new board of trustees is also appointed or elected at an AGM.

The 2008 AGM of Pan Villa Court Body Corporate was no different from other AGMs: a new board of trustees, among other things, had to be elected. “The

competition for leadership was very high that is why the previous trustees did not return to office. It was only the chairperson who managed to get back into office. This does not mean people were not happy with them (previous trustees of 2007). Owners were generally happy with them because of their achievement (painting project). Some of them (previous trustees of 2007) actually declined when they were nominated, I think because they did not want to work with the newly elected trustees” (Respondent 3: 10 December 2013).

The above argument shows that both the body corporate and the board of trustees did not follow the directions and restrictions imposed on the trustees at the AGMs seriously. Despite the fact that the trustees had failed to adhere to the restrictions that were imposed on them at the previous AGM of 2007, at the following AGM of 2008 their actions were not challenged. Instead their actions were encouraged through praises from individual owners (Respondent 3: 10 December 2013). Therefore, one may conclude that a restriction or direction given to trustees in this scheme was taken for granted. Owners simply fulfilled their requirements of discussing all the items on the AGM agenda.

f. New trustees uncover serious financial problems

Following the AGM that was held in November 2008, the new board of trustees was appointed. One of the tasks that this new board of trustees inherited from the

previous board of trustees was the painting project as it was still in progress (Respondent 4: 16 January 2014).

The new board of trustees, however, did not blindly embark on the painting project as expected by their predecessors. The first thing that the new trustees did “was to analyse the finances of the body corporate because it was not clear how the previous trustees were financing this big project (painting) without raising a special levy. That was a mystery to all of us” (Respondent 4: 16 January 2014).

The new trustees analysed the financials of the body corporate and were shocked to discover that “the previous trustees financed their painting project through funds that were budgeted for maintenance, water and electricity. Basically, they short paid their creditors every month in order to have money for their painting project” (Respondent 4: 16 January 2014).

Further analysis of the body corporate finances by the new trustees revealed that, “the body corporate was in arrears with their electricity and water accounts. In fact, they owed municipality approximately one million towards water and electricity accounts, and that maintenance suppliers were not paid timeously and as a result they were owed substantial amounts” (Respondent 4: 16 January 2014). This meant that the painting project was initiated at the expense of the items that had been approved and budgeted for at the previous AGM (2008).

Upon deeper analysis, it was discovered that the body corporate was not in a healthy financial situation as owners were made to believe by the trustees at the previous AGM (2008 AGM). The fact of the matter was that the body corporate was in a serious financial situation. This was also attested to by a series of letters of demand that the new trustees received from the lawyers of the creditors of the body corporate at the beginning of 2009. The creditors included maintenance providers and the local authority's account for water and lights (Respondent 4: 16 January 2014).

Having established the above facts, the new trustees suspended the painting project and convened an urgent special general meeting to inform owners about the situation and to seek direction about the way forward. "Some owners understood our point while others were angry at us especially those whose blocks (blocks of units) were not yet painted. Those whose blocks were already painted wanted us to suspend the project indefinitely while those whose blocks were not yet painted wanted the project to be completed by any means necessary" (Respondent 4: 16 January 2014). This revealed the tension that existed amongst owners because of the painting project.

As a way forward, the trustees proposed a special levy to complete the painting project and to cover the shortfall for municipality services because part of the money for these services had been already used for painting. Unfortunately, the body corporate could not get answers from the previous board of trustees as they had

either sold their units in the scheme or moved out and rented their units to tenants (Respondent 4: 16 January 2014).

The proposal by the new board of trustees to raise a special levy for the painting project and municipality accounts was accepted by the owners after a long debate. It was agreed at the special general meeting of the owners that the special levy in question was to be paid over a period of 12 months (Respondent 4: 16 January 2014).

In other words, the new board of trustees did not only suspend an illegitimate painting project, but the trustees went a step further to have the project in question approved. The trustees also ensured that the project had its own budget. Trustees also made arrangements with the creditors of the body corporate regarding the monies that the body corporate owed them. “Unfortunately, by this time municipality had already obtained a default judgement against us [body corporate]. We had to negotiate through the lawyer with them” (Respondent 4: 16 January 2014). This revealed the conflict that existed between the body corporate and its service providers.

The trustees also discovered that the body corporate’s financial year ended at the end of February each year as opposed to November as had been the practice for years. Convening AGMs in November of every year was contrary to the requirement

of the legislation which states that “an annual general meeting shall be held within four months of the end of each financial year” (management rule 51(1)). Since the end of financial year for this scheme was February, the AGM should have been held no later than end of June each year.

Following this discovery, the trustees decided to convene the AGMs during the period required by law. “Our chairperson (Mandla) advised us to convene a special general meeting to inform owners of this change. He argued that if we do not inform owners they would expect us to convene an AGM in November as it had been the case in the past” (Respondent 4: 16 January 2014).

The chairperson, Mandla (not his real name) was relatively well-informed about body corporate issues. He guided his committee every step of the way. His fellow committee members relied largely on his skills and expertise (Respondent 4: 16 January 2014).

Mandla argued, “The previous trustees made many mistakes. Their mistakes affected the body’s corporate finances negatively. They did not comply with the rules that apply to the scheme and unfortunately in most cases they were encouraged by the body corporate by not stopping them” (Respondent 5: 20 January 2014). He supported his argument by citing examples of the things already discussed above, which included not convening AGMs in accordance with the Act.

By the end of the term of office of Mandla's leadership, the painting project had been completed, creditors had been paid in full, municipality accounts were up to date, and the arrangement for the default judgement was in place. The AGM schedule was now back on track as the following AGM was held in April of 2010 (2010 Chairperson's report). The financial records that were presented at this AGM and the chairperson's (Mandla) report indicated that the body corporate was in good financial standing and it had a positive credit in its bank account after paying all its creditors. Thus, the leadership in question had managed to influence and improve the body corporate's financial situation.

The above discussion not only revealed the existence of conflict in the scheme that involved members of the body corporate, board of trustees and service providers, but it also supported organisation theory's argument that scarce resources may lead to conflict. "If it appears that resources are scarce, efforts will be made to secure resources, often to the detriment of the goals of others" (Aldag & Kuzuhara, 2002: 467). While there was no evidence of securing resources at the expense of others in this case, the conflict was triggered by the owners who were expected to finance the project that had initially been rejected because of a lack of financial resources.

Furthermore, the conflict in the above situation may be attributed to poor leadership as the previous trustees of 2007 had made decisions that were detrimentally to the body corporate. They initiated a painting project at the expense of service providers

and thus, did not honour the goals of the body corporate. Their action supports organisation theory's argument that goal incompatibility may lead to conflict (Aldag & Kuzuhara, 2002:468). The trustees' failure to adhere to the restrictions of the body corporate was tantamount to not honouring the goals of the body corporate to reduce expenses.

g. Body corporate faces financial crisis again

The achievements of the trustees that finished their term of office in April 2010 were reversed by the trustees that took over in 2010. Following the AGM of April 2010, a new board of trustees was appointed. Mandla was not available to stand as he had found a new job and he was relocating to another province. Two of the trustees from Mandla's committee agreed to serve but "along the way we were sidelined by the new board of trustees and we decided to pull out" (Respondent 6: 20 January 2014).

Soon after they had sidelined the two trustees from the previous board, the 2010 board of trustees co-opted their own trustees. They did not only co-opt their own trustees, but they also started drifting away from the foundation that had been laid by the previous board of trustees (Respondent 6: 20 January). They started introducing improvements on the common property that not been approved by the owners and were also not in the budget. One of those projects was a children's playground. "They introduced a playground which was not part of the budget. Owners were not consulted about this project" (Respondent 6: 20 January 2014).

Apart from the fact that the children's playground project had not been budgeted for, the trustees also appeared to have inflated the cost of the project itself. The amount reflected on the invoice of the supplier of the playground equipment differed with the actual amount that the trustees spent on the children's playground facilities. The supplier's invoice reflected a total of R 18 000 whereas the actual money spent was approximately R 30 000 (Respondent 6: 20 January 2014).

The researcher attended the owners' general meeting that was held in November 2013 as a complete participant. Despite the fact that the researcher had already started with the interviews in this scheme, his identity as a researcher was still concealed to the majority of the owners because those that had already been interviewed did not want anyone to know that they had participated in the study. The agreement between the respondents and the researcher to conceal the respondents' identities worked in favour of the researcher in this instance. The researcher took part in the meeting in question without having to worry about anyone finding out what he was doing.

At this general meeting in November 2013, for the first time owners challenged the unilateral introduction of the children's playground by the trustees. The trustees, however, justified their action by pointing out that there was no play area for the children in the complex and claimed that the play area would minimise the children's bad behaviour in the complex. The issue of the children's playground was quickly

rationalised by the trustees by suggesting that owners who had raised questions about this project were insensitive to the children's needs. For instance, they would respond by saying: "What is wrong about providing a playground for our own kids? Don't you have kids of your own? Where do you want the kids to play?"

As a result of such rhetorical questions, the owners quickly refrained from asking further questions. The owners at this general meeting failed to challenge trustees on the matter of principle. Morally, the trustees might have been correct to cater for the children in the scheme, but the principle here is that the trustees were required to consult owners if they wanted to embark on any project that was not budgeted for in terms of the directions and restrictions imposed on them at the previous AGM (Body Corporate AGM Minutes of 2010).

The other major unauthorised improvements were surveillance cameras and electronic access control. These projects too were not included in the budget of the body corporate (Respondent 6: 20 January 2014). Despite the fact that improvements of this nature require approval of the owners (management rules 33(1) and 33(2)(a)), the trustees did not consult the owners when effecting these improvements. Given the fact that owners were not asked to make contributions towards these improvements, they did not contest them and it appeared as though they had not thought about the implications of such decisions (Respondent 6: 20 January 2014).

Furthermore, this new board of trustees (2010 board of trustees) disregarded the AGM schedule that had been restored by their predecessors (2008 board of trustees). They did not convene an AGM from the time they took over in April 2010 until December 2012 (Respondent 6: 20 January 2014). All the achievements of their predecessors were thus reversed. They returned to the practices of the trustees that had been in office before November 2008. Furthermore, the positive financial achievements of their predecessors were reversed. History showed that unbudgeted projects in this scheme had resulted in serious financial problems.

The financial problems of Pan Villa Court Body Corporate got worse in 2016. According to the list of owners that owed levies, dated 30 March 2016, and also posted at the entrance gate of the complex in the name of 'naming and shaming', the body corporate was owed approximately R 500 000 in levies by individual owners who were not paying their levies. "The list that you saw at the gate is very disturbing. You cannot put the list of the owners with their full personal information such full names and units numbers at the entrance gate for everyone to see. That information is confidential. These people (trustees) are irresponsible" (Respondent 6: 25 May 2016).

The above situation revealed the conflict that existed in the scheme between the members of the body corporate and their trustees over the financial mismanagement by the trustees and failure by the trustees to adhere to the directions and restrictions

imposed on them by the body corporate. It further revealed that the trustees in this scheme undermined their body corporate.

h. Body corporate in the hands of the bullies

The researcher managed to attend four general meetings of the scheme in November and December 2013, and February and July 2014. The researcher attended these meetings as complete participant and was nominated as a trustee at November and December 2013 general meetings, but declined the nominations as he did not want to compromise the study at hand.

At the four meetings that the researcher attended, one or more projects that were reported to have been initiated by the trustees without having obtained permission from the owners as per the directions or restrictions of the body corporate were discussed. This shows that trustees in the scheme had no respect for the body corporate.

Furthermore, at the four meetings, the trustees did not seek direction from the body corporate. They called the meetings to tell the body corporate what they as trustees would be doing. For example, in one of the above mentioned meetings, the trustees informed the body corporate that they (trustees) would be terminating the services of various service providers: security, cleaning and maintenance. “The matter is not open for discussion. We know what we are doing,” said one of the trustees.

The above situation suggested that the body corporate was in the hands of the bullies. The members of the body corporate had no say in the appointment of its service providers or in determining the costs of the service providers. The trustees simply informed them what and how things were to be done in the scheme. “Well that is, Pan Villa Court for you, my brother. There is no room for discussion here. We are instructed like children” (Respondent 6: 20 January 2014). The discussion above shows that the body corporate’s poor financial situation was to a large extent the result of the trustees’ poor or unilateral decisions.

i. Poor or lack of understanding of how the scheme functions

The financial situation of this scheme also seemed to be exacerbated by a lack of knowledge on the part of the trustees on how sectional title schemes work. The laws that govern sectional titles schemes were not applied correctly, if ever applied.

It is clear in terms of section 44(c) of the Act that an owner is responsible for the maintenance and repair of his or her own section. This is also confirmed by management rule 71(b). The legal claim launched by the maintenance service provider through its lawyers against the body corporate in 2013 included maintenance that was carried out inside the units of individual owners. In its legal documents, the service provider claims that it was the body corporate through its trustees that called him out to do the work: hence, his claim against the body corporate.

As mentioned, maintenance inside individual owners' units is the responsibility of the owners concerned. By paying for the work carried out in the individual units, the trustees were unnecessarily and wrongly indebting the body corporate.

Furthermore, the claims of the maintenance service provider also included expenses that were supposed to be covered by insurance including burst geysers and resultant damages (service provider's letter of demand to the body corporate). Despite the fact that the insurance policy of this scheme covered the preceding items, the trustees had not submitted any claim to the insurers in many instances. The costs that were supposed to have been paid by the insurance of the body corporate were carried by the body corporate unfairly because of the ignorance of the trustees. Many of the problems of this scheme could be attributed to the leadership of the scheme.

The leadership in this case refers to the trustees and the managing agents because these two parties were actively involved in the management of the scheme. Their failure to convene AGMs to review the body corporate's budget annually, and to hold regular trustees elections are some of the examples that show the trustees did not know how the scheme should operate (Respondent 6: 20 January 2014).

The letters of demands referred to above revealed that conflict existed between the body corporate and its service providers in the scheme in question. The conflict in question could be attributed to the failure by the body corporate to honour its

financial obligations towards its service providers. The discussion above also confirms the existence of conflict between the body corporate and its trustees because of the trustees' failure to adhere to the restrictions or directions of the body corporate.

The fact that the trustees did not comply with the rules of the Act when raising a special levy was another indication that the trustees knew little or nothing about the rules that apply to residential schemes. While it is the discretion of the trustees to raise a special levy, there are two requirements that the trustees must satisfy if they wish to raise a special levy: firstly, the special levy must be necessary and secondly, a special levy cannot be raised to pay an expense that had already been included in the budget approved at the AGM. In other words, a special levy cannot be raised for an expense that can wait for inclusion in the budget for the next financial year (Paddocks, 2008).

In addition, a special levy cannot be used to pay for a maintenance expense because the latter must be included in the budget. Therefore, special levies are for emergencies. Mismanagement and/or misappropriation of funds by the trustees or the managing agents does not constitute an emergency (Paddocks, 2008).

j. Misappropriation of the body corporate funds

Misappropriation of funds was so common at Pan Villa Court that it was regarded as normal by owners. “It has always been like this since the beginning of this complex. I am one of the first owners in this complex and funds have been disappearing ever since. At first it was a developer, then the managing agent and the trustees. We all know that funds are stolen here. All the projects that you see here, are a disguise for people to eat our money” (Respondent 8: 7 March 2016).

Misappropriation of the funds of the body corporate in this scheme happened under all the boards of trustees dealt with in this study; the period from 2006 to 2016. “The 2007 trustees discovered that there was a vehicle debit order that was running through the body corporate account. Upon investigation the trustees discovered that the vehicle that was financed through the body corporate account actually belonged to one of the previous trustees. No one knows whether the money was recovered from the trustee in question or not” (Respondent 4: 10 December 2013).

Again during the term of office of the 2007 trustees, “Trustees could not produce many of the invoices of the materials they claimed they bought for the painting project. So there is no proof that they bought that material or the material that was bought was indeed used in the complex” (Respondent 4: 16 January 2014). Furthermore, under the 2008 board of trustees, the then treasurer stole R 60 000 from the body corporate account. The treasurer, however, was caught and made to

pay back the money he had stolen. “This was the only incident that I am aware of in which the money that had been stolen was recovered” (Respondent 4: 16 January 2014).

The above incidents did not only reveal that it was easy to steal money from the body corporate, but it also revealed the lack of financial control measures of Pan Villa Court’s body corporate. Since the chairperson did not reside in the scheme, he would sign about two or three blank cheques and leave them with the treasurer should there be a need for payments to be made in his absence (Respondent 4: 16 January 2014). This practice made the body corporate vulnerable for fraud.

As stated previously, the board of trustees that were elected in May 2010 did not convene an AGM until December 2012. “When they handed over, it was discovered that local authority was owed about R3,5 million rand for water and lights despite the fact that records show that cheques were signed in favour of the local authority during the same period. The funds did not reach the local authority. More than a million went missing from the body corporate account” (Respondent 4: 16 January 2014). Part of the money that was intended for the local authority for water and electricity was paid to the managing agent of the time (Respondent 4: 16 January 2014).

According to the records of the monthly statements issued by the local authority, Pan Villa Court did not make any payment for water and electricity for a period of about a year from the beginning of 2012 until the end of that year. During the same period, however, money was taken out of the body corporate account under the pretext of paying the local authority (Respondent 4: 16 January 2014). “They (trustees) owed a huge amount to local authority. I don’t know what happened but I heard that the managing agent told them that she knew people within local authority who could assist them to “squash” their (body corporate) debt and that’s when the trustees decided to give money to the managing agent to pay the individuals within the local authority. But to date the debt has not been squashed” (Respondent 4: 16 January 2014). This showed the collusion between trustees and the managing agent in misappropriating the funds of the body corporate.

Furthermore, the bank statements of the body corporate revealed an amount of about R 30 000 that went to cover the expenses of the repairs of one of the previous trustee’s vehicle (Respondent 4: 16 January 2014). Upon discovering all the financial discrepancies and the financial difficulties the body corporate found itself in, the trustees that were elected in December 2012 raised a special levy which angered the owners in the complex. Mandla, the 2008 chairperson, was one of the trustees that were elected in December 2012.

The owners were also angry about the missing funds and the raising of the special levy to pay for the funds that had been stolen by the trustees. “They accused Mandla of stealing the missing funds even though he was not part of the board under which funds went missing. Remember Mandla inherited similar problems in 2008 from the trustees that initiated the painting project. He introduced a special levy then and he was introducing it again now in 2012. So rumours were going around that Mandla was the one who had stolen the funds” (Respondent 4: 16 January 2014).

The above confirms organisation theory, which argues that conflict may be caused by perceptions and assumptions (Aldag & Kuzuhara, 2002). A perception was created amongst the owners that Mandla had stolen the funds of the body corporate and this created conflict between him and the body corporate.

Within two months of his appointment on the board of trustees, Mandla resigned from the board of trustees and subsequently, all other trustees that had been appointed with him in December of 2012. Their resignations led to the appointment of a new board of trustees in July 2013 (Respondent 4: 16 January 2014). “The truth is individual members of the body corporate wanted a way of removing me from the board of trustees. I was cleared by their own formal investigation, which included accountants and lawyers but it was too late to change owners’ perception about me” (Respondent 5: 20 January 2014).

Mandla went on to add, “My only crime was to discover the missing funds of our body corporate. I suspect that people that were spreading rumours about me were part of the ‘syndicate’ that steals our body corporate funds. After our resignations (he and his team) they nominated themselves to be in the board of trustees in July 2013 until now. There has never been an AGM since they took over in July 2013 until now. How do you explain that? They used the special levy to plot against me. If there was anything wrong with the special levy, why didn’t they cancel it after they were elected?” (Respondent 5: 20 January 2014). The respondent added that the reasons the trustees were avoiding AGM was to prevent change of leadership because they knew that they might not be appointed as trustees again.

Despite the fact that the special levy was raised for the period of 12 months for water and electricity to date the special levy was still running. “I can tell you now that that debt has not been settled. In fact, the debt has become worse according to people that work there (local authority). Our complex is going down because of the trustees. Who can confront them? They (trustees) do as they want with our money. No one can tell them anything because of their connections in politics. We are afraid of them. Service providers are coming in and out of our complex and obviously paid with our money. There are many tenders that are taking place here” (Respondent 8: 7 March 2016).

The above story supports organisation theory, which argues that “if it appears that resources are scarce, an effort will be made to secure them, often to the detriment of the goals of others” (Aldag & Kuzuhara, 2002:467). In this case, the trustees deviated from the goal of the body corporate to pursue their own selfish goals. They used their positions as trustees to access resources of the body corporate such as levies, and to create business opportunities for themselves within the body corporate structures.

k. Conflict of interest

Prior to 2009, Pan Villa Court employed individuals directly to clean the complex and to maintain the garden. In total, the scheme had five employees to render the aforementioned services. In 2009, Mandla, then chairperson, convinced the body corporate to subcontract both the cleaning and garden services (Respondent 4: 16 January 2014).

“His (Mandla) argument which many of us understood was that the body corporate did not have the capacity and skills to manage staff. Staff members were coming late or they would not come to work at all. Some owners privately used them in their units or they would be made to wash the owners’ cars during their working hours. They were bonus issues as well end of the year, and many other things. So because of all these challenges Mandla thought it was best to outsource both services. But what

Mandla did not realise was that some of the employees were relatives to the owners in the complex” (Respondent 4: 16 January 2014).

As a result “those owners (relatives to the employees and those who were using them for private work) started mobilising against him. They started spreading rumours about him that he was stealing the funds of the body corporate, accusing him of owning the subcontract companies that were to employ the staff. They even influenced the staff to take the body corporate to CCMA (The Commission for Conciliation, Mediation and Arbitration) for unfair dismissal. The CCMA dismissed the case and that made the owners in question and the workers even more angry” (Respondent 4: 16 January 2014). Conflict of interest and nepotism were some of the challenges facing this body corporate. It appeared that owners would rather sacrifice a good leader than refrain from pursuing their own personal goals. Achieving individual goals had become more important than achieving the goals of the organisation (Aldag & Kuzuhara, 2002:467).

The above situation also confirmed that conflict existed between the body corporate, through its trustees, and the employees. Employees at times came to work late, demanded bonuses end of the year and taking of the body corporate to CCMA, all those factors were an indication that conflict existed between the body corporate and its then employees. This conflict could be understood by employing industrial relations theory which argues that the relationship between employers and

employees is inherently conflictual because of their conflictual interest (Bendix, 1996).

I. Special levy continues beyond its deadline

As previously stated, the special levy that was raised in December 2012 for a period of 12 months was still running (Respondent 8: 7 March 2016). The situation was exacerbated by the trustees' failure or refusal to convene general meetings to update the body corporate on the financial state of the body corporate and any other matters that related to the body corporate.

The above situation shows that trustees at times can abuse their power as the case in Pan Villa Court scheme. A special levy was raised for a period of 12 months, but it was still running more than 36 months later. Unfortunately, the purpose for which the special levy had been raised had not been satisfied. In fact, the debt was alleged to have been worse. "People that I know there (people that work within the offices of the local authority) told me that our debt has doubled" (Respondent 8: 7 March 2016). The authorities were owed more than what they had been owed when the special levy was first raised. In other words, the special levy was not making the financial situation of the body corporate better as it was envisaged by those who raised it.

Furthermore, the absence of the timeline for the expiry of the special levy in question posed serious problems for the sellers at Pan Villa Court. Since sellers are liable for the entire special levy before they sell their units, they did not know until when they would be liable for the special levy (Respondent 8: 7 March 2016). The trustees kept providing different dates for the end of the special levy to the attorneys that required clearance figures from the body corporate in the event of sales. Some of the dates that were provided by the trustees to the attorneys had already lapsed and the sales had gone through (Respondent 8: 7 March 2016).

If the dates that were cited as the final dates for the payment of a special levy had already passed, and the special levy was still running, this implied that a number of units in the scheme had been unfairly exempted from paying the special levy. The current leadership did not seem to understand or care about this discrepancy. This again confirmed that the majority suffered at the hands of a few in the scheme and the situation further confirmed organisation theory's argument that in the event of scarce resource, "effort will be made to secure resources, often to the detriment of the goals of others" (Aldag & Kuzuhara, 2002:467).

m. Appointment of wrong managing agents

The appointment of the managing agent is supposed to be a relief to the trustees who often do not have skills, time or expertise to manage the scheme (Horwitz, 1985). Pan Villa Court, however, seemed constantly attract and appoint the wrong

managing agents. “We change managing agents all the time here because there is always something wrong with the managing agents that we appoint. They all seem to be overwhelmed by the size of our complex. This complex is too big and demanding. It does not want chancers” (Respondent 4: 16 January 2014).

Managing agents were accused and dismissed over various allegations, but mainly over the poor financial management of the scheme. “There is no point of changing the managing agents because they are all the same. We have been changing managing agents for many years now. They are all the same. They are fine for two months and thereafter they start eating our money like the rest” (Respondent 4: 16 January 2014).

On the other hand, the managing agents argued that “trustees always interfere with our job. We always advised trustees at that complex (Pan Villa Court) but they would not listen. That is why we always fought with them and eventually they terminated our contract. We took legal action against the body corporate and they settled out of court. The body corporate agreed to pay us for the remainder of the contract” (Respondent 7: 20 February 2014). This supported the existence of conflict between the trustees and the managing agent.

A number of managing agents’ contracts were cancelled at Pan Villa Court. “I lost count of the number of managing agents that were fired since I was the owner in this

complex. They keep on firing them but things do not get better. Instead they get worse. Our money gets missing under their watch” (Respondent 4: 16 January 2014).

Although the managing agents were always accused of stealing the funds of the body corporate at Pan Villa Court, the body corporate at this scheme had its own bank account, which was controlled and managed by the trustees for and on behalf of the body corporate (Respondent 4: 16 January 2014). It was for this reason, therefore, that the managing agents rejected the claim that they had mismanaged and/or misappropriated the funds of the body corporate (Respondent 7: 14 February 2014).

Despite the fact that a number of the managing agents’ contracts were cancelled, the problem of financial misappropriation continued unabated. “We fired many of them before but things don’t get better. They all find a way of stealing our funds” (Respondent 4: January 2016).

Furthermore, the body corporate did not have documented procedure of appointing managing agents. The appointment of the managing agents depended on the trustees in office. “There is no transparency when it comes to the appointment of the managing agents. Boards of trustees use their own discretion when they appoint the managing agents as a result there is no uniform way of appointing them”

(Respondent 4: 16 January 2016). The Estate Agent's Act as well does not provide procedures of appointing the managing agents by the bodies corporate. The situation is made worse by the fact that the trustees did not know the requirements the estate agents were expected to satisfy in terms of the Act (Respondent 4: 16 January 2016).

In light of the above, one can argue that the conflict between the body corporate and the managing agent to a very large extent was informed by the perception that the managing agent was misappropriating the funds of the body corporate and thus, confirmed organisation theory's view that conflict in some instances is caused by perceptions and assumptions (Aldag & Kuzuhara, 2002).

n. Body corporate runs its own bank account

The constant accusations of the managing agents of misappropriating the funds of the body corporate led to the opening of the body corporate bank account in approximately 2007 (Respondent 4: 16 January 2014). This account was controlled and managed by the trustees on behalf of the body corporate.

Opening a separate banking account, however, did not prevent mismanagement and/or misappropriation of funds of the body corporate. Things did not improve, but got worse as was evident by the substantial funds of the body corporate that went missing in 2012. The poor management of the body corporate's financial situation

could also be attributed to the fact that the trustees were often inexperienced in managing huge budgets like that of the body corporate (Respondent 5: 20 January 2014). Given the size of the scheme, the body's corporate budget was estimated to be R 2 000 000 per annum. This was a huge budget for the trustees who were inexperienced in financial matters.

The independent banking account also made it easier for the trustees to mismanage and/or misappropriate the body corporate funds. As mentioned previously, the body corporate funds went missing regardless of the board of trustees. One owner noted, "All trustees are stealing money from the body corporate. There is no point of going after the ones who stole our millions now. The complex never punished the previous thieves; why do you want to punish these ones now?" (Respondent 8: 7 March 2016).

A consideration of the appointments of the wrong managing agents and corrupt trustees showed the body corporate was faced with a serious dilemma of choosing between the corrupt trustees or the managing agents that kept on forcing the body corporate into difficult financial situations. To date, the scheme was still managed by both "devils" (Respondent 8: 7 March 2016).

0. Conclusion

In this scheme, the collection of data involved interviews with eight respondents. Each interview lasted between 45 to 75. The interviews took place in the respective units of the owners.

The information that was discovered in these interviews was validated through complete participation, complete observation and documentary analysis. Documents that were analysed in this scheme were body corporate conduct rules, levy rolls, minutes of general meetings, chairpersons' reports, auditors and/or investigators' reports, letters of demands from creditors and general memos posted at the entrance gate. The documents in questions were showed to the researcher by various respondents as they were trying to support or justify their claims.

The researcher also attended four general meetings of the scheme; as a complete participant at two of them and as a complete observer at the other two. Since the identity of the researcher was not known at this stage, the researcher was nominated to be a trustee in the two general meetings of November and December 2013, but declined the nomination to avoid compromising the study at hand. The combination of all the data collection methods ensured that the findings of the study were credible.

Furthermore, the findings were validated through Respondents 4, 5 and 8. The three respondents were selected based on their contribution to the study at hand. In terms of the information relevant to this study, the respondents in question contributed more. All three respondents accepted the findings in the current form as these findings did not reveal any of the identities of the participants and the schemes that formed part of the study. Involving respondents in the validation of data is the most crucial way of validating data, according to Lincoln and Guba (1995).

As demonstrated in the discussion above, the researcher concluded that conflict existed in the residential sectional titles scheme in question. The conflict involved various role players in the scheme: the body corporate; service providers, more specifically, the local authority and maintenance companies over unpaid services; the board of trustees for repeatedly undermining the body corporate; owners who were angry about the children's bad behaviour; former employees; managing agents for failing to collect levies; and individual owners regarding the rules of the body corporate.

The conflict took on different forms. It took the form of legal action: over an assault of a child by one of the owners; against the body corporate by its creditors; individual owners who challenged the trustees for the inconsistency in the application of the rules; against the body corporate by an owner over the illegal disconnection of electricity to his unit; failure or refusal by the trustees to adhere to the restrictions or

directions of the body corporate; inconsistency in the application of rules by the various boards of trustees; false accusations of individual trustees over the misappropriation of funds; and violation of rules by individual owners.

The cause of conflict in the scheme could not be attributed to a single factor, but to various factors. One of the causes of conflict in the scheme in question was the failure by some members of the body corporate to pay their levies. This affected the cash-flow of the body corporate. The trustees, in some instances, were compelled to take drastic measures to compel owners to pay their levies such as disconnecting electricity to units that owed levies.

The preceding argument confirms organisation theory's argument that task interdependence, which refers to "the nature of the dependence among units for financial material" can lead to conflict. It argues that "the greater the interdependence among units, the greater the potential for the conflict" (Aldag & Kuzuhara, 2002:468). As demonstrated in the discussion above, members of the body corporate were greatly dependent on one another financially. Failure by some members to pay their levies led to serious cash-flow problems for the body corporate.

The cause of conflict at Pan Villa Court scheme can also be attributed to wrong false accusations of individual trustees. When Mandla was falsely accused that he had

mismanaged the funds of the body corporate, other members of the body corporate also assumed that he did and therefore, supported the accusers. They all assumed that Mandla was a thief. The members of the body's corporate action against Mandla confirms organisation theory's argument that conflicts in some instances are caused by perceptions and assumptions (Aldag & Kuzuhara, 2002).

The cause of conflict at Pan Villa Court can also be attributed to poor and unilateral decisions taken by the trustees. Among others, trustees in the scheme in question introduced projects such painting and a children's playground without having obtained permission from the owners as required in terms of the restrictions imposed on them by their body corporate. This revealed that the trustees did not share the same goals as that of the body corporate. The goal of the body corporate to reduce expenses of the body corporate was ignored by the trustees.

The preceding argument, therefore, confirms organisation theory's argument that when individuals or units have incompatible goals conflict is bound to happen. The theory argues that "such differences may lead to conflict even when both parties agree on overall goal for the organisation" (Aldag & Kuzuhara, 2002:468).

In addition, the body corporate was disadvantaged by some of the trustees. They used their position to bully members of the body corporate by not allowing them an opportunity to participate in the running of their scheme. Despite the fact the body

corporate was compelled in terms of the Act to convene AGMs, the scheme had not had meetings in the previous three years. They controlled and used the funds of the body corporate as they wanted. The exclusion of other members of the body corporate in the running of the scheme was a conflict on its own.

While the causes of conflict could be attributed to various factors including the fact that owners came from different backgrounds in terms of upbringing, culture, education and previous relationships, such evidence could not be found in the scheme in question.

The conflict referred to above affected all the owners in the scheme. The owners were deprived by a few to participate in the control, administration and management of their scheme. The scheme was controlled by a few. Any debt that was created by the individuals in question affected all the owners in the scheme. For example, the alleged water and electricity debt affected all the owners in the scheme. Legal action against the body corporate by their creditors affected the whole body corporate. The refusal by the trustees to convene regular general meetings and to review the body corporate financials annually indicated that the scheme was no longer run in accordance with the rules that govern residential sectional titles schemes.

The response to conflict in the scheme did not follow a specific programme or strategy. A number of boards of trustees were elected. Managing agents were also

replaced. The body corporate also responded to the conflict by opening its own bank account that was to be managed by its board of trustees. It also responded to the conflict by implementing a special levy for all its members.

Furthermore, the body corporate responded to the conflict by disconnecting electricity to all the units that owed levies to the body corporate so as to compel owners to pay their levies; however, this backfired when one of the owners threatened the body corporate with legal action and forced the body corporate not to disconnect the electricity. The body corporate's action to disconnect power to units of the owners that owed levies was undoubtedly illegal.

Section 27(3) of the *Electricity Act of 1987* states, "Any person, who without legal right (the proof of which shall be upon him) cuts off or damages or interferes with any apparatus for generating or supplying electricity, shall be guilty of an offence and liable on conviction to a fine not exceeding the amount which the Minister may from time to time prescribe or imprisonment not exceeding twelve months".

Thus, if a body corporate disconnects electricity to the tenants or owners, for whatever reason, the affected party can approach a lawyer to bring what is called a spoliation application to court for an order to restore. Spoliation, as stated previously, is a legal term, which simply means to restore peaceful and undisturbed possession of an item.

Following the above discussion, one can conclude that conflict in Pan Villa Court did not only exist, but it also took various forms and was caused by various factors.

5.2.3 Castel Villa Court (Case study 3)

Castel Villa Court was situated in the province of Gauteng. This stack unit scheme consisted of 182 units in total. The researcher was an investor and/or owner in the scheme. He owned two rental units in the scheme in question. As one of the owners in the scheme, the researcher did not have a problem regarding access into the scheme. The researcher interviewed four respondents.

a. Access into the scheme

The researcher as one of the owners in the scheme and prior to the study at hand visited the scheme a number of times. On 1 August 2013, however, the researcher visited the scheme for a different purpose. He had an appointment with the chairperson of the body corporate to request permission to conduct the study at hand. After presenting his case to the chairperson, the chairperson agreed to the request and became the first person to be interviewed.

After the interview, the chairperson invited the researcher to the board of trustees' meeting, which was held on the same day with their managing agent. The meeting was one of the regular trustees' meetings, which were held monthly to reflect on the activities of the body corporate in that month. As per the agreement between the

chairperson and the researcher, the researcher was introduced as one of the owners who was interested in the body corporate's issues and thus, had come to observe. The researcher explained to the chairperson that he did not want his identity as the researcher to be revealed right away in order to ensure that the natural participation of the trustees was not influenced.

During the meeting, therefore, the researcher was regarded as a mere owner and thus, allowed to participate in the discussion of the issues that were tabled. Thus, the researcher was a complete participant during the meeting. In as far as everyone was concerned, with the exception of the chairperson, the researcher was regarded as one of them. During the meeting, the researcher was asked if he would like to join the board of trustees given the fact that some trustees were reported as not being committed as they were constantly absent from the meeting.

It was only after the meeting that the identity of the researcher as a researcher was revealed by the chairperson who further explained the reason for concealing the identity of the researcher during the meeting. The researcher used the meeting as an opportunity to identify other potential respondents for the study.

b. Children are vandalising our facilities

The scheme originally had a number of recreational facilities, which included a swimming pool, club house, children's playground area, laundry room, tennis court and public phones (Respondent 1: 1 August 2013).

Some of the facilities in the scheme, particularly the tennis court, visibly required some serious repairs. The fence around the tennis court was visibly damaged, and hence, access onto the court was through various holes in the fence. The surface of the court contained some holes. In fact, there was no longer tennis court anymore because even the net in the middle of the tennis court was no longer there. The previous position of the net could only be recognised by small poles that had been left standing on both sides of the tennis court surface (Personal observation on 1 August 2013).

The evident vandalism of the tennis court was attributed to children that lived in the scheme. "It is embarrassing that all these damages are done by our own children in this scheme. Tennis court has now become their soccer field as you can see them now" (Respondent 1: 2 August 2013). The children in the scheme had turned the surface of the tennis court into their soccer field despite the fact that there was enough undeveloped space at the back of the scheme that could have been used as soccer field.

Vandalism was also visible on the children's playground. Some parts of the equipment belonging to the playground were either missing or damaged. The handsets of the two public telephones that were located at the back of the scheme near the children's play areas were damaged or missing. There were a couple of broken windows at the club house as well. "All these things that are vandalised by our children the body corporate is unable to keep up with the maintenance expenses and repairs associated with all these facilities" (Respondent 1: 2 August 2013).

Although it appeared to be a general knowledge that children were responsible for the vandalism,, holding their parents responsible for the costs of the repairs was not easy. "Many parents do not take kind to the accusation of their children of vandalism in the scheme. They (parents of the accused kids) become very angry to the point that those who saw the children committing the act become afraid to come forward with the information. If there is no one to be held responsible, the body corporate ends up carrying the costs for repairs" (Respondent 1: 2 August 2013). This suggested the existence of conflict between the body corporate and individual owners of the children that had been accused of vandalism in the scheme. It also confirmed the possible existence of conflict between those who witnessed vandalism and those who had witnessed someone committing vandalism.

The reason damages were not found all over the scheme could be attributed to the fact that "children in this complex are not allowed to play on the driveway or between

the cars. We do not want them to scratch owners' or visitors' cars. That is why there is a designated area for them to play" (Respondent 1: 2 August 2013).

Despite all the challenges mentioned, the scheme was generally well maintained. The common areas including the garden were well maintained and the children were only allowed to play in the areas that were designated for such. As one entered the scheme, there was a guard house, which was the only entrance into the complex and was manned by security guards. Three to four security guards worked per shift; their other responsibility was to patrol inside the complex to ensure that the children did not play in places where they were not supposed to play.

c. Restriction of access into the scheme

The procedure that one needed to follow when entering or visiting the scheme showed that access into the scheme was controlled and restricted. All visitors were expected, in terms of the rules of the scheme, to report to the security guards on duty and they were required to complete the visitors' register (Respondent 1: 2 August 2013). This rule applied to both motorists and pedestrians. Prior to completing the register, visitors were required to provide their names to the security guard on duty in order for the security guard to contact and establish permission, via a telephone intercom, from the person being visited. Once permission was granted, the visitor was allowed to enter the scheme (Respondent 1: 2 August 2013).

While the scheme had clear rules that governed access onto its premises, some owners and some visitors did not want to comply with the parking rules. Some visitors insisted on entering the scheme without adhering to the rules of the scheme and when the guards refused to grant them access, conflict ensued. “At times they threaten the guards because they do not want the person being visited to confirm their visit. At times it is owners themselves that give guards tough times. They want their visitors to come in without signing in the visitors’ book” (Respondent 1: 2 August 2013). This confirmed the existence of conflict that involved security guards, visitors and some of the owners.

The refusal by some owners to cooperate with the security guards in the execution of their duties created tension between them and other owners who wanted the rules to be enforced all the time. The behaviour of the owners that did not want to comply with the rules also made the work of the security guards extremely difficult because some of the security guards regarded all the owners as their employers. The behaviour of the owners who did not want to comply with the rules confused the guards. “It becomes difficult for the guards to do their jobs in case they offend owners who might be trustees tomorrow and get them fired from work” (Respondent 1: 2 August 2013).

d. Application of the rules of the scheme

As indicated, the body corporate's conduct rules at Castel Villa were enforced from the entrance or rather one was made aware of the existence of the rules from the time one entered the scheme. Conduct rules governed the behaviour of owners, tenants and visitors in the scheme.

Failure or refusal by owners or visitors to use parking spaces that were allocated to them was not only a violation of the body's corporate rules by the individual concerned, but the action often resulted in conflict amongst individuals in the scheme. "Residents fight over parking because each unit is allocated one parking bay but most units own more than one car. So owners fight over limited visitors' parking that are situated closer to the units" (Respondent 2: 3 August 2013).

While owners or residents were permitted to use visitors parking as and when the need arose, the conduct rules of the scheme specified that tenants were not allowed to repair their vehicles in any of the parking areas provided and they were also not allowed to park their vehicles in visitors parking for more than three days without using them. Some residents, however, "park their second or third vehicles for more than the specified period and in this way they prevent other residents from using the same parking spaces. This is what makes owners to fight with one another" (Respondent 2: 3 August 2013).

Furthermore, some owners repaired their vehicles in their parking areas, a practice that often put them at 'loggerheads' with the trustees of the body corporate. In some instances, however, the tenants found themselves at 'loggerheads' with the owners "because of the fines that are imposed on the units that violate the rules. The managing agent usually charges the fines to the owners' levy accounts and that makes owners angry with their tenants" (Respondent 2: 3 August 2013).

Castel Villa had become a primary residence for some owners. In other words, some owners' units that they occupied in the scheme were the only homes that they had. "You would probably know that complexes were previously like hostels. You come here to work and when you want to have a function you would go back home. These days complexes have become permanent homes" (Respondent 3: 3 August 2013).

Funerals were some of the functions that were regarded as not being "appropriate" to take place in complexes. "I am aware of more than three funerals that were held in the complex since I came here. Everything took place inside the complex here. This is against the rules of our scheme but how do you prevent owners from burying their loved ones in the name of rules?" (Respondent 3: 4 August 2013). This situation impacted on the enforcement of the rules of the body corporate.

It impacted on the rules of the scheme in the sense that funerals require a bigger venue. In the absence of such venues in the scheme, bereaved families were

compelled to erect a tent to accommodate their guests for the funeral. “Families approached trustees for the permission to erect a tent on the common property. Functions that require tents are not permitted in the complex but how do you prevent families from burying their loved ones”, (Respondent 3: 4 August 2013).

Bigger functions such as funerals in the scheme in question seemed to bring challenges associated with parking. “Mourners park anywhere on the day of the funeral as we always do in the township. We even park on the pavements of the neighbours irrespective whether they are on speaking terms with the deceased family and they would not say anything or do something to your car” (Respondent 3: 4 August 2013).

The same township spirit regarding parking was brought into the scheme by mourners on the day of the funeral. This compelled the body corporate to suspend its rules on the day of the funeral (Respondent 3: 4 August 2013). On the day of the funeral, everyone parked anywhere he or she could find a parking space. “You can’t punish owners for not complying with the parking rules on that day (day of the funeral) because their parking bays are probably taken by the mourners” (Respondent 3: 2 August 2013). This implied that the rules of the scheme were suspended on the day of the funeral.

The parking rules did not seem to be the only rule that was suspended on the day of big functions such as funerals; entrance rules were also suspended. “Guests that are coming to the funerals in the complex are not signing visitors’ register. Can you imagine if all guests were to sign the visitors’ register? Visitors’ register would be full in one day”, (Respondent 3: 4 August 2013).

While no incident of crime had been reported on the day of the three funerals that had taken place thus far in the scheme, some of the owners were concerned about the possibility of such an incident. “On the day of the funeral we are all vulnerable in the complex. You can tell the difference between the real mourners and criminals. People can be robbed or even worse killed on that day. The event affects all of us. Our lives come to a standstill because we cannot use our common property as we want” (Respondent 3: 4 August 2013). Everyone was deprived of the use and enjoyment of their facilities in the scheme on the day of the funerals.

The most affected group on the day of funerals was children. “It is really bad for the children on the day of the funeral. They cannot do anything because of the restrictions that come with it”, (Respondent 3: 4 August 2013). In an African culture, children generally do not go to funerals especially when they are not related to the deceased family. This means that funerals that take place inside the schemes are not only brought to the faces of the children, but children are also deprived of their right to play on that day because the nature of the scheme would not allow children

to play while the funeral was taking place. They would be reprimanded for making a noise or for being disrespectful (Respondent 3: 4 August 2013).

Consequently, “parents that want their children out there playing would be frustrated and angry at the board of trustees for permitting the function to take place” (Respondent 3: 4 August 2013). This revealed tension that existed between the board of trustees and owners because of the latter being deprived of the use and enjoyment of the scheme on days such as funerals.

e. The current managing agent is the best

The daily management of this scheme rested with the managing agent and the board of trustees. The current managing agent had been appointed about three years previously after the scheme had experienced problems with the previous managing agents. “Trust me. We were changing the managing agents almost every year before our current managing agent. This one is the best I am telling you. Before this managing agent we had problems with finances of the body corporate. We always had a deficit at the end of our financial year”, (Respondent 1: 2 August 2013).

The claim made by Respondent 1 regarding the current financial status of the body corporate was supported by the financial records of the body corporate, which revealed that the body corporate was up to date with its creditors and had a reserve of approximately R 200 000 as of end of July 2013. This positive financial status was

attributed to the current managing agent. “Unlike the previous managing agents, the current managing agent has scheduled monthly meetings with trustees to discuss income and expenses of the body corporate in that month, among other things”, (Respondent 1: 2 August 2013).

The managing agent also ensured that scheme’s operation was in line with the Act. For instance, “the managing agent ensures that AGMs are convened regularly and records of the minutes are kept. This never used to happen prior to the appointment of this current managing agent. Things are much better now. In fact, they are perfect” (Respondent 1: 2 August 2013).

The managing agent actively participated in the day-to-day operation of the scheme. “They (managing agent) collect levies on behalf of the body corporate and do follow ups on levy defaulters. They regularly communicate with the owners on behalf of the trustees about anything that the trustees want them to communicate. In other words, they are always ready and available to act on behalf of the trustee” (Respondent 1: 2 August 2013).

In addition, “They (managing agent) appoint and supervise service providers on behalf of the board of trustees including the appointment of debt collectors to deal with levy defaulters. They also pay service providers on behalf of the trustees. You

can see trustees are not doing much under the current managing agent. That is why we are happy with them” (Respondent 1: 2 August 2013).

The managing agent of this scheme was very professional. It managed the scheme according to the Act. The minutes showed that AGMs were convened within four months after the end of the scheme’s financial year end as required by the Act. The managing agent also kept records of the minutes of the scheme in one book as required by the Act (Respondent 1: 2 August 2013).

On the other hand, the managing agent stated, “We are a professional managing agency and we do things according to the law. When we took over the complex about three years ago, things were very bad in terms of finance and records keeping. We had to start everything all over. We meet with trustees regularly. We take and keep minutes of all the meetings in this book (pointing at the book that had the name of the scheme on top)” (Respondent 4: 4 August 2013)

While the scheme appeared to be in a relatively better financial position, the financial reserve of the scheme had decreased in the previous two years which indicated that the scheme was sustaining some of its operational costs from the reserve. “Right now I don’t have an explanation for that (referring to the decrease of the reserve funds). All that I can tell you is that increasing levies will not be easy because owners are already complaining about the levies that are too much” (Respondent 1: 4

August 2013). The fact that levies were already high in this scheme meant that any possible increase of levies to avoid using reserve funds could lead to conflict between the trustees and members of the body corporate.

Prior to the appointment of the current managing agents in this scheme, the body corporate had experienced financial problems and a number of managing agents were appointed and replaced (Respondent 1: 4 August 2013). The present managing agents brought with them relevant skills and expertise that were important in shaping the scheme in the right direction. They managed to advise and guide the trustees in the right direction (Respondent 1: 4 August 2013). Thus, managing agents play major role in the financial failures and successes of the schemes which they administer.

While the owners seemed to be generally satisfied with the current managing agents, they were not satisfied with their trustees. They accused them of “doing their own things” (Respondent 3: 4 August 2013). Some owners alleged that trustees did not consult with them in many instances, but no evidence was provided to that effect. The only example that was cited was that the chairperson had been on the committee for approximately four years (one of discussions that took place and observed by the researcher during the meeting of the trustees referred to above).

Furthermore, the tension between members of the current board of trustees could not go unnoticed. The board of trustees had a total number of seven members, but only four were active according to the trustees' minutes. For the previous 10 months the other three trustees had each only attended trustees meetings once. They accused the other trustees, especially the chairperson of being dictators (one of the discussions that took place and observed by the researcher during the trustees' meeting mentioned above).

The chairperson, however, argued that the only reason "the three other trustees agreed to serve as trustees in the first place was to render the board of trustees unworkable by not attending the meetings so that trustees do not form a quorum at their meetings" (Respondent 1: 4 August 2013).

f. Payment and collection of levies

The current managing agent was also praised by the trustees, particularly the chairperson, for collecting levies timeously. The levies of the body corporate were due and payable in advance on or before the first day of every month, but not later than the 7th of every month. When owners failed to meet the payment deadline they were charged interest on their outstanding balance and/or handed over to debt collectors (Respondent 1: 2 August 2013).

In many instances, the collection of levies led to confrontation between defaulters and the trustees of the body corporate. “Owners often swear at us for charging interest on their outstanding balances or for handing them over to debt collectors” (Respondent 1: 2 August 2013). In other words, the collection of levies sometimes caused confrontation between trustees and other ordinary members of the body corporate in the scheme. This suggested that the collection of levies may have been a source of conflict in the residential sectional title scheme.

g. Conclusion

In this scheme, the collection of data involved the interviews of four respondents. Each interview lasted between 45 and 75 minutes. The respondents were interviewed separately in their units with the exception of the managing agent who was interviewed in his office.

In addition to the interviews, the data in the scheme in question was also collected through participant-as-observer and documentary analysis. The documents that were analysed in this scheme were financial reports, trustees’ minutes and a monthly budget. The documents in question were viewed at a trustees’ meeting, which is thus discussed.

The researcher also attended one trustees’ monthly meeting on 2 August 2013 as participant-as-observer. As an owner in the scheme, the researcher was advised that

he could participate in all the discussions of the meeting, but he was not permitted to vote. The researcher was granted permission to participate in the meeting in terms of management rule 15(5) which stipulates that “an owner shall be entitled to attend and speak at any meeting of the trustees, but shall not in his or her capacity as such, be entitled to vote thereat”.

The combination of all the above mentioned data collection methods ensured that the findings of the case study were credible. Furthermore, the findings were validated through all four respondents that participated in the study. Involving respondents in the validation of data is the most crucial way of validating data, according to Lincoln and Guba (1995).

The researcher concluded that conflict existed in the residential sectional title scheme. The conflict involved residents’ children vandalising property, visitors and owners who violated the body corporate rules, owners who defended the rules and those who transgressed the rules, and mourners at funerals.

Conflict in the scheme took different forms. It took the form of dismissal in which a number of managing agents’ contracts were regularly cancelled. It also took the form of physical confrontation when some members of the body corporate threatened security guards when the latter were performing their duties. It also took the form of

the accusation of individual children with regard to vandalism and the parents' reaction thereof.

The causes of conflict at Castel Villa can be attributed to factors such as the violation of the rules of the scheme by owners or residents. The failure or refusal by some owners to comply with the rules of the scheme resulted in conflict between the owners concerned and the body corporate. The cause of conflict in this scheme could also be attributed to the body corporate's relaxation of its rules to accommodate functions such as funerals that took place in the scheme.

In addition, the cause of conflict at Castel Villa could be attributed to poor or lack of financial management, in particular the failure by some owners to pay their levies timeously.

Another source of conflict in the scheme in question was the deprivation experienced by owners and children, particularly during funerals, of the use and enjoyment of the scheme as envisaged by the Act. Children were deprived of the right to play outside their units during funerals and thus, tension between the parents of the children that were affected and the trustees that had granted permission for the funerals resulted.

The failure by the managing agents to manage the scheme according to the expectations of the trustees led to conflict between the managing agents concerned

and the trustees. A number of managing agents' contracts had been cancelled for failure to satisfy the expectations of the trustees such as ensuring that the scheme's financial status was good.

While the cause of conflict can be attributed to various factors including the fact that owners come from different backgrounds in terms of upbringing, culture, education, and previous relationships, such evidence, however, could not be found in the scheme in question. There was potential conflict, however, if the body corporate continued to permit functions such as funerals to take place within the scheme. Some of the functions might have been contrary to other owners' beliefs or culture and thus, caused conflict.

In addition, potential conflict could also be experienced if the future management of the scheme refused to grant permission to other families to convene bigger social events such as parties and funerals in the scheme.

The conflict referred to above affected many people in the scheme. It affected the residents and children in that they were deprived of the right to use and enjoy the facilities in the scheme on the days of big functions such as funerals. This also affected the smooth operation of the scheme in that the rules of the scheme were suspended from time to time.

In the conflict between the managing agent and the body corporate, the body corporate responded by terminating the managing agent's contract. In the conflict that involved the violation of the rules, the body corporate, through its managing agent, imposed fines on the offenders (Respondent 1: 2 August 2013).

The scheme tried to deal with conflict by enforcing its rules at the entrance. It ensured that visitors and residents were aware of the rules as soon as they entered the scheme through its security personnel. The scheme also dealt with conflict through its managing agent. The managing agents communicated with owners or residents timeously regarding the rules of the scheme and reprimanded any transgressors.

5.2.4 Khaya Palace and Jozi Place (Case studies 4 and 5)

Khaya Palace and Jozi Place were both situated in the province of Gauteng. They were built on the same land and hence, are discussed simultaneously. Khaya Palace had 206 units while Jozi Place had 276 units. The units were all stacked to level four. A total of five respondents were interviewed in both schemes.

a. Access into the scheme

The researcher was introduced to the scheme in November 2013 by the managing agent of the scheme as he and the managing agent were employed by the same managing agency at the time. At the time of the introduction to the schemes in

question and their boards of trustees, the researcher had been in the employ of managing agency for three days. He was, however, not introduced as a researcher because his identity, as a researcher, at the time was still concealed.

The researcher was first introduced to the boards of trustees of the two schemes when their members attended a trustees' workshop on 15 November 2013 that was organised by the managing agency in question at their offices, which were located in the 'white suburbs' as opposed to a township.

The urgent appointment and the introduction of the researcher to the two boards of trustees did not happen by accident. "The boss wants you to be the one that runs the coming workshop. These two complexes are going to fall under your portfolio after your training. Trustees would probably be more comfortable to work with you than me because of the colour (white managing agent and black trustees from the township). Don't be surprised when they arrive here, they always fight with us" (Managing agent: 13 November 2013).

On 15 November 2013, trustees arrived at the workshop in two separate mini bus kombis organised and paid for by the managing agent. We (the managing agent and I) welcomed them as they come through the main entrance door, one after another, and headed to the board room where the workshop was due to take place. The

tension between the managing agent and the trustees was evident judging by the 'cold' greeting between the two parties.

After exchanging greetings with me, one of them remarked, in IsiZulu, as she was heading to the board room, "*Izimali zethu zonke lezi*" (this is all our monies, referring to the office building of the managing agency). After everyone had settled in the boardroom, the managing agent introduced the researcher as the facilitator of the workshop and his immediate successor of the two schemes.

The notion by the managing agency that black managers would work better with the black trustees from the township did not seem to be shared by the trustees concerned judging by the body language of the trustees and the remark, in IsiZulu, passed by one of them: "*Kuzonkwenza muphi umehluko ngoba usebenzela bona?*" (What difference does it make because he works for them?).

The trainee manager (researcher) took over the workshop and quickly explained to everyone the purpose of the workshop and that he (the manager) would try to be as objective as possible. After the explanation or clarification, the body language of the participants indicated that they were now ready to begin with the workshop. The focus of the workshop included the operation of the scheme, role of the body corporate, role of the trustees, collection and purpose of the levies, and role of the

managing agent. The workshop lasted about three hours and refreshments were served after the workshop at the expense of the managing agency.

During the course of the workshop, the participants (trustees) gradually started to feel at ease with the facilitator (researcher). As opposed to when the workshop had started, they started to show an interest in the issues that were presented by asking the facilitator to repeat certain points. They seemed to be shocked more by the fact that schemes are governed by rules. “If I knew that there were so many rules in the complex I wouldn’t have bought there. I think you should organise another workshop for all the owners at the complex so that we all understand what is right and wrong” remarked one of the participants. This participant’s remark and request summarised everyone’s feelings about the residential sectional title scheme. They all agreed to a request that a workshop be held for everyone in the scheme.

Following the request, a workshop was organised for all the owners of the scheme. The researcher also saw the workshop as an opportunity for him to visit the two schemes. The workshop for the owners was scheduled for the following week and the researcher was again requested to be the facilitator of the workshop. “They seemed to understand you better and I think you should be the facilitator at that workshop as well. Beside, they would not want me to be in charge of the workshop. They’ve got attitudes towards me” (Managing agent: 15 November 2013). After being

the facilitator at the trustees' workshop, gaining access into their scheme became easy.

b. Two schemes in one

Upon visiting the schemes, the researcher discovered that Khaya Palace and Jozi Place literally shared the same land, which made it difficult for one to see them as two separate schemes. The notion that there was one scheme was also supported by the fact that residents of these schemes used the same entrance and exit gates. The buildings of the schemes were divided by a 'wire fence'. There was no boundary wall that separated the two schemes. In the eyes of an observer (researcher) this was just one big scheme (Personal observation, 22 November 2013).

The two schemes also shared the same main water and electricity meters. In other words, there were no separate water and electricity meters for the two schemes. In the event of a power failure, both schemes were affected. If for some reason the authority decided to cut the power of one scheme, the other one automatically became affected (Respondent 1: 22 November 2013).

Furthermore, the two schemes shared the same parking spaces; the limited parking spaces that were available on the premises were for the residents of both schemes. Neither of these two schemes could claim any of the parking spaces as belonging to their particular scheme. The common property was literally shared by both schemes.

It was for these reasons that the two schemes were regarded as one (Respondent 1: 22 November 2013).

Despite the fact that the two schemes literally shared the same facilities and were built on the same land, the developer presented them as two separate schemes, and accordingly, there were two separate boards of trustees and separate budgets for the two schemes (Respondent 1: 22 November 2013). These two factors, namely, separate boards of trustees and budgets were the only factors that differentiated the two schemes. The situation presented potential conflict between the two schemes.

In light of the above facts, it can be argued that there was one scheme, not two: they shared parking spaces, entrance and exit gates, land where the schemes were built, resources and so on, and thus, the two schemes could to be regarded as one big scheme. On the other hand, the existence of different boards of trustees and separate budgets make it impossible for one to regard the two schemes as one.

The fact that the schemes were regarded as two separate schemes when evidence suggests that there was one scheme seemed to be a source of conflict on its own. “You can’t say there are two complexes here when there is actually one complex. Can you show me where the first complex starts and where it ends? You can’t unless someone tells you that from here to there is one complex, and from there to there is another complex. There is one entrance for all of us. The owners from the

other complex (Khaya Palace) are forced to drive through our complex in order to go to their so-called complex” (Respondent 1: 22 November 2013).

The two boards of trustees did not work together. “We can’t work with them. Those ones are too radical. Their trustees told owners (Jozi Place) not to pay levies and we want all owners to pay levies in our complex” (Respondent 2: 22 November 2013). “It is true that we told owners not to pay levies because those people (managing agent) are eating our money. Anyway, even if they pay (Khaya Palace) it will not make any difference. We are one complex and we are all affected” (Respondent 1: 22 November 2013).

The above discussion illustrated the potential for conflict; this is known as task interdependence. Task dependence is defined as “the nature of the dependence among units for financial material, or human resources. The greater the interdependence among units, the greater the potential for conflict” (Aldag & Kuzuhara, 2002: 468). Given the nature of the two schemes, financial interdependence was unavoidable. Refusal by the owners of the one scheme to pay their levies would result in financial problems for both schemes and thus, lead to conflict between the two schemes.

c. Absence of recreational facilities

Both schemes did not have any recreational facilities. “There is nothing here (Khaya Palace). Even that side (Jozi Place) there is nothing. There is no swimming pool, there is no kids’ playground and no braai areas” (Respondent 1: 22 November 2013). The trustees had confronted the developer about the absence of recreational facilities in their scheme. “The developer told us that recreational facilities were not part of his plan” (Respondent 1: 22 November 2013).

It is common practice for schemes to be developed with one or more of the following recreational facilities: swimming pool, club house, braai or entertainment area, children’s playground and tennis courts. This was also evident in all the schemes that were situated within and around the area. One may have wondered if it was a legal requirement for the scheme to have one or more of these recreational facilities. With regard to Khaya Palace and Jozi Place, however, there was not a single recreational facility that formed part of the plan of these two schemes. The design of the schemes did not have any recreational facilities. This meant the children had no designated playing area and the adults did not have any place they could use for social activities. “I mean this is unusual. All the complexes that we have seen have these things (recreational facilities). Is it because we don’t deserve them?” (Respondent 2: 22 November 2013).

The above discussion did not only confirm the existence of conflict between the developer and the body corporate in both schemes over recreational facilities, but the conflict in question was in accordance with organisation's theory that conflict may be caused by assumptions (Aldag & Kuzuhara, 2002). The owners in both schemes assumed that their scheme would have some form of recreational facilities. Consequently, the absence of recreation facilities in the schemes led to conflict between the bodies corporate through their boards of trustees and the developer.

d. It is racism not location

According to the respondents below, the absence of recreational facilities and lack of a boundary wall around their scheme was not informed by the location of the development, but by racism. "No, it is not location. It is location to you maybe because you work with them. To us this is nothing but racism" (Respondent 3: 22 November 2013).

The angry respondent (3) went further to allege that, "It was not a mistake that he (the developer) developed what he developed in the township. He knew exactly what he was doing. He knew that this was for black people who do not deserve to live like whites. I am sure that there are many developments that this man (the developer) did before, in white suburbs. I can tell you now, his complexes in the suburbs come with at least one parking bay per unit. They are fenced off with proper boundary walls. There are swimming pools, tennis courts, club houses etc. because there

“*kuhlala amangamla*” (because whites live there)” (Respondent 3: 22 November 2103).

Despite the fact that the developer had to give up part of his land in order to provide additional parking, owners in the scheme still believed that the developer had not given up his land out of goodwill. “It is clear that this development was done like this because of the fact that it is in the township and we are all black. You will never see a development like this in the suburbs. We had no choice but to force him to give us more parking. In some instances, we prevented them from coming on site to continue building” (Respondent 3: 22 November 2013).

The above discussion, once again, supported organisation theory, which argues that conflict in an organisation exists due to perceptions or assumptions (Aldag & Kuzuhara, 2002). The fact that the developer of the two schemes was white and he had developed schemes that did not meet the expectations of the end-users (owners) who were all blacks led to the owners’ perception that he was racist.

While this could be true, the developer could have been influenced by the pricing of the housing properties in the area. Houses in the townships are relatively cheaper compared to the houses in the white suburbs. Providing every recreational facility that is found in white suburbs could have pushed the prices of the units in the two schemes even higher and thus, affected the demand for the product. This, however,

did not mean that the developer could not have been influenced by whites' general perception of black people given the history of institutionalised racism in South Africa.

e. The developer is taken to task

The owners at both Khaya Palace and Jozi Place were not only unhappy with the developer, but they took action against him on a number of occasions. In some instances, “residents prevented him and his employees from entering the premises. He [the developer] had to open a case of intimidation against the chairperson because he mobilised owners against the developer and his employees. The chairperson even accused us (managing agent) of working together with the developer” (Respondent 4: 22 November 2013).

The respondents alleged that both the developer and the managing agent were racists. “I am telling you they are racists. You can tell the way they (managing agent and the developer) talk to us. They have no respect for us at all. The only reason they were nice with us the other day is because you were here as well” (Respondent 3: 23 November 2013).

The allegation of racism was not the only issue that caused conflict between the developer and the residents at Khaya Palace and Jozi Place. The relationship between the two parties was also affected by the developer's failure and/or refusal to

honour warranties or guarantees that fell outside the stipulated period of the contract. “Some of our units have cracks from the roof all the way down. Pipes and toilets are leaking. There are many things that are wrong here but the developer is refusing to fix them” (Respondent 2: 22 November 2013).

While the owners believed that the developer was liable for all the defects in the scheme, the developer rejected this notion by arguing that “owners there do not understand how new developments work. They did not read their contracts (sales contract). According to the contract the developer was not liable for the defects after 90 days from the date of transfer of the unit unless it was the structural defects or roof leak. Many of the defects that owners are talking about were reported after the 90 days of the transfer of ownership and that is why the developer rejected them” (Respondent 4: 22 November 2013).

They were not only unhappy with the developer’s response regarding defects that were reported outside the 90 day period, but they were also not prepared to accept it. “How could he tell us about ninety days when some of us took occupation after that ninety days? He should have told us to occupy our properties immediately when the transfer happened” (Respondent 3: 22 November 2013). The conflict between the developer and the body corporate over the issue of defects was caused by ambiguity over responsibility of jurisdiction as proposed by organisation theory (Aldag & Kuzuhara, 2002).

All attempts by the developer to insist that certain defects did not fall within his jurisdiction were challenged by the owners through their board of trustees. “Trustees would mobilise owners against the developer, his employees and suppliers every time he (the developer) refused to attend to the defects presented to him directly or through his representatives” (Respondent 2: 22 November 2013).

It was not possible for the developer to ignore the owners’ demands because he was still onsite completing another section of his development. “Many times he tried to ignore our defects lists alleging that some of the defects were dating back to six months ago, but we taught him a lesson. We all went to the entrance gate in the morning singing struggle songs to prevent his employees from entering our premises. At times we would send his delivery vehicles away. As soon as he learns what was happening onsite he would come running to talk to us. He threatened us with police, but we would not budge” (Respondent 3: 22 November 2013).

The developer was not only expected to address defects that fell within the contract period. He was expected to address all the defects that were presented to him at that time. “We did not care how far back the defects were dating. We wanted him to fix all of them. The quality of the material that he used in this development is very poor. The walls have cracks and pipes are leaking. There are many things that are wrong here”, (Respondent 3: 22 November 2013).

The situation of the developer was not only complicated by the fact that he was still onsite, but he still owned about 30 units in this development (Respondent 3: 22 November 2013). The fact that the developer was still an owner in the scheme that was giving him so many problems and also that he was still busy with another section that he was developing in the same area made it difficult if not impossible for him to avoid the endless list of demands from owners of Khaya Palace and Jozi Place. This was supported by the fact that he would rush to site every time owners prevented his employees from working on site.

The developer had the law on his side while the owners had collective power on their side. They would have made it difficult for him to sell the remaining 30 units he still owned in this development or to continue with his development if he took any drastic measures against the owners such as getting them arrested. This situation could be understood through organisation theory, which argues that conflict in organisation could be attributed to goal incompatibility. The goals of the developer and that of the body corporate were not the same. The body corporate's goal was to have products (units) that were built with quality materials whereas the developer wanted to maximise profits by compromising on the quality of the material used in the construction.

f. Erosion of the conduct rules

Like any other residential sectional title scheme, these schemes were governed by the sectional titles act, management rules and conduct rules. The shortage of parking spaces for the owners and visitors rendered some of the sections of the conduct rules of these schemes useless; a situation that might have led to the erosion of the entire conduct rules. “The rules from the developer are not in line with what is being practised by the residents and visitors. This starts with the parking rule that requires vehicles to be parked only in designated parking areas. Where are those parking areas? They are few and this forces owners to park anywhere they could fit their vehicles” (Respondent 3: 22 November 2013).

The above situation presented a potential conflict situation as envisaged by organisation theory, which states that scarce resources have the potential to cause conflict in organisations. In terms of the theory, “If it appears that resources are scarce, efforts will be made to secure resources, often to the detriment of the goals of others” (Aldag & Kuzuhara, 2002:467). Shortage of parking in the scheme went against the scheme’s objective to have all vehicles parked in designated parking areas.

Due to the shortage of parking spaces available in these two schemes, some residents ended up using the driveways to park their vehicles. This practice did not only make driving difficult on the premises, especially for new drivers, but it also

rendered the conduct rules of the schemes useless. Despite the fact that the conduct rules stipulated that all vehicles must only be parked in designated parking spaces, the shortage of parking spaces left residents and visitors with no other option, but to park anywhere they could find a parking space including driveways (Respondent 3: 22 November 2013).

The additional 30 parking bays that were provided by the developer after sacrificing a piece of his land that he intended to use for building another block of units were not enough (Respondent 3: 22 November 2013). The struggle over parking still continued and accordingly, so did the violation of the conduct rule that dealt with parking. Furthermore, the failure and/or refusal by the members of the body corporate to follow rules that applied to the scheme in raising grievances with the developer and the managing agent was another indication of the disregard for the rules by the body corporate (Respondent 3: 22 November 2013). This constant and repeated disregard for the rules in these schemes would undoubtedly lead to the abolishment of the rules of the scheme.

g. Payment and collection of levies

As previously discussed in the literature review, bodies corporate are authorized in terms of the Act to raise income that is required for the operation of the schemes through levies. Levies come in two forms: normal and special levies. It is clear from the literature that paying levies by owners is not optional, but rather obligatory.

Judging by the levy rolls of November 2013 of Khaya Palace and Jozi Place, many owners in these schemes did not pay their levies. The levy rolls showed that the bodies corporate combined were owed levies of approximately R 1 000 000.

The levies of both schemes were collected and managed by the same managing agent. Both schemes inherited the managing agent in question from the developer (Respondent 4: 23 November 2013). The developer and the managing agent of the two schemes seemed to have a relationship that dated back before the development of the two schemes.

“Some of the schemes that we are currently managing were given to us by the developer. He develops complexes all over and hands them over to us for management. ...Yes, that includes the two complexes (Khaya Palace and Jozi Place). The bank agreed to finance in the schemes on condition that the developer manages or appoints a reputable managing agent for the period of two years before moving out of the place because of the location (township)” (Respondent 4: 23 November 2013). According to this respondent, the bank had insisted on skills transfer to the owners after a period of at least two years as this (residential sectional titles scheme) model of development was new in the township.

The close relationship that existed between the managing agent and the developer created tension between the trustees and the managing agent. “This managing

agent is not ours. It was appointed by the developer and he is loyal to him not to us. We don't recognise them (managing agent)" (Respondent 3: 22 November 2013). As a result, the trustees refused to cooperate with the managing agent with regard to the collection of levies. In fact, the trustees had organised levy boycotts.

The stance taken by the trustees regarding levies that were collected by the managing agent revealed conflict that existed between the two parties. "Trustees don't know what they are doing. They will affect their own scheme by influencing owners not to pay levies" (Respondent 4: 22 November 2013).

According to the trustees, the managing agent undermined them. "They take decision without consulting with us. They spend our money without our permission. They have appointed debt collectors that are paid with our money without involving us. They treat us like children. That is why we told owners not to pay their levies" (Respondent 5: 23 November 2013).

The respondent further alleged that both the managing agent and the developer disrespected them because they were black and thus, insinuated that both the managing agent and developer were racists. "They are against our people and have no respect for us. The only reason the managing agent is talking nice today is because you are here. You don't know this man (referring to the managing agent). They treat us like this because we are black" (Respondent 5: 23 November 2013).

The above situation did not only reveal the existence of conflict between the managing agent and the trustees, and the difficulties facing the managing agent in collecting levies in these schemes, but most importantly it confirmed organisation's theory argument that conflict may be caused by perceptions and assumptions. The trustees perceived the managing agent to be biased, in favour of the developer and thus, excluded them from all decision processes that affected their schemes. On the contrary, the managing agent assumed that the trustees were not ready to manage their scheme and consequently, made all the decisions that affected the two schemes without involving them.

h. Misrepresentation to prospective buyers

As the schemes were relatively new; the owners had bought their units off-plan. Some owners believed that the selling agents were not totally honest with them. "Their selling agents had tables set up somewhere up there. The complex and the units looked very nice and big on the plan. We were excited because we were told that the complex was going to have everything" (Respondent 2: 22 November 2013). The respondent further claimed that the selling agents promised buyers that the scheme would have a swimming pool, children's playgrounds, parking with carports and security guards at the main entrance. "We were shocked on our arrival here to discover that those things were not there" (Respondent 2: 22 November 2013).

On the contrary, the managing agent claimed that it was not true that the schemes intended to provide all the things that were mentioned as promised. “I think the selling agents said all those things in order to get quicker sales. Parking for every unit, swimming pools, kids’ playground and security were all not part of the developer’s original plan” (Respondent 4: 23 November 2013).

The claims made by the managing agent on the one hand, and the owners on the other regarding what formed part of the original plan could not be verified in the absence of the plan. Neither the managing agent nor the owners had the development plan of the scheme. If it is true, however, that the selling agents promised owners things that were not part of the scheme, their action was tantamount to misrepresentation. Since the selling agents were acting on behalf of the developer when selling the units, the developer was regarded as being responsible for the misrepresentation.

Conflict in this instance can be understood through organisation theory, which attributes the source of conflict in some instances to assumption (Aldag & Kuzuhara, 2002). Owners came to the scheme assuming that the scheme would provide specific facilities and the lack thereof led to conflict between members of the body corporate and the developer, and subsequently, the managing agent.

i. The operation of the scheme is under threat

It is unquestionable that owners in the two schemes in question were unhappy about many things including, but not limited to, misrepresentation, poor maintenance conditions of their schemes, levy payments, insufficient parking, managing agent, lack of recreational facilities, and the size of their units.

While it is true that all these challenges were legitimate, their response to them could have had serious repercussions for the entire operation of the schemes. For instance, organising a levy boycott could have led to a serious financial crisis for the entire body corporate. The body corporate may not have been able to meet its financial obligations to pay for maintenance and repairs, insurance premiums, service providers and so on. The levy boycott could have also affected the future income of the body corporate. Members of the body corporate may have got accustomed to the culture of non-payment and thus, it would have been difficult for the body corporate to collect levies in the future.

In addition, the body corporate may have found itself faced with a situation of service disconnection due to non-payment. This could have resulted in a situation where financial institutions also refused to provide finances to prospective buyers in the schemes. Owners who were forced to stay in the scheme because financial institutions refused to finance future buyers may also have refused to cooperate with the trustees and/or managing agent regarding levy payment. In essence, the scheme

might have found itself operating outside the rules that apply to residential sectional title schemes, thus, putting the operation of the scheme under threat.

j. The concept of residential sectional titles scheme is foreign to owners

The two workshops discussed above revealed that the concept of residential sectional title schemes were still foreign to many owners in the two schemes in question.

At the presentation, the researcher paid attention to the body language of the participants and could not stop noticing how the participants, from time to time, looked at each other with disbelief at what they were hearing. Some of the things that seemed to capture the attention of the participants during the presentation were rules and the revelation about financial interdependence amongst the owners in the scheme.

The lack or limited knowledge by owners on how the schemes really function was also evident in the kind of questions that were asked by participants at the workshop. For instance, questions such as the following were asked: “So, am not allowed to change tiles outside my units because it is common property?”; “The fact that there are so many people that are not paying their levies, does that affect me as well?”; and “Does that mean we can’t extend our units?” The tone of the participants when raising the questions regarding the operations of the residential sectional titles

schemes clearly revealed their limited knowledge about how this type of development really works.

Owners also learned in the workshop that meetings of the body corporate are governed by the Act. In terms of the Act, there are only two types of meetings of the body corporate, namely, AGMs and SGMs (management rules 51 and 52). At least 14 days' notice is required for every general meeting (management rule 54). This came as a shock to the owners because many of the meetings that had been called in the scheme previously did not adhere to the requirement of the Act in terms of the notice of the meeting. They were only given very short notice and in some instances, owners were asked to come to the meeting on the same day (Respondent 5: 23 November 2013).

The schemes also did not refer to their meetings as general meetings, but as mass meetings. The trustees' meetings were referred to as committee meetings (Respondent 5: 23 November 2013). This suggested the schemes created their 'own rules' and practices that were not in accordance with the official rules that are detailed in the Act.

Despite the fact that sectional title development was foreign to many owners in these schemes, residential sectional title schemes appeared to have become a primary residence for other owners. According to the respondents, since the scheme had

been established, there had been at least two funerals that had been held on the premises of the scheme and on both occasions, tents had been erected to accommodate mourners (Respondent 5: 23 November 2013).

Furthermore, owners in these schemes seemed to perceive the scheme as one big community. They supported one another financially in the event of the funeral. In the event of a funeral, the trustees went from one unit to the next to collect monetary donations from other owners. Mourners from outside were also allowed to come in to pay their last respects to the deceased (Respondent 5: 23 November 2013). The practices in the schemes went against the nature of residential sectional title schemes, which were security orientated. Access into similar schemes was restricted through security guards.

Both workshops alerted the owners and the trustees to the nature of residential sectional title schemes and the rules that govern this type of development. Discovering the true nature of residential sectional title scheme made participants uncomfortable. “As you could see owners’ body languages during the presentation, they were not happy about the workshop because they (owners) have created their own culture here which contradicts the rules of the scheme” (Respondent 2: 10 November 2013).

k. Conclusion

In the two schemes in question, the collection of data involved interviews in which a total of 5 respondents were interviewed. Each interview lasted between 45 and 75 minutes. Respondents were interviewed at the complex with the exception of the managing agent who was interviewed in his office.

In addition to interviews, data in the schemes were also collected through complete participation and documentary analysis. Documents that were analysed in the schemes were previous and current financial records, levy rolls, and correspondence, in the form of emails, between trustees and the managing agent. The researcher accessed the documents in question as part of his training as the future portfolio manager of the two schemes.

The researcher also participated in the two workshops, as a complete participant. Through the two workshops, the researcher managed to uncover information without having to disturb the natural settings of the environment.

The combination of all the above mentioned data collection methods ensured that the findings of the study were credible. Furthermore, the findings were validated through members of both boards of trustees that participated in the study. The respondents were also taken through the findings that were gleaned through complete observation and permission was obtained from them for the information to

be included in the final report of this study. According to Lincoln and Guba (1995), involving respondents in the validation of data is the most crucial way of validating data.

Following the discussion above, the researcher concluded that conflict existed in the residential sectional title schemes in question. The conflict in question involved the developer, managing agent, boards of trustees and members of the body corporate.

Conflict in the scheme in question took different forms. It took a racial form in that the trustees accused the managing agent and the developer of being racist towards them. It also took the form of physical confrontation between members of the body corporate and the employees of the developer when members of the body corporate prevented employees of the developer from entering the scheme. It further took the form of withholding levies when owners were encouraged by the trustees to boycott levies. It also took the form of a lack of cooperation as the trustees refused to cooperate with the managing agent in their schemes.

The causes of conflict at the two schemes in question could be attributed to factors such as a perception of racism, a poor or lack of understanding by owners on how residential sectional title schemes function and unilateral decisions by the managing agent, which was interpreted as disrespect by the trustees.

Conflict in the schemes was also caused by inadequate or a lack of resources such as parking bays and recreational facilities; the latter resulted in conflict between the owners and the developer.

The cause of conflict in the above mentioned schemes could also be attributed to what organisation theory refers to as task interdependence (Aldag & Kuzuhara, 2002). In this case, it refers to the interdependence that existed between the two schemes in terms of sharing resources such as parking bays and recreational facilities, and interdependence in terms of finance. The trustees at Khaya Palace encouraged the owners to boycott levies whereas the Jozi Place trustees encouraged the owners to pay their levies. Since the two schemes were financially interdependent, the failure by the owners in one of these schemes to pay their levies, automatically affected the other scheme and thus, led to conflict between the two schemes.

The strong interdependence could also be seen when the owners who did not pay their levies made it difficult or impossible for the scheme to meet all its financial obligations. This situation led to conflict between the defaulting owners and the managing agent.

In addition, the cause of conflict in the two schemes could be attributed to what organisation theory refers to as goal incompatibility (Aldag & Kuzuhara, 2002). The

developer and the owners in the schemes did not seem to share the same goals. The developer appeared to compromise on building material in order to maximise profits, while the owners, on the other hand, insisted their units be built with quality material to avoid constant defects such as leaking roofs and cracking walls.

The cause of conflict in these two schemes could also be attributed to perception and assumption (Aldag & Kuzuhara, 2002). Both the managing agent and the developer were perceived as racists by virtue of the fact that they were whites. Often the actions or decisions taken by them in respect of the two schemes were regarded as being influenced by racism towards owners who happened to be black. The unilateral decisions by the managing agent on matters that affected the schemes was influenced by the assumption that the trustees were not yet ready to manage their schemes.

While the cause of conflict could be attributed to various factors including the fact that owners came from different backgrounds in terms of upbringing, culture, education, and previous relationships, such evidence, however, could not be found in the schemes in question. There would be potential conflict, however, if the body corporate continued to permit functions such as funerals to take place within the scheme. Some of the functions might have been in contrast with the other owners' beliefs or culture and thus, caused conflict.

Potential conflict could be experienced when the future management of the scheme refuses to grant permission to other families to convene bigger social events such as parties and funerals in the schemes.

The conflicts referred to above affected the developer and the entire body corporate. The developer was affected in the sense that he was not able to proceed with his remaining project onsite. The body corporate was affected because the scheme was unable to function properly, levies were boycotted and protests against the employees of the developer were organised from time to time, and the rules were not applied consistently.

The conflict affected the operation of the schemes negatively. The trustees took decisions that did not allow the smooth running of the schemes; these included boycotting levies, allowing tents to be erected on the common property, and refusing to cooperate with the managing agent.

The response to the conflict came from the trustees of the body corporate, the developer and the managing agent. The trustees responded by organising a levy boycott, protesting against employees of the developer and refusing to cooperate with the managing agent. The managing agent, on the other hand, responded to the conflict by organising a workshop to educate the trustees about the nature of residential sectional title schemes. The developer responded by threatening trustees

with legal actions when they prevented his employees from entering the premises of the schemes to do their work.

5.2.5 Paving Heights (Case study 6)

Paving Heights was a block of flats with approximately 19 floors and undercover parking. This Gauteng province based scheme consisted of 177 units in total. The entrance gate of the scheme was made up of strong steel and it was manned by security guards day and night.

a. Access into the scheme

The researcher gained access into Paving Heights through its trustees whom he met through his lawyer. The trustees of the scheme were clients of the researcher's lawyer. Having learned through the lawyer in question about the researcher's involvement with various bodies corporate and his study that was focusing on residential sectional titles schemes, the trustees wanted to meet with the researcher.

Following the aforementioned meeting, the trustees of the scheme in question did not only agree to participate in the study, but they also invited the researcher to an owners' general meeting at the scheme. The general meeting in question did not only provide the researcher with an opportunity to study the scheme through observation, but it also provided the researcher with an opportunity to identify issues that were affecting the scheme.

b. Right to manage the scheme taken away from the body corporate

At the time of this study, the scheme was faced with serious challenges; hence, the trustees' visit to the lawyer. There were two reasons that the trustees of Paving Heights consulted a lawyer. "Our electricity and water have been disconnected for about two months now by municipality because of the money that we (body corporate) owe municipality. We owe about R1.4 million for both accounts combined. On top of that we (scheme) are placed under administration by the court. So we wanted Nthabi (lawyer and not her real name) to help us to challenge the administration and with the reconnection of services to our flats" (Respondent 1: 30 September 2013).

The respondent added, "To tell you the truth, we don't think the court order to place our flats under administration is legitimate that's why we wanted the lawyer to check it for us. There are about five guys who are investors in our flats. They own about 35 flats among themselves. These are guys who went to court to place our flats under administration without the knowledge of other owners" (Respondent 1: 30 September 2013). According to Respondent 1, the lawyer confirmed that the court order to place the scheme under legal administration was, however, legitimate.

In terms of the above mentioned court order, the rights to control, administer and manage the scheme were taken away from the body corporate and its board of trustees; this included the right to collect levies. After being appointed as an

administrator, the administrator subsequently appointed the managing agent to manage the scheme (Respondent 1: 30 September 2013). The main purpose of the general meeting that was convened by the trustees of the body corporate on 30 September 2013, and to which the researcher was invited was to discuss the above challenges that were confronting the scheme.

As discussed previously, the control, administration and management of a residential sectional title scheme rests with the body corporate and/or its board of trustees. The appointment of the administrator was not only contrary to the norm, but it also frustrated owners who wanted the management of the scheme to rest with the body corporate and accordingly, they consulted a lawyer (Respondent 1: 30 September 2013). The situation also revealed tension that existed amongst members of the same body corporate, particularly the tension that existed between the five investors that obtained the court order to place the scheme under administration and other members of the body corporate (Respondent 1: 30 September 2013).

The researcher, however, was not able to interview any of the five owners mentioned above as no one in the scheme seemed to know their contact details or their whereabouts. According to the court's documents, however, the five owners had approached the court to appoint an administrator for their scheme alleging that the scheme was not properly managed and that the funds of the scheme were misused and/or misappropriated by the trustees, managing agent or both. "Yes, it's true that

funds were misused but they were not misused by us. Funds were misused by the previous managing agency and that managing agency has since closed down” (Respondent 1: 30 September 2013).

The respondent went further to state, “We even went to the offices of the managing agency and we couldn’t find them. These guys (the five owners) should have spoken to us first before going to court so that we can work together to solve this problem” (Respondent 1: 30 September 2013).

The above situation did not only confirm the existence of conflict among owners in this scheme, but it also confirmed organisation theory’s argument that assumptions can lead to conflict (Aldag & Kuzuhara, 2002). The action taken by the five owners to place their scheme under administration was based on the assumption that the trustees were misusing the money that belonged to the body corporate. This created a negative assumption about them and thus, conflict ensued.

c. Owners are seeking answers at the general meeting

As already alluded to above, a meeting for the owners at the scheme was convened on 30 September 2013. The frustration and anger amongst the owners at the meeting in question were unquestionable given the fact that the scheme had been without water and electricity for a period of about two months. “We are paying levies but we don’t have water and electricity in this complex. What happens to our money?

We have to go to neighbours to ask for water and that is not fair”, argued one angry owner who addressed the meeting.

The trustees’ explanation that the funds of the body corporate had been stolen by the previous managing agent was not accepted by all the owners. “How was the money stolen? Where were you when they stole our money?” asked another angry resident.

After explaining what they (trustees) did after discovering that their funds had been stolen, including visiting the offices of the previous managing agent and discovering that the managing agent had been liquidated, the trustees further explained that unfortunately the situation of the body corporate situation had been worsened by the fact that the management of the entire scheme including the collection of levies had been taken away from the body corporate by the court who had appointed an administrator for the scheme. “We don’t want an administrator here. We are not going to cooperate with them (administrator)” an angry participant argued to which the other owners responded with a round of applause as an approval to her submission that they should not cooperate with the administrator.

After a long and emotional discussion, a resolution was taken by the body corporate not to cooperate with both the administrator and his managing agent. They also decided the body corporate should open a bank account where owners should pay

their levies and once there was enough money, the trustees would approach the municipality to negotiate the reconnection of services to the scheme.

This confirmed the existence of conflict between the body corporate on the one hand, and the court administrator and his managing agent on the other over the management of the scheme. The parties did not agree on how the scheme should be managed. The source of conflict in this instance could be attributed to failure or refusal by the body corporate to recognise the jurisdiction of the court administrator in the scheme, thus, confirming organisation theory's argument that conflict in some instances is caused by ambiguity over responsibility or jurisdiction (Aldag & Kuzuhara, 2002).

d. Battle for the management of the scheme

As stated previously, the body corporate through its board of trustees was not prepared to recognise the administrator that the court had appointed as the legitimate manager of the scheme. Both residents and the trustees were suspicious of the administrator of the court. They argued and believed that the administrator in question was pursuing his own selfish interests and that of the investors that had approached the court (Respondent 1: 30 September 2013). Consequently, they took a resolution not to cooperate with them.

In order to demonstrate support for their leaders, the body corporate took a decision to open a banking account that would be controlled and managed by them through its trustees (30 September 2013 meeting). This account was not to be accessed by the administrator. Following the general meeting of 30 September 2013, a bank account in the name of the body corporate was opened. At the time of opening the account, the body corporate had raised approximately R 150 000. Their aim was to raise enough money for the down payment that was required by the authority to reconnect services to their scheme (Respondent 1: 30 September 2013).

The above actions were taken to demonstrate that the body corporate, with the exception of the investors of the 35 units, was not prepared to accept the administrator that was appointed by the court as the manager of their scheme (Respondent 1: 30 September 2013).

The body corporate wanted to manage their own scheme and control their own funds. “The money was collected from residents including tenants because we don’t know who the owner is and who the tenant is. So we were collecting from everyone that is living here. So, about a week later the money that was raised was about R 300 000” (Respondent 1: 30 September 2013).

After learning about the body corporate and trustees’ decision, the administrator used the powers of the court to access the funds that the body corporate kept in the

bank. “We don’t know how he got to know about the account. He presented the letter from the court that our scheme was under his administration and based on that the bank allowed him to access all our funds. We are now back to where we started” (Respondent 1: 30 September 2013).

Although the administrator had managed to access the funds that the body corporate saved, to date the services had not yet been reconnected to the scheme. It appeared that he may have used the money for his own operational costs because the money was never spent on the scheme (Respondent 1: 30 September 2013).

The administrator also used the powers vested in him by the court and appointed his own managing agency to manage, control and administer the scheme (Respondent 2: 30 September 2013). This meant the trustees would not only have to compete with the administrator for the management of their scheme, but also compete with the managing agent that had been appointed by the administrator. Given their previous experiences with managing agents, the body corporate was very angry with the administrator (Respondent 2: 30 September 2013).

Despite all the challenges described above, the trustees have not given up. They were still trying to find a way forward regarding the management of their scheme. “We are still trying to find a solution to this problem. We are going to seek legal advice again” (Respondent 2: 30 September 2013). Both the managing agent and

the administrator refused to participate in this study and argued that issues of the body corporate were private and confidential.

e. Lack of trust in the managing agents

The managing agents in this scheme had a bad reputation. One respondent argued, “One after another they (managing agents) stole our funds. We are in this mess today because of the managing agents. They all come with promises but at the end of the day they don’t deliver” (Respondent 3: 30 September 2013).

The managing agents were also accused of neglecting the scheme once the body corporate concluded a management contract with them (Respondent 3: 30 September 2013). They hardly visited the scheme once they had secured a written contract with the body corporate. The only person that came to the scheme after the signing of the contract was the person that delivered levy statements at the end of the month (Respondent 3: 30 September 2013).

Given their bad experiences with managing agents, the body corporate in this scheme did not want any more managing agents. “I think we can manage our properties ourselves. We can even do a better job than the managing agent. We had enough with them” (Respondent 3: 30 September 2013).

All managing agents were now viewed with suspicion in the scheme. They were viewed or perceived as crooks and unreliable and thus, conflict between them and the body corporate was inevitable.

f. Failure to comply with the rules of the schemes

The financial problems of the scheme could also be attributed to the scheme's failure to comply with the rules that apply to residential sectional title schemes. For instance, despite the fact that bodies corporate should convene their AGMs within four months of the end of each financial year, this body corporate had not had an AGM in the previous four years. "Well, I don't remember the last time we had an AGM. I think it is four years ago" (Respondent 3: 30 September 2013).

Failure by the body corporate to convene AGMs timeously did not only suggest that the body corporate's budget was inaccurate, but it also meant that the body corporate did not have mechanisms in place to make the managing agent accountable for the levies collected and spent by the managing agents on behalf of the body corporate.

Furthermore, failure to convene regular general meetings of owners is not only a violation of the body corporate rules, but the action also deprives owners' of their rights to participate in the management of their own scheme.

In addition, if general meetings were ever convened such as the one that was convened on 30 September 2013, the trustees had not complied with the Act; in particular, they had not complied with the 14 days' notice required in management rule 54(1) of the Act (Respondent 3: 30 September 2013). This left the resolutions of the body corporate open to legal challenges in the event of dispute.

g. Conclusion

In the scheme, the collection of data involved interviews in which a total of three respondents were interviewed. Each interview lasted between 45 and 75 minutes. All the interviews took place at the scheme after the meeting.

In addition to interviews, data in the scheme in question were also collected through the complete observer method during the meeting (only the trustees were aware of the researcher identity at the meeting) and after the meeting, the participant-as-observer method was used. Data was also collected through documentary analysis. Documents that were analysed in the schemes were previous minutes of the body corporate and the administration order of the court. The documents in question were showed to the researcher by the chairperson, Respondent 1, during the interview.

The researcher also attended one general meeting of the owners as per the invitation of the trustees of the body corporate. The researcher requested that his identity not to be revealed until the end of the meeting so that the owners would participate freely without thinking that there were being observed.

The combination of all the data collection methods ensured that the findings of the study were credible. Furthermore, the findings were validated through members of both boards of trustees that had afforded the researcher access into the scheme. Respondents were also taken through the findings that were discovered through documentary analysis and complete observation, and permission was obtained from them for the information to be included in the final report of this study. Involving respondents in the validation of data is the most crucial way of validating data, according to Lincoln and Guba (1995).

Following the discussion above, the researcher concluded that conflict existed in the residential sectional title scheme in question. The conflict involved the five owners, the body corporate, the board of trustees, the managing agents, the local authority and the court administrator.

The conflict in the scheme took different forms. It took a legal form when five owners took the body corporate to court so that the scheme could be placed under administration. It also took a legal form when the trustees sought legal advice to challenge decisions to place the scheme under administration. It also took the form of confrontation between ordinary owners and the trustees during the general meeting.

In addition, the conflict in the scheme took the form of battle for the management of the scheme between the board of trustees, and the court administrator and the managing agent that was appointed by the administrator. It also took the form of the disconnection of services to the scheme by the local authority due to the non-payment for the services concerned.

The scheme was placed under administration by five owners who were not satisfied with the manner in which their scheme was being managed. The five owners did not trust the then management of the scheme. This created tension between the five owners and the entire body corporate. The action of the five owners confirmed organisation theory's argument that conflict can also be caused by perception (Aldag 2002). The five owners perceived the management of the scheme as incompetent and thus, took legal action for the scheme to be placed under administration.

Various parties were found to be involved in conflict in the scheme in question. The conflict involved owners over mistrust regarding the management of their scheme. It involved the local authority over unpaid services. It involved managing agents over misused and/or misappropriation of funds. The conflict also involved the appointed administrator and his managing agent over the management of the scheme.

All the owners in the scheme were affected by the conflict. The fact that water and electricity was disconnected to the entire scheme showed that all residents were

affected. The owners and/or residents were affected as individuals and also collectively. As individuals, owners were not able to sell their units in the current situation, without water or electricity. Investor owners were likely to lose tenants. The cause of conflict, could also be attributed to what organisation theory refers to as task interdependence (Aldag & Kuzuhara, 2002).

The fact that trustees sought legal advice showed that the scheme was trying to resolve its conflict through legal action. On the other hand, some of the owners tried to resolve the matter by appointing the administrator, which action by itself led to further conflict.

Conflict in this scheme had a serious impact. It led to the disconnection of the critical services of water and electricity. The appointment of the administrator deprived owners of the right to manage their own scheme and thus, rendered it impossible for the scheme to be managed within the rules that govern the residential sectional title schemes. The scheme, therefore, did not operate according to the residential sectional title rules.

While the cause of conflict can be attributed to various factors, including the fact that owners come from different backgrounds in terms of upbringing, culture, education, and previous relationship, such evidence, however, could not be found in the scheme in question. This, however, did not mean that owners in the scheme came

from the same backgrounds. In fact, they were products of diverse backgrounds; the researcher concluded this during his observations at the general meeting referred to above.

5.2.6 Jason's View Place (Case study 7)

This residential sectional title scheme was a block of flats. It consisted of 139 units spread across the 18 floors of the building. The scheme was situated in the province of Gauteng.

a. Access into the scheme

Among other things in the property industry, the researcher managed individual owners' properties. One of his clients in another scheme recommended the researcher to one of the owners at Jason's View Place who was looking for assistance with the management of their entire scheme. With the request of the owner in question, the researcher visited the scheme on 17 December 2013 to establish the nature of the assistance that was required by the owner and her body corporate.

As the researcher entered through the steel entrance gate, which was not manned by any security guard, the paint that was peeling off on the walls of the building and the grass that was growing in between the paving bricks was evident. The communal

lights in many areas were missing, which suggested that the place was dark outside at night. The name of the building and the address were not displayed anywhere.

The researcher found Jason's View Place by means of a GPS; after confirming that he was at the correct place, he drove into the wide open gate, which was unmanned. The researcher's contact met him in the driveway. She took the researcher to her garage while she went to find a few owners who joined the discussion.

b. Financial crisis

The meeting started when the woman who had invited the researcher to the scheme described it as facing a serious financial crisis. Not only were services such as water and electricity under threat of being disconnected, but the scheme were also under the threat of being auctioned by its creditors.

Since the researcher's identity as a researcher was not known at this stage, he was presented as a possible person who could assist the scheme through advice or by taking over the management of the scheme. For this reason, the researcher took notes without any one worrying or being uncomfortable about him doing so.

The poor state of maintenance at Jason's View Place could be attributed to its financial problems. Many owners, if not all, were not paying their levies.. "I am the first one to stop paying levies here because I did not know what they were doing with

our money. There was no maintenance and/or cleaning taking place in the common areas. After stopping paying my levies, they came (managing agent and other people) to remove the wheels of my car and the police were called in. I was screaming like I was mad and someone called the police. When the police came they (people that were trying to confiscate the wheels of her car) left” (Respondent 1: 17 December 2013).

The respondent claimed that the reason she had stopped paying her levies was because she had discovered that their levies were paid into the personal banking account of the person who had been appointed as the managing agent. She further claimed that none of the owners were involved in the appointment of that managing agent (Respondent 1: 17 December 2013).

The lady proceeded to provide further background to the financial crisis of the scheme. “We don’t know who appointed that woman. Everyone received a levy statement with her account details. In fact, the bank account belonged to her boyfriend and I discovered this when I had a problem with my levy payment not have gone through. I went to the bank to find out what happened to my payment and the bank wanted me to confirm the account holder and that is how I discovered that we were paying our levies into the account of the boyfriend of the managing agent” (Respondent 1: 17 December 2013).

After discovering that levies were paid into the personal account of the boyfriend, the respondent was further convinced that their levies were misused and she stopped paying her levies (Respondent 1: 17 December 2013).

Rumours started spreading around the scheme that the body corporate funds were being 'eaten' by the managing agent and her boyfriend. Despite the rumours, some owners gave the managing agent the benefit of the doubt and continued to pay their levies. "People like umkhulu (Zulu word which means grandfather) would not miss his levy payment. He was paying religiously, I am telling you" (Respondent 2: 17 December 2013).

The rumours about the funds of the body corporate being paid into the banking account of the managing agent's boyfriend were true. "The boyfriend passed away and all his accounts were frozen including the account that had our funds. This was when other owners stopped paying their levies as well" (Respondent 2: 17 December 2013). Owners deliberately withheld their levies (Respondents 1 & 2: 17 December 2013).

None of the respondents knew how the managing agent was appointed. All they knew was that the current members of the board of trustees had been unilaterally appointed by the current managing agent (Respondents 1 & 2: 17 December 2013). The managing agent went further and appointed trustees into various positions. "I

was appointed by the managing agent as the trustee and the chairperson of the body corporate. I agreed to be the trustee, but honestly I don't know what my job is as the trustee and the chairperson of the body corporate" (Respondent 3: 17 December 2013).

The researcher, however, could not get the managing agent's side of the story as she refused to participate in the study. Nonetheless, the information above revealed the existence of conflict between the managing agent and the members of the body corporate. The conflict was, at first, triggered by the perception that the managing agent was misusing the funds of the body corporate and thus, supported organisation theory's argument that perception could lead to conflict (Aldag & Kuzuhara, 2002).

Due to the financial crisis, the body corporate was not able to meet all its financial obligations, including maintenance.

c. Disregarding rules of the scheme

The behaviour of the managing agent in this scheme was not in line with the Act and the policy of the EAAB. In terms of management rule 6 of the Act, trustees are elected at the AGM of the body corporate by fellow members of the body corporate, not by the managing agent as it appeared to be the case in the scheme.

Once elected, trustees have powers, among others, to appoint service providers including the managing agent (management rule 26(1)(a)(i)(ii)). This means the managing agent is the employee of the body corporate through its trustees. The practice in this scheme, however, made trustees the ‘employees’ of the managing agents. By appointing the trustees in this manner, the managing agent seemed to avoid convening an AGM for the owners to elect the trustees of their choice.

Furthermore, in terms of the policy of the EAAB, managing agents are prohibited from using their personal accounts to collect levies. In fact, the EAAB requires managing agents to have trust accounts in which levies should be paid (Estate Agents Act 112 of 1976). Thus, managing agent disregarded the rules that governed both the schemes and managing agents.

Furthermore, the managing agent in the scheme in question failed to convene general meetings for the owners. “I have been here for four years but we have never had any meetings of the owners with the managing agent. We asked her many times to call the meeting, but she refuses” (Respondent 1: 17 December 2013). The behaviour of the managing agent was not only contrary to the Act, but it also deprived the body corporate of the right to participate in the running of its scheme, including its finances.

It also deprived the body corporate of the opportunity to hold the managing agent accountable for the levies the owners had paid in the previous financial year. As a result of not knowing how and what the funds of the body corporate were used for, it became easy and justifiable for members of the body corporate to withhold their levy payments.

d. Body corporate is chased by creditors

Following the decision to withhold levies, Jason's View Place Body Corporate found itself unable to meet all its financial obligations (Respondent 1: 17 December 2013). In fact, since the body corporate was not 'hands-on', it did not know its financial obligations as everything was left to the managing agent. "We were surprised to receive letters of demands from creditors such as the municipality for the unpaid services. We found out that we owed water, electricity and rates and taxes. I think we owe about R 4 000 000 in total for the municipality services and since there is no levy income I don't know how we are going to deal with this problem" (Respondent 3: 17 December 2013).

The body corporate wanted to manage the scheme itself through its board of trustees, given their previous experiences with the managing agents. "We want trustees to manage the complex for us because we don't trust the managing agents anymore" (Respondent 3: 17 December 2013). This view was also shared by all

participants as per their body language, which included positive nodding as the participant mentioned the idea of managing the scheme themselves.

In my view, however, taking over the management of the scheme by the trustees might not have been a good idea. The scheme already had problems in terms of both management and finance; this had happened in the presence of the same individuals who wanted to take over the management of the scheme.

The management of a scheme requires skilled, professional and qualified managers (Horwitz, 1985). Appointing a reputable managing agency with the expertise might save owners time and future problems. Proper credit control measures were required because the owners in this scheme were accustomed to the culture of non-payment.

e. Functioning of residential sectional titles schemes not known

As already demonstrated through the literature review, the residential sectional title schemes model is the product of legislation; its formation and operation is governed by legislation, namely, the *Sectional Title Act of 1971*. Owners in the scheme, however, demonstrated a lack of such knowledge during their meeting with the researcher.

The researcher was invited to 'a general meeting', which was convened by an ordinary member of the body corporate. This was contrary to management rule 53

which states, “The trustees may whenever they think fit and shall upon a request in writing made either by owners entitled to 25 per cent of the total of the quotas of all sections or by any mortgagee holding mortgage bonds over not less than 25 per cent in number of units, convene a special general meeting. If trustees fail to call a meeting so requested within fourteen days of the request, the owners or mortgagee concerned shall be entitled themselves to call the meeting”.

The above mentioned section of the management rules was never taken into consideration when a meeting, to which the researcher was invited, was convened. Secondly, despite the fact that the meeting was not procedurally convened, the participant wanted to appoint the researcher as the managing agent of the scheme. Such an appointment would have been illegal as such powers of appointment of service providers rest with the body corporate or its board of trustees in terms of section 38(a) of the Act.

In addition, an appointment of the new managing agent would have meant the termination of the current managing agent’s contract without having followed the proper procedures. The appointment and termination of managing agent services is guided by management rule 46(1) to (2)(d). By terminating the managing agent’s contract without following the proper procedure, the body corporate would have exposed itself to possible legal action by the managing agent concerned.

Based on the above examples, among others, the members of the body corporate who were present at the meeting did not seem to understand exactly how residential sectional titles schemes function. It may be assumed by extension of the members who attended the meeting, that those who did not attend the meeting were also unaware of how such schemes function.

f. Conclusion

In the scheme in question, the collection of data involved only the complete observer method. The observation in question involved a group of about 10 owners in 'a general meeting' of the scheme. The meeting and hence, observation took about two hours. During the meeting, the researcher asked follow up questions to seek clarity or further explanations from the participants.

The researcher's identity was concealed until a day later when the researcher returned to provide feedback to the owners in the scheme as promised the previous day. Concealing the researcher's identity in the meeting was done to avoid the natural settings of the environment being affected, which could have led participants to hold back information or not speak freely. Consequently, the participants were able to speak freely without being conscious that they were being observed. They believed the researcher was one of them.

At the beginning of the meeting, however, the situation was a bit tense when one owner did not want to participate until she had been informed about the status of the researcher in the meeting. The suspicion was addressed by the woman that had invited the researcher to the meeting; she said, “I am the one who invited him. That’s why we are here. He deals with complexes and I invited him to help us with our problems here” (She was also Respondent 1). It was only after this explanation that everyone started relaxing. This also prepared the researcher for later on when he revealed his identity as the researcher.

After the suspicion, the researcher decided not to disclose his identity as the researcher immediately. He informed owners that he needed to double check some of their concerns through legislation and that that he would return the following day to provide concrete advice regarding their situation. The following day, the researcher returned with suggestions, which were supported by the relevant legislation; the latter included the reason the owners were not the right structure to appoint him as the managing agent of the scheme.

He first analysed what he had discovered during the meeting. After agreeing on the findings, the researcher took the opportunity to inform the owners that he was also conducting a study on the same issues and asked the owners if he could include their scheme as one of the case studies. They agreed subject to concealing all the participants’ identities and their scheme.

Based on the discussion above, however, there was no doubt that Jason's View Place was characterised by conflict. In fact, the researcher was invited to the scheme because of the existence of conflict in it. The conflict could be attributed to factors such as the managing agent's unilateral decisions, financial mismanagement and/or misappropriation of funds by managing agents. The source of conflict in the scheme in question could further be attributed to failure and/or refusal by members of the body corporate to pay levies, which led to conflict between them and service providers such as the local authority over unpaid services, particularly water and electricity.

The nature of the conflict at Jason's View Place took the form of physical confrontation between owners and the managing agent in which the police were called in to intervene. It also took the form of refusal by owners to pay their levies on the suspicion that the managing agent was mismanaging the funds of the body corporate.

The managing agent and the body corporate found themselves disagreeing with each other over the method of paying levies. Members of the body corporate were not happy with the fact that their levies were paid into the personal account of the managing agent, especially that of the managing agent's 'boyfriend'.

There was, however, no evidence in the scheme in question that conflict was caused by the fact that owners in the scheme came from various socio-economic, political and cultural backgrounds. The parties that were involved in the conflict in the scheme were the managing agent, members of the body corporate as individuals or collectively, and the local authority that was in conflict with the body corporate over unpaid services.

The body corporate was the party most affected by the conflict in the scheme. The refusal by owners to pay their levies led to a financial crisis for the body corporate. The body corporate was unable to meet all its financial obligations and this was evident in the conflict between the body corporate and the local authority over unpaid services. The poor state of maintenance of the common property in the scheme also attested to the fact that the body corporate as a whole was affected.

The body corporate tried to resolve conflict between itself and the managing agent by embarking on a levy 'boycott'; the latter affected them negatively later. They found themselves unable to meet financial obligations following the said boycott. The body corporate also tried to resolve the conflict between itself and the managing agent by opening a separate bank account into which levies of the owners were to be paid.

The conflict in question affected the operation of the scheme negatively. For instance, as a result of conflict, the body corporate did not have funds for the

maintenance of the common property. The scheme was also not being managed according to the rules that applied to residential sectional title schemes, of which Jason's View Place was a part.

5.2.7 Adelaide Court (Case study 8)

Another scheme that formed part of the present study was Adelaide Court. It was a relatively small scheme with only 36 units and was situated in the province of Limpopo.

a. Access into the scheme

The researcher accessed the scheme through an owner who was also a trustee that the researcher knew through a friend. The owner in question is referred to below as Respondent 1. This this owner introduced the researcher to other respondents in the scheme.

While ownership in the scheme included individuals and organisations, the majority of residents were tenants of their employers. "I think I am the only owner that is residing here. Most of the units are owned by companies and their units (companies' units) are occupied by their employees. The developer is also still owning about 13 units in the complex through his company" (Respondent 1: 15 July 2014).

b. Potential conflict of interest

The scheme was currently managed by the developer's company. He appointed his company as the managing agency at the time he was still the majority shareholder in the scheme (Respondent 1: 15 July 2014). After selling some of his units, he lost his position as the majority shareholder in the scheme, but his company continued to manage the scheme uncontested. "Well, when I bought here the scheme was already being managed by the developer. I don't know who appointed his company as the managing agency and I don't think it was contested because he was the majority shareholder in the scheme at the time" (Respondent 1: 15 July 2014).

Even after the developer had lost the majority of shares in the scheme, his management of the scheme was not contested because some of the individual owners appointed the developer and his company to manage their units as the managing agent. "Many owners bought units in our development off plan. Some bought as business partners and few as individuals. They bought the units for investment purposes because they wanted us to manage their rentals.Yes, it is (company) registered as the managing agent" (Respondent 2: 15 July 2014).

In addition to the 13 units that the developer owned in the scheme, he also managed three units that belonged to individual owners. "The developer owns 13 units, he manages three on behalf of the clients, he is the managing agent of the whole complex, he is also the developer of the same scheme, appoints service providers,

don't you think that is conflict of interest? The other 18 units are owned by one organisation and are occupied by the employees of its contractors. I am one of the trustees, but what can I do in this situation?" (Respondent 1: 15 July 2014).

Despite the concern by the owner, it was difficult for to talk about a conflict of interests in the situation described above. In terms of management rule 5(b), the managing agent or any of his or her employee can be a trustee as long as the managing agent is an owner in that scheme. The developer was still an owner in the scheme in question which made him legible to be one of the trustees. There was, however, potential for conflict because of the suspicion of financial mismanagement; especially by individual owners who were not linked to either the developer or the other organisation that owned 18 units.

c. The danger of majority ownership

When the majority ownership in the scheme rests with one party, it can be dangerous for the proper functioning of the scheme, especially when the major owner is an organisation (Respondent 1: 15 July 2014). Organisations are normally represented by one person and if the nominated person is not committed, the scheme can find itself unable, most cases to make progress.

Respondent 1 noted, "We hardly form a quorum in our meetings because the representatives of this organisation are based in Gauteng, and they hardly attend

meetings. As a result, everything is left to the managing agent” (Respondent 1: 15 July 2015). In some instances, meetings were postponed because of failure of the representative of the organisation concerned to attend meetings (Respondent 1: 15 July 2014).

In fact, independent individual owners in the scheme did not have a voice at all. Their opinions were suppressed by the developer and the organisation in question. “In practice the general meetings are for three people only. There are for me, the representative of the developer and the representative of the organisation. Remember that the developer, over and above his units he also manages units of other owners and those owners give him their proxies to represent them in all the general meetings. They (owners that are represented by the developer) do not attend meetings. That is why I am saying the meeting is only for three people. It’s for three people but only two people that can make decisions, the developer and the organisation” (Respondent 1: 15 July 2014).

The reason the meetings could not proceed in this scheme was that the value of the properties owned by the organisation in question in the scheme gave the organisation the majority ownership (Respondent 1: 15 July 2014). Although the management rules stated that if the quorum was not present at a general meeting, the meeting should be postponed to the following week at the same time and same place, the postponement became time-consuming for other owners especially

individual owners who were not linked to either the developer or the organisation (Respondent 1: 15 July 2014).

The above situation had the potential to affect the proper functioning of the residential sectional title scheme in question especially when one or both of the major players were not committed to the scheme. The situation, therefore, may have led to conflict between the two major players or between the individual owners and the major players in the scheme. “Almost every time I report maintenance problems to the managing agent I am told that there is no money because the organisation has not paid” (Respondent 1: 15 July 2014).

As already alluded to above by the respondent, the other problem of the majority ownership related to the payment of levies. If the majority owner, in this case the organisation, failed to pay its levies or to pay on time the entire scheme suffered severely. “At times they pay their levies late and this cause financial strain on the entire body corporate. We have debit orders and service providers to pay such as cleaners, maintenance, security and insurance. We have to pay them on time. They do not seem to understand. So, we fight a lot about levies here. The problem is late payment by these big organisations” (Respondent 1: 15 July 2014).

The respondent’s claim regarding lack of timeous levy payment was confirmed by the representative of the organisation in question. “You need to understand that we

are a big organisation. Our financials are governed by Public Finance Act. We have to comply with it every time we make payment. You must remember that payments in this organisation have to go through procurement process. That is why in most cases we are not able to pay our creditors on time...Yes, at times we are three months in arrears with our levies” (Respondent 3: 15 July 2014).

d. Constant violation of the conduct rules

Conduct rules in the scheme were constantly violated according to the respondents. The violations including unauthorised parties, incorrect parking, noise from radios and loud conversations were some of the common offences in the scheme (Respondent 1: 15 July 2015). This was no surprise because the majority of the residents in the scheme were single males who used employer’s accommodation (Respondent 3: 15 July 2014).

A respondent noted, “These men party almost every week and I have my kids staying here with me. I raised this matter with the managing agent in our meetings but things are still the same. The other day I had to call the police on them. Although the police made them to stop their party on the day but the following week there was another party in the complex. It is not nice staying with labourers. Our lifestyles are completely different” (Respondent 1: 15 July 2014).

The above situation did not only confirm the existence of conflict in the scheme in question, but it also confirmed that different socialisation processes can lead to conflict (Aldag & Kuzuhara, 2002). Both the respondent and the labourers came from different social and professional backgrounds. The respondent was a medical doctor by profession while the other residents were technicians who were also born and brought up in various provinces in the country.

Furthermore, enforcing the rules did not seem to be easy in the scheme in question. Most of the units were used as communes. They were occupied mainly by males who did not care about the rules (Respondent 1: 15 July 2014). There were between two and five individuals in one unit. When the managing agent delivered a letter of reprimand to the unit after receiving a complaint from the residents, the one who was found in the unit denied being there on the day of the incident; this frustrated the managing agent (Respondent 2: 15 July 2014).

Sharing of units in the scheme by employees seemed to bring its own challenges. For instance, each unit was allocated one parking bay in the scheme. Since there were more than two adults, in some instances, who shared one unit, and all the occupants tended to own vehicles, this put pressure on the available parking spaces. "These people don't care. They park anywhere they like. Many time I found myself without a parking because some fool decided to take my parking bay" (Respondent 1: 15 July 2014).

e. Conclusion

In this scheme, the collection of data involved interviews in which a total of three respondents were interviewed. Each interview lasted between 45 and 75 minutes. Respondents were interviewed at their respective places of work.

No documents of the scheme were analysed in relation to the study because of the managing agent's refusal to make them available to the researcher. The documents of the scheme, according to the managing agent, were private and confidential.

Like the other schemes that have been previously discussed, Adelaide Court was also characterised by conflict. The source of conflict in the scheme in question could be attributed to the majority power and the constant violation of the conduct rules by some residents in the scheme. Independent owners in the scheme appeared to be intimidated by the organisation and the developer.

The conflict in the scheme in question seemed to take the form of interpersonal conflict, namely, the conflict between two individuals. This was evident in the conflict, between the resident owner and the individual employees that resided in the scheme, over issues of noise and the violation of the parking rules. The conflict in the scheme also took the form of intergroup, which refers to conflict that happens between different teams within the same organisation. This referred to the conflict between the organisation that owned the majority of the units in the scheme and the

body corporate over payment of levies and lack of commitment to the operation of the scheme by the organisation.

The fact that the residents in the scheme came from different backgrounds seemed to contribute to the existence of conflict in the scheme in question. The respondent attributed the difference between the 'labourers' and him to their different backgrounds. Given their different backgrounds, the parties did not seem to view things the same way. This situation confirmed organisation theory's argument that different backgrounds in terms of upbringing, culture, education, and previous relationships may lead to conflict when people come to live or work together (Aldag & Kuzuhara, 2002).

The conflict in the scheme involved the body corporate, the organisation that was discussed above, independent owners, the developer and the 'resident employees'. Independent owners seemed to be the most affected parties in this scheme. Given their minority status, their voices were suppressed. The body corporate would also be affected in the long term.

At the time of the study, there was no evidence of a plan or strategy to resolve the conflict in the scheme. The conflict in the scheme had a serious impact on the operation of the scheme. Some residents had no respect for their fellow residents.

The cause of conflict in the scheme could be attributed to scarce or limited resources such as parking spaces. The residents competed and/or fought over the limited available parking spaces. This situation supported organisation theory's argument that scarce resources may result in conflict. According to the theory, "if it appears that resources are scarce, efforts will be made to secure resources, often to the detriment of the goals of others" (Aldag & Kuzuhara, 2002: 467).

5.2.8 Zacharia Park and Klein Fountain Village (Case studies 9 and 10)

Another two schemes that formed part of this study were Zacharia Park and Klein Fountain. The two schemes were also based in the province of Limpopo. Zacharia Park had 190 units while Klein Fountain had 270 units. The two schemes are discussed simultaneously because of the similarities found in them as well as the fact that they were located in close proximity to each other. A total of three respondents in both schemes were interviewed.

a. Access into the scheme

While accessing the scheme was not a problem, accessing the relevant respondents was a challenge. The schemes were accessed through the representative of an organisation that was renting a number of units in the schemes on behalf of its employees. The representative in question was introduced to the researcher by the first respondent at Adelaide Court, which was discussed previously. The

representative subsequently introduced the developer to the residents' employees in the absence of the residents' owners.

Zacharia Park and Klein Fountain Village were relatively new developments. The sudden development of the two schemes appeared to have been influenced by the anticipated high demand for accommodation in and around the area. "Developers somehow knew that we (an organisation discussed above) would be coming in the area and would need accommodation for our staff members. They (developers) approached us for deals. In fact, they wanted us to buy their units off-plan but we refused. So they took a gamble and built because they had an inside information that we would definitely need accommodation" (Respondent 1: 16 July 2014).

The 'gamble' taken by the developers appeared to have been advantageous to them. "We ran out of accommodation for our staff members and we (an organisation) were forced to approach the developers for additional accommodation. So, what they (developers) did they appointed estate agents to negotiate on their behalf. Estate agents insisted on the duration of the lease contracts of not less than 24 months. After signing lease contracts with them (estate agents) they (developers) sold the units that we rented from them with lease contracts in place. In other words, they used our lease contracts to attract investors to buy their properties" (Respondent 1: 16 July 2014).

b. Unhappiness with the management of the scheme

Accordingly, the residents in both schemes were mainly tenants. “We are renting more than 50 per cent of the units in both complexes. There are other companies that are renting there as well” (Respondent 1: 16 July 2014).

The representative of the organisation expressed his unhappiness with the management of both schemes. “I really don’t know who is managing these two complexes. Every time there is a problem we are being sent from pillar to post. It’s the managing agency, it’s body corporate, we really don’t know the managers of these complexes” (Resident 1: 16 July 2014). This was potential for conflict.

Frustration with the management of the schemes was also expressed by a tenant from each scheme who were introduced to the researcher by Respondent 1. The tenant from Klein Fountain Village stated, “All the problems that we are having here regarding the common property are communicated to the developer because the developer is still here on site busy with another block” (Respondent 2: 16 July 2014).

The above respondent provided an example: “They are not here (referring to the managing agent). There is a big sewer just outside the fence. In summer the place is stinking. You can’t open your windows let alone staying outside” (Respondent 2: 16 July 2014). Similar concern regarding the absence of the managing agent in the scheme was shared by a resident at Zacharia Park. “We report our problems to our

employer because the managing agent is not here. I understand their offices are in Gauteng” (Respondent 3: 16 July 2014).

Both developers of the schemes refused to participate in the study and they also refused to disclose details of any of the owners in the schemes due to confidentiality regarding clients’ information.

c. Conclusion

In the two schemes in question, the collection of data involved interviews in which a total of three respondents were interviewed. Each interview lasted between 45 and 75 minutes. Respondents were interviewed at their respective schemes with the exception of the representative of the organisation who was interviewed in his office.

As already illustrated above, any form of conflict in both schemes could not be established. There, however, appeared that there was potential conflict between the tenants and the developers or the estate agents over the management of the schemes in both schemes. Poor management of the schemes could have led to frustration on the part of the tenants and thus, conflict between them and the managers of the schemes.

Furthermore, failure to address maintenance problem timeously in the above mentioned schemes did not only creates tension between owners and the managing

agents, but it also caused tension between the tenants and owners. If the situation continued unabated, tenants may have walked away when the situation permitted, thus, leaving landlords with not only unoccupied properties, but also financial challenges (Respondent 1: 16 July 2014).

5.2.9 Mamba Village and Desborough Heights (Case study 11 and 12)

Mamba Village and Desborough Heights were both situated in Gauteng. Mamba Village consisted of 208 units while Desborough Heights had 169 units. Both schemes had two levels of stack units. The schemes are discussed together here because the findings in both schemes were similar. One respondent in each scheme was interviewed.

a. Access into the scheme

The researcher gained access into the schemes through his clients. As the managing agent, he managed one unit in each scheme on behalf of his clients. Through the assistance of the tenants, the researcher was able to gain access into the schemes.

b. Enforcement of the rules

Everyone in the schemes was expected to abide by the rules that governed the schemes. The rules of these schemes dealt with parking, parties, visitors, noise, use of units and common property (Respondent 1: 6 October 2013). The trustees in these schemes assisted by the security guards were enforced the rules of the

schemes with ease. “If an owner or owner’s visitor violates any of the rules a fine is imposed on the owner concern. They are very strict here (referring to the trustees)” (Respondent 1: 6 October 2013).

Owners also got fines for illegal parking; where an owner or owner’s visitor parked his or her vehicle in an area that was not designated for parking such as the driveways or in someone else’s parking bay. The trustees or the managing agent on behalf of the trustees notified anyone found violating the rules and the transgressor’s levy account was debited (Respondent 1: 6 October 2013).

Conflict between the owners or residents was handled mainly by the security guards. For instance, if a resident or a visitor parked in an area that was not designated for parking, an aggrieved owner or resident reported the incident to the security guards on duty. The security guard confronted the offender on behalf of the aggrieved owner. If the offenders were not happy with the fact that they had been confronted, they tended to their frustration on the security guards (Respondent 1: 16 October 2013). In this way, the security guards found themselves in the middle of the owners’ conflict. Conflicts between owners themselves resulted in conflict between owners and the security guards.

c. Payment and collection of levies

Both Mamba Village and Desborough Heights were in relatively healthy financial situations. This healthy financial situation could be attributed to their over 90 per cent success rate in levy collections. This had been achieved through their tried and tested measures or systems. Their systems began with issuing levy statements to owners timeously. “We always receive our levy statements on time before the 25th of every month. We have to pay not later than the 07th of the month or else they will add interest and take legal action against you” (Respondent 2: 6 October 2013).

Levies were due and payable on or before the first day of every month (body corporate conduct rules). Owners, however, were given until the 7th of the month to pay their levies. Failure to adhere to this policy resulted in interest being added on the outstanding balance of the owner’s levy bill. Owners were also handed over to debt collectors to ensure that all owners paid their levies timeously (Respondent 2: 6 October 2013).

Poor or lack of levy collection often leads to cash–flow problems. Schemes are not able to meet their operational expenses if some of the owners do not pay their levies. The measures put in place by these two schemes in respect of levy payment and collection assisted in mitigating financial risk of the schemes.

Failure to address maintenance problem timeously in the schemes did not only create tension between owners and the managing agents, but it also caused tension between the tenants and owners. If the situation continued unabated tenants might have left walk away when the situation permitted, thus, leaving landlords with not only unoccupied properties, but also financial challenges (Respondent 1: 16 July 2014).

d. Conclusion

In the two schemes in question the collection of data involved interviews; one respondent in each scheme was interviewed. Each interview lasted between 45 and 75 minutes. The respondents were interviewed at their respective schemes.

Following the discussion above, the researcher concluded that conflict existed in the residential sectional title schemes in question. The conflict involved individual owners, security guards and the boards of trustees.

Conflict in the schemes took on different forms. It took form of complaints by owners to security guards regarding individual owners or tenants. It also involved physical confrontation between the security guards and the individuals that violated the rules of the schemes. It also took the form of legal action against individuals who violated the rules of the schemes such as not paying levies timeously.

The causes of conflict in the two schemes could be attributed to factors such as failure by individual owners or residents to adhere to the rules of the schemes. Conflict was also caused by high levies, which resulted in owners not being able to afford the levies or defaulting on their levies; this in turn, resulted in conflict between the owners concerned and the body corporate.

While the cause of conflict can be attributed to various factors including the fact that owners come from different backgrounds in terms of upbringing, culture, education, and previous relationships (Aldag & Kuzuhara, 2002), evidence of conflict that is caused by different background could only be found in one scheme namely Adelaide Court out of the 15 schemes that formed part of this study. This suggests therefore that different backgrounds of the owners and/or residents did not play a major role in the conflict that was found to be existing in residential properties that formed part of this study.

5.2.10 Olivier Gardens (Case study 13)

Olivier Gardens was a relatively bigger scheme with 177 units in total. The scheme was situated in one of the affluent areas in the province of Gauteng.

a. Access into the scheme

The researcher accessed the scheme through the managing agency the researcher was working for at the time. He attended the AGM of the scheme with the managing

agent as the trainee portfolio manager. The scheme was going to be one of the schemes that would form part of the researcher's property portfolio on completion of his training.

b. Enforcement of the conduct rules

The conduct rules were strictly enforced in this scheme. This included restricted access into the scheme. The security guards were expected to obtain permission, by means of an intercom, from the resident if there was a visitor at the gate. Fines were imposed on all those who violated the rules of the scheme including holding unauthorised parties and/or causing a disturbance or making a nuisance for other residents in the scheme (Olivier Gardens Body Corporate Conduct Rules, January 2001).

c. Facilities in the scheme and their conditions

Unlike some of the schemes that formed part of this study, this scheme had a number of facilities. These facilities included a tennis court, club house, children's play area and swimming pool. The scheme and its facilities seemed to be well maintained. The latter could be attributed to its form of management (The conclusion is based on personal observation, 2 December 2013).

Besides the managing agent and the board of trustees, the scheme had a full-time estate manager. The estate manager dealt with day-to-day operational issues,

especially maintenance. He appointed service providers on behalf of the body corporate and oversaw their work (Respondent 1: 2 December 2013). This relieved the trustees from dealing with day-to-day operational issues. On completion of the work, he signed off their job cards. The maintenance issues were not left to the trustees or the managing agent. They were addressed timeously by the estate manager (Respondent 1: 2 December 2013).

The estate manager was also required to be present at all the general meetings of the scheme in order to deal with any owners' concerns relating to operational issues. While the idea of an estate manager is appealing, not all schemes can afford the services of an estate manager. His remuneration came from the levies that were paid by the owners (Respondent 1: 2 December 2013).

Despite the cost that comes with the appointment of an estate manager, the presence of an estate manager in any scheme can make a vast difference. It can relieve trustees from dealing with day-to-day maintenance problems. The estate manager in Olivier Gardens inspected and certified the work of the contractors for and on behalf of the trustees and thus, made sure that the body corporate did not only pay for services, but most importantly were completed to its satisfaction.

d. Payment and levy collections

In terms of the audited financial records of the scheme presented at the 2013 AGM, the body corporate was in good a financial position. It managed to spend within the allocated budget. Money was also set aside for the reserve fund. At the time of the study, the scheme had a reserve of more than R 500 000 to cover unexpected future expenses (December 2013 financial statement of the scheme).

In addition, there was no special levy currently running or planned for the near future. According to the audited financial records, the scheme was up to date with all its creditors including municipality accounts. This positive financial status could be attributed to successful levy collection by the body corporate through its managing agency. Levy defaulters were handed over to debt collectors whose methods of collections included letters of demands and litigation. As a result, non-payment of levies was estimated to be 0.6 per cent (Respondent 1: 2 December 2013).

In light of the above, it can be argued that for the scheme to achieve a viable and healthy financial status, it required effective and vigorous levy collections measures. It also required a dedicated, qualified and experienced management team, which included the estate manager.

e. Manipulation of the trustees' election process

In terms of management rule 6, trustees are elected at an AGM. All owners and their spouses are legible to be trustees (management rule 5(a)). The managing agent or any of his or her employees or an employee of the body corporate such as an estate manager do not qualify to be trustees unless they are owners in the scheme concerned (management rule 5(b)).

The process of electing individuals onto the board of trustees begins nominations. An interested person should first be nominated by owners in writing. He or she should accept the nomination before his or her nomination is forwarded to the managing agent (Management rule 7). The nomination and the consent form of the nominee should reach the 'domicilium' of the body corporate not later than 48 hours before the meeting (Management rule 7). In the event that there are not enough nominations, further nominations may be accepted at the meeting.

At Olivier Gardens, however, the researcher observed that candidates for the trustees were nominated by the managing agent and estate manager; the members of the body corporate simply endorsed the appointed trustees (AGM of 2 December 2013). The managing agent and the chairperson of the meeting deliberately skipped the item that dealt with the election of the trustees. When one of the owners brought this to the attention of the meeting, the managing agent quickly suppressed the

matter by informing the owners that all the previous trustees were still available to serve as trustees (AGM of 2 December 2013).

The owner that raised the issue asked the chairperson to call all trustees to come forward and confirm that indeed they were still available to serve as trustees. The committee was short of two members, but the chairperson informed the meeting that the other two trustees had sent their apologies. He attested that they were dedicated and hardworking individuals. After the managing agent submitted his argument for the continuation of the present board of trustees, the matter was closed.

The above situation clearly illustrated the manipulation of the election process of the trustees by the managing agent. “I raised the question because I was interested to become one of the trustees. Something was definitely not right but I did not want to push further because some people would have thought that I am forcing my way into the committee” (Respondent 2: 2 December 2013).

One may agree with the respondent above. The managing agent was definitely manipulating the trustees’ election process. In fact, he had no intention of taking the owners through the election process. He deliberately skipped the election item so that owners did not get a chance to appoint the trustees of their choice. The incident in question may leave one wondering about the relationship that the current trustees had with the managing agent for them to be defended by him to such an extent. It

was clear that the managing agent did not want other people on the board of trustees other than the current members.

The manipulation of the body corporate was also evident by the actions of the estate manager. The estate manager came to the meeting with more than 20 proxies and gave them to the chairperson, the managing agent, for record purposes. “Before we come to the meeting we double check with the owners to assess if quorum will be present. The estate manager because he is onsite he reminds them about the meeting and collect proxies from those who would not be attending” (Respondent 1: 2 December 2013).

The above described situation suggested that the outcome of the meetings in the scheme was predetermined by the managing agent and estate manager. In other words, meetings of the scheme were used for record purposes only, because in reality decisions were finalised outside the meetings. Owners received notices of the meeting with items to be discussed in advance. Prior to the meeting, the estate manager collected proxies and the mandate on how to vote on certain items. By the time the meeting started, the estate manager and managing agent knew the possible direction of the meeting (Respondent 1: 2 December 2013).

In light of the above argument, the researcher concluded that, general meetings in the scheme were used for endorsement purposes. They were invited to meetings to

endorse the aspirations of the managing agent, the estate manager and their supporters.

f. Conclusion

In this scheme, the collection of data took the form of complete participation. The researcher observed the AGM of 2 December 2013. After the meeting, the researcher had casual conversations with the respondents to follow up on his observations. No formal interviews were conducted in the scheme because of the unfriendly environment.

In addition to complete participation, the researcher collected his data through documentary analysis. Documents that were analysed in this scheme were financial reports, the chairperson's report and minutes of previous AGMs. The documents in question were sent to the owners before the meeting.

The combination of all the above mentioned data collection methods ensured that the findings of the study were credible. While there was no evidence of conflict in the scheme, the manipulation of the election process referred to above, was a potential for conflict. It is possible that other owners in the future will challenge the manner in which the managing agent ran meetings, thus, causing conflict between the owners concerned and the managing agent.

5.2.11 Miami Gardens and Peter Palace (Case study 14 and 15)

Both Miami Gardens and Peter Palace were situated in the province of Gauteng. The two schemes differed in terms of size. Miami Gardens had a total of 72 units, while Peter Palace has a total 180 units. Each unit in the schemes consisted of two and three bedrooms. Beside the fact that they were located in the same suburb, the reason they are discussed simultaneously is that the researcher's findings were similar.

a. Access into the scheme

The researcher gained access into these schemes through his former employer, the managing agency. The schemes in question formed part of the property portfolio that was managed by the managing agency in question.

b. Conflict over available facilities

Both schemes had a swimming pool, club house and children's play area. The entrance gates were manned by 24 hour security personnel whose responsibilities included controlling and restricting access into these schemes. Upon entering, one was greeted by well-maintained gardens and physical structures of the buildings.

Visitors' parking was clearly marked as such. To ensure that visitors did not park in residents' parking, the security guards at the entrance directed visitors to the visitors' parking. Residents were allowed to use visitors parking, but visitors were not

permitted to use residents' parking. A resident was allowed to use visitors' parking, but he or she was not allowed to use another resident's parking without the latter's permission. Parking rules were enforced all the time to avoid unnecessary conflict between residents or between visitors and residents.

The schemes were managed by the same managing agent and estate manager that managed Olivier Gardens. The techniques and strategies of managing all three schemes were the same. The three schemes seemed to invest a lot in security guards. The entrance gates were manned by security guards. Any guard that violated the policy such as sleeping on duty was reported to the estate manager (Respondent 1: 4 October 2013).

The current managing agent was not the first managing agent for the scheme. The scheme had had many other managing agents previously, but poor relationships between the two parties resulted in new managing agents being appointed. Among other reasons, the owners were not happy with the manner in which their schemes were managed, especially their financial management. The schemes found themselves owing local authorities for water and electricity (Respondent 1: 4 October 2013).

Conflict amongst the owners or residents seemed to be minimal because of the active role played by security guards in the schemes. Instead of confronting one

another, owners preferred to report the matter to the security guards (Respondent 1 4 October 2013).

c. Conclusion

In this scheme, the collection of data took the form of complete participant. The researcher observed the AGMs of 4 and 5 October 2013. After the meetings, the researcher had casual conversations with the respondents to follow up on his observations. No formal interviews were conducted in the two schemes.

In addition to participant observation, the researcher collected his data through documentary analysis. Documents that were analysed in the schemes were financial reports, chairpersons' reports and minutes of previous AGMs. The documents in question formed part of the 'pack' owners had received before their meetings.

The combination of all the above mentioned data collection methods ensured that the findings of the study were credible. While there was no evidence of conflict in the schemes, the manipulation of the election process referred to above, was a potential cause for conflict. It is possible that other owners in the future are likely to challenge the manner in which the managing agent ran meetings and thus, conflict between the owners concerned and the managing agent could result.

5.3 Summary

The above chapter discussed each of the 15 case studies that formed part of this research. Each of the case studies was examined to establish whether or not conflict existed within them and the cause thereof. The discussion of each case study above was concluded by answering the main research question and its sub-questions. Chapter six below will deal with the findings, conclusions, suggestions and recommendations of the current study.

CHAPTER 6: FINDINGS, CONCLUSIONS, SUGGESTIONS AND RECOMMENDATIONS

6. Findings and conclusions of the study

6.1 Introduction

Unprecedented population growth and massive urbanisation in the last century resulted in a serious shortage of accommodation in many parts of the world. The situation has been further exacerbated by the astronomical increase in the population as well as the increasing costs of the building construction. Therefore, it is extremely difficult, if not impossible, for individuals or families with an 'average' income to own properties (Horwitz, 1985).

In response to the above challenges, many countries have introduced multi-ownership or fragmented ownership, a system in which owners are not only expected to live close to one another as neighbours, but the system also demands co-ownership, joint management and sharing of certain expenses amongst all the owners. In other words, ownership in this type of development came with certain responsibilities and obligations for all the owners (Pienaar, 2010). The success of fragmentation ownership depends mainly on co-operation amongst owners as they are dependent on one another financially and in terms of management.

In South Africa, this system of fragmented ownership is in the form of sectional title properties which were introduced in the 1970s and included commercial, residential

and industrial properties (Horwitz, 1985; Pienaar, 2010). Based on organisation theory, which argues that human relationships are conflictual by nature (Aldag & Kuzuhara, 2002), the author believed that sectional title properties were likely to be characterised by conflict because owners in such schemes were products of unique backgrounds. Given this reality, they see the world differently from one another and since this model of fragmented ownership demands cooperation amongst the owners, conflict in such environment is inevitable.

In light of the diversity mentioned above, this study moved from the premise that conflict in this sectional title residential properties was inevitable. Human beings that come from different backgrounds in terms of upbringing, culture, education, and previous relationships are bound to have conflict (Aldag & Kuzuhara, 2002). Their backgrounds are believed to inform the manner in which they see the world, which is different.

6.2 Findings of the study

The findings of the study revealed that the majority of the schemes that formed part of the study were characterised by some form of conflict. The source of conflict in the schemes in question, however, could not be attributed to a single factor. Among other factors, the source of conflict in the schemes in question included violation of the rules, financial mismanagement and/or misappropriation of funds, unilateral decisions by the managing agent or board of trustees, abuse of power by the

trustees, and power struggles between members of the board of trustees, and between the body corporate and the managing agent.

Furthermore, the following sources of conflict were found to be common across all the schemes that experienced conflict: failure by owners or tenants to adhere to the rules of the body corporate; potential or actual failure by the body corporate to meet all its financial obligations; perception or bad experiences with the managing agents; and undermining of the body corporate or its trustees by the managing agents.

While conflict could not be discovered in three schemes, these schemes were not completely immune from conflict. The study revealed potential conflict in the three schemes. Table 6.1 below indicates which of the schemes were found to have conflict in them.

Table 6.1

Name of the scheme (Pseudo Names)	Did conflict in exist in this scheme?	Location in terms of Province
1.Kwezi-Mansion	Yes	Gauteng
2.Pan Villa Court	Yes	Gauteng
3.Castel Villa	Yes	Gauteng
4.Khaya Palace	Yes	Gauteng
5.Jozi Place	Yes	Gauteng

6.Paving Heights	Yes	Gauteng
7.Adelaide Court	Yes	Limpopo
8.Jason's View Place	Yes	Gauteng
9.Zacharia Park	No	Limpopo
10.Klein Fountain Village	No	Limpopo
11.Mamba Village	No	Gauteng
12.Desborough Heights	Yes	Gauteng
13.Olivier Gardens	Yes	Gauteng
14.Miami Gardens	Yes	Gauteng
15.Peter Palace	Yes	Gauteng

As indicated in Table 6.1 above, the majority of the schemes in this study were found to experience some form of conflict. The causes thereof cannot be attributed to a single factor. Some of the factors that led to conflict were common across all 12 schemes while other factors were only found in certain schemes.

The schemes in which conflict could not be established had three things in common. Firstly, they were relatively new, and therefore, they did not have many maintenance problems. Secondly, owners in these schemes were mainly investors. They relied on the managing agents to manage the schemes on their behalf. There was little interaction amongst the owners as a result. Thirdly, they did not seem to have financial problems partly because the schemes were relatively new. Furthermore,

since their units were managed by the managing agents, the managing agents first deducted all the expenses relating to the body corporate before paying over the difference to the owner-investor. This mitigated financial losses to the body corporate.

Contrary to the organisation theory's argument that human relationships are characterised by conflict, in all the case studies where conflict was found to exist, no evidence of conflict could be attributed to the fact that owners in the scheme came from various backgrounds. The fact that owners came from different or unique backgrounds was not the source of conflict as believed prior to the commencement of the study.

6.3 Nature of the conflicts

The nature of the conflict in the schemes that were studied could be classified as external and internal. External conflict refers to conflict that exists between the bodies corporate and its service providers such as the managing agents, city council, security, employees of the body corporate and maintenance. It is called external conflict because the conflict involves the body corporate on the one hand and external parties such as service providers on the other. In other words, it was a case of insiders versus outsiders. This conflict was caused mainly by the failure of one party to honour its obligations. An example of this was failure of the bodies corporate to pay service providers.

Internal conflict, on the other hand, involves members of the bodies corporate fighting among themselves over body corporate matters. It also refers to fighting amongst the trustees of the bodies' corporate or conflict between members of the bodies corporate and their trustees collectively or individually. This conflict is mainly caused by poor or lack of proper governance by the boards of trustees, abuse of power by the trustees, violation of the body corporate rules including the failure and/or refusal by some owners to pay their levies.

Internal conflict is the most dangerous because it pulls members of the bodies corporate in different directions and thus, compromises service delivery in the scheme concerned. It also affects the proper functioning of the scheme and thus, deprives owners or residents of their right to use and enjoy their scheme and its facilities.

One may argue that the conflict between the bodies corporate and their service providers is expected given the fact that the two role players may not share the same interests. On the one hand, the bodies corporate want to reduce expenses in order to keep levies as affordable as possible for their members whereas service providers, like businesses, want to maximise profits as much as they can by increasing expenses. This conflicting interest leads to inevitable conflict between these two parties.

Internal conflict, on the other hand, is not expected, but not surprising. It is not expected because members of the bodies corporate are brought together by legislation, specifically the *Sectional Titles Act* as joint owners of common property in sectional title schemes. They are jointly responsible for the maintenance of the common property and share in the use and enjoyment of the facilities in the schemes in which they all live or own. Given this situation one would expect owners in the scheme to work and live together harmoniously as partners.

By the same token, internal conflict is not surprising. Owners in residential sectional titles schemes are not partners by choice. They are brought together from diverse backgrounds through a piece of legislation (*Sectional Titles Act*) and are expected to work and live together harmoniously. Unfortunately, the understanding and expectations amongst owners on how the scheme ought to function may not be the same. Some owners have bought in residential sectional title schemes without a full understanding on how the model actually works, and hence, may refuse to pay their levies such as the owners of Kwezi-Mansion.

The fact that the model of residential sectional title schemes brings with it compulsory financial interdependence amongst owners makes conflict in residential sectional title schemes inevitable. Individual financial circumstances are not static. They may change either for better or worse. If the financial circumstances of the

owners change for the worse, it may affect their ability to pay levies and accordingly, conflict with the body corporate will ensue.

6.4 Conclusion

The aforementioned conflicts have serious repercussions for the schemes. As they constantly and repeatedly occur, they compromise the proper functioning and management of the schemes. They also affect service delivery that is intended to keep the scheme well-maintained.

Further, conflict deprives owners and/or residents of their proper use, enjoyment and rights of their schemes. Residents and/or owners are unable to use and enjoy facilities available in their schemes due to a lack of proper maintenance or due to disregard of the rules by some owners or residents.

Some owners and prospective owners, in some instances, have already lost confidence in the schemes. To them developments such as residential schemes are nothing but 'territories of exploitation' of the unsuspecting majority by a few because of mismanagement and/or misappropriation of the bodies' corporate funds by the trustees and the managing agents. This view was perpetuated by trustees in schemes such as Pan Villa Court, where funds went missing regularly. Furthermore, the capture of the body corporate by individuals such as trustees, and refusal by them to afford owners an opportunity to participate in the management of their

schemes perpetuates a negative perception about residential sectional titles properties.

Residential sectional title schemes have become a fertile ground for self-enrichment by individuals such as trustees and organisations such as the managing agencies. Trustees and managing agencies repeatedly steal from the unsuspecting bodies corporate. In some instances, stealing continues year after year without any serious consequences for the offenders. This criminal behaviour went unpunished year after year in some schemes such as Pan Villa Court.

The rules that governed the sectional title schemes were not known or they are deliberately ignored. For instance, despite the fact that bodies corporate are obliged to have AGMs in terms of management rule 51, in some of the schemes general meetings were a luxury. Once appointed into office, trustees did not convene any general meetings, especially the AGM.

As revealed in this study, some of the trustees had been in office for more than four years without convening any general meeting. They used the resources of the body corporate as they wished. Service providers were hired and fired as they please. Many members of the bodies corporate did not seem to understand or care about what was happening in their schemes. They were more concerned about levies not increasing.

While trustees are empowered, in terms of management rule 31(4), to raise special levies, special levies cannot be paid perpetually. They are raised in special circumstances for a specified period. At the end of that period, the special levy must come to an end and the purpose for which it was raised should have been satisfied. At Pan Villa Court, however, this rule did not apply. Their special levy had been running for more than 70 months although it had been raised for a period of 12 months. Whether or not its purpose was served, remained to be seen.

Furthermore, residential sectional title schemes are 'cash cow' for investors and/or developers. Once ownership is passed on to the third party, they do not care what happens next in respect of the schemes they built. This was evident in the two developments, Jozi Place and Khaya Palace. In these two examples, the developer did not have the interest of the end-user in mind when designing the developments in question, but his own interest. He produced a security development that did not have boundary walls and recreational facilities.

Apathy is one of the major challenges facing residential sectional titles properties. Many members of the body corporate do not take part in the issues that affect their schemes. For example, a quorum in general meetings is hardly present. They leave decisions to the managing agents and the trustees.

Despite all the challenges that come with sectional title developments, this type of development remains a home to many individuals and families. For some families, it is the only home they know. Major functions such as funeral proceedings and graduation parties that take place in these schemes attest to this. In other words, sectional title development are no longer a secondary home for many families, as it seemed to be the case before, but a primary residence.

The culture of 'tenderpreneurship', a situation where tenders have become the only business and source of income for individuals is slowly and surely infiltrating sectional title properties. Unlike government, there are no rules that govern tenders in sectional titles schemes. Trustees are given a 'blank cheque' to identify and appoint service providers.

In the absence of rules and transparency in appointing service providers, trustees are alleged to be forming and appointing their own companies or relatives and friends to render services such as cleaning, security, maintenance, 'legal advisers' and managing agent. Refusal by some trustees to convene general meetings is not by accident. They know that an AGM means possible change of leadership. In order to prevent this from happening, the trustees do not convene AGMs.

In light of the above, bodies corporate are slowly but surely become a financial risk to owners and investors alike. Year after year funds get stolen from the bodies

corporate directly and indirectly. Common property is neglected in terms of maintenance and thus, the schemes become unattractive to prospective buyers.

For the schemes to continue to be viable and attractive to prospective property owners, the challenges discussed above need to be confronted. These challenges, however, cannot be left to members of the bodies corporate to resolve alone because most of these challenges transcend the boundaries of their expertise. Secondly, and most importantly, these challenges are created by the same members of the bodies corporate who are entrusted with the responsibility to solve them.

Some members of the bodies corporate deliberately ignore ill-practices in their schemes because they do not see themselves as permanent residents in these schemes. They use ownership in a sectional scheme as their stepping stone towards ownership of a freehold property. Others leave due to changes in their personal circumstances such as finance, marriage and having children. For people like these, it does not really matter whether the scheme makes progress or not.

Residential sectional title schemes make it impossible for the owners or residents to avoid each other. They use the same entrance and exit gates. They share the same recreational facilities. Given this reality, many owners are not willing to risk their lives by confronting their fellow members of the bodies corporate when they steal their funds. They are afraid that their actions might bring harm to them personally or on

their family members. In other words, they are afraid of intimidation by their fellow owners.

Contrary to the belief that individualism dominates our modern societies, sectional title schemes demand interaction and collaboration among members of the bodies corporate in such schemes. The manner in which these schemes are designed compels members of the bodies corporate and/or residents not only to interact with one another, but most importantly to work together.

6.5 Suggestions

Following the preceding argument, bodies corporate require assistance from external forces or bodies such as the EAAB to enforce the rules of the bodies corporate. These bodies can compel trustees of the bodies corporate to submit their financial books for audit every year. Failure to do so should result in some form of punishment for the trustees concerned.

Annual General Meetings of the bodies corporate must be compulsory in order to mitigate financial losses for the bodies corporate. Convening regular AGMs will not only compel trustees and the managing agent to involve ordinary members of the body corporate to participate in running of their scheme, but most importantly it will compel trustees to account to members of the body corporate and prevent them from clinging to power.

In the event that body's corporate funds are misappropriated, both criminal and civil actions against perpetrators must be instituted in order to discourage the "culture" of embezzling bodies' corporate funds as it was discovered in this study. Trustees that were in office at the time funds of the body corporate went missing should not be allowed to sell their properties until the funds under their control were accounted for. Clearance certificates should not be issued to the trustees in question until the stolen funds are returned to the body corporate.

Furthermore, bodies corporate through the assistance of bodies such as EAAB should have recourse against trustees that have failed to adhere to the budget. They must refund the bodies corporate all funds that were spent without the permission of the bodies corporate unless the expense can be justified. In this way, the trustees will be compelled to adhere to the budget given to them by their bodies corporate.

There should also be consequences for the trustees that do not comply with the restrictions and conditions that the bodies corporate imposed on them in terms of section 39(1) of the Act. This will not only prevent unnecessary cash-flow problems in the bodies corporate, but it may also reduce unnecessary conflict that is triggered by financial mismanagement.

Management of the schemes requires time, skills and relevant expertise in order to be viable both financially and socially. On the part of finance, schemes need to have

proper and efficient control measures. Spending without adhering to a budget must be discouraged by punishing those that practice it. This includes projects that are not approved by the owners even if those projects are of benefit to the bodies corporate.

The appointment of managing agents must be taken very seriously. Its processes must be fair and transparent. Managing agents must not only be qualified in terms of meeting the requirements of the EAAB, but most importantly they must be in possession of relevant experience, skills and expertise to manage the schemes. They must also have the capacity in terms of all the resources including human resources to manage the schemes they have been appointed to manage.

Furthermore, all trustees need to undergo compulsory training within 30 days of their appointment to ensure that they understand their responsibilities and obligations clearly. Further studies, therefore, are required to establish what exactly the training of the trustees should entail. The trustees should not be allowed to commence with their work until and unless this requirement is satisfied in order to prevent them from making wrong decisions.

On the social side, residents and/or owners must be able to use and enjoy their schemes and all the benefits that come with ownership in the schemes. Given the fact that schemes are homes to people from different social, cultural, political,

religious backgrounds and so on, it is imperative for the rules to be applied consistently without any fear, favour or prejudice.

The rules of the schemes must form part of the offer to purchase and lease contracts. Prospective owners and tenants need to know in advance what will be expected of them once they have become part of the community. In this way, they will have a choice on whether or not to proceed signing offer to purchase or lease contract.

Laws that apply to residential sectional title schemes must take precedence over collective action or political stances such as boycotting payment of levies. Any attempt or practice of resolving differences in the schemes through political or collective action must be discouraged at all costs even if it means criminalising the practice. Differences must be resolved through following the rules or laws that apply to this type of development including dispute mechanism processes provided for in the Act.

Finally, despite all the challenges facing residential sectional titles schemes, these types of developments remain a home to many individuals and families and are attractive due to various factors such as the security that comes with it, sharing of expenses for the maintenance of the common property and they are relatively cheaper compared to other forms of property ownership such as freehold properties.

6.6 Recommendations for further study

Following the findings of the study presented above, it is recommended that further research should be done on conflict resolution structures or bodies. The challenges facing bodies corporate need to be resolved by an independent structure or body. The structure or body in question should protect ordinary members of the body corporate from being bullied by the minority in the schemes such as the trustees.

Further studies, therefore, need to investigate if such structure or body is available to the bodies corporate, and if it does, what are its functions and powers. If such structure or body, however, does not exist, further study needs to investigate the possibility of establishing such structure or body and the role it needs to play to address conflict in residential sectional titles schemes.

Furthermore, further study is required on a larger scale to establish whether or not conflict is unique to the case studies that formed part of this study. In other words, the recommended study needs to establish whether conflict is common in residential sectional title properties or the conflict that was discovered in the case studies was exceptional to those case studies.

6.7 Limitations of the study

The study took a form of a case study and focused only on 15 residential sectional title schemes. In light of the fact that there are many similar schemes across the country, the experiences of the owners in other similar schemes may not be the same as the schemes that formed part of this study. Consequently, it may not be appropriate to generalise the results of this study.

While there are similarities in the findings amongst some of the schemes in this study, such findings are regarded as findings of that particular scheme because of the nature of sample which is not representative. Therefore, any generalisation of the findings of the 15 schemes in question should be done with great caution.

List of references

Aldag, R.J. & Kuzuhara, L.W. (2002). *Organizational behaviour & movement: an integrated skills approach*. South-Western / Thomson Learning, 2002.

Bendix, S. (1996). *Industrial relations in the new South Africa*. Cape Town: Credo Press.

Bernard, H. (1994). *Research methods in anthropology: qualitative and quantitative approaches*. 2nd ed. London: Sage Publications.

Blandy, S., Dixon, J. & Dumpuis, A. (2006) Theorising Power Relationships in Multi-owned Residential Developments: Unpacking the bundle of rights. *Urban Studies*, vol. 43 no. 13, pp.2365-2383.

Body Corporate News, Issue 11, 2005

Body Corporate News, Issue 33, March/April 2009

Briggs, A.R.J., Coleman, M. & Morrison, M. (2012). *Methods in Educational Leadership and Management*. 3rd ed. Los Angeles: SAGE.

Carter, L.A. (1986). *The management of sectional title and share block schemes*, Masters Dissertation, Johannesburg: University of the Witwatersrand.

Cohen, L., Manion, L. & Morrison, K. (2000). *Research methods in Education*. London: Routledge.

Cohen, L., Manion, L. & Morrison, K. (2007). *Research methods in Education*. London: Routledge

Creswell, J.W. (2003). *Research design: qualitative and mixed-method approach*. Thousand Oaks, California: Sage Publication Inc.

Creswell, J.W. (2008). *Education Research: Planning, Conducting and Evaluating Quantitative and Qualitative Research*. Upper Saddle River, New Jersey: Person Prentice Hall.

Dehaloo, G. & Schulze, S. (2013). Influences on the work engagement of secondary school teachers in rural Kwazulu-Natal. *The Journal for Trans-disciplinary Research in Southern Africa*, vol. 9, no.2, pp. 225-240.

Delport, H.J., (2004) *South African Property Practice and the Law*, Cape Town: Juta & Co, Ltd

De Vos, A.S., Strydom, H., Fouche, C.B. & Delport. C.S.L. (2012). *Research at the grass roots for the social science and human service professions*. Pretoria: Van Schaik.

Dornyei, Z. (2007). *Research methods in applied linguistics*. Oxford: Oxford University Press.

Easthope, H. & Randolph, B. (2009) 'Governing the Compact City: The challenges of apartment living in Sydney, Australia', **Housing Studies**, vol. 24, no. 2, pp. 243-259.

Elida-Tomita, T., (2010). *The revolution of conflict as a behaviour process within global organizational communication management*. *Annales Universitatis Apulensis Series Oeconomica*, vol. 12, no. 2.

Fraenkel, J.R., & Wallen, N.E. (1996). *How to design and evaluate research in education*. USA: McGraw-Hill Inc.

Fox, W. and Saheed, B. (2007). *A guide for managing research*. Cape Town: Juta.

Fry, C.L. (1934). *The technique of social investigation*. New York: Harper and Brothers.

Gifford, R. (2007) The Consequences of Living in High-Rise Buildings. *Architectural Science Review*, vol. 50, no. 1, pp. 1-16.

Guiding, C., Warnken, J., Ardill A. & Fredline, L. (2003). An agency theory on the owner/ manager relationship in tourism-based based Condominiums. *Tourism Management*, vol. 26, pp. 409-420.

Hamel, J., (1993). *Case Study Methods*. UK: SAGE.

Horwitz, A., (1985). *The function and operation of the community of sectional titles owners: its successes and failures*. PhD Thesis, Johannesburg: University of the Witwatersrand.

Hsieh, H.R., (2009). *Collective action dilemmas in condominium management*, Urban Studies, January 2013 50:128-147

Hyman, R., (1975). *Industrial Relations: a Marxist introduction*. London: Pluto Press.

Ilkin, A., (1996). *Strata Title and Community Title Management and the Law, 2nd ed.* Sydney: LBC Information Services.

Ilkin, A. (2007). *NSW Strata and Community Schemes Management and the Law, 4th ed.* Sydney: Thomson Legal and Regulatory Australia.

Joubert, C.L. (1999). *The importance of the body corporate to its members*. PhD Thesis, Johannesburg: University of the Witwatersrand.

Kaplan, L.G. (1988). *The Sectional Titles Act 85 of 1986: A consideration of some of the sections of the Act which bring about fundamental changes to the law and of*

issues which the Act has failed to address. Master of Arts Dissertation, Johannesburg: University of the Witwatersrand.

Leedy, P.D. (1989). *Practical research planning and design*. New Jersey. USA: Pearson Education International.

Lincoln, Y.S. & Guba, E.G. (1985) *Naturalistic inquiry*. Beverly Hills, CA: Sage

Maree, K. (2011). *First Steps in Research*. Pretoria: Van Schaik.

Marshall, R., (1987). "The Future Role of Government in Industrial Relations", *Industrial Relations*, vol. 31, no.1.

McKenzie, E. (2010). Emerging Regulatory Trends, Power and Competing Interests in US Common Interest Housing Developments. In *Multi-owned housing: law power and practice*. Edited by S.Blandy, A Dupuis & J. Dixon. Surrey:, pp 53-72.

McMillan, J.H. and Schumacher, S. (2010). *Research in education: Evidence-based inquiry*. 7th ed. Boston: Pearson.

Mojtahed, D. (2007) Conflict Management of Cooperative Organizations in Contemporary Iran: A Review Analysis; *Public Organization*, Rev (2007) 7:163-180

Moloi, K.C. (2010). How can schools build learning organisations in difficult education context? *South African Journal of Education*, vol. 30, pp. 621-633.

Mouton, J. and Marais, H.C., (1994). *Basic concepts in the methodology of the social sciences*. Pretoria: HSRC.

Paddocks, G. (2008). *Sectional titles survival manual*. Claremont: Ascot Press.

Pienaar, G.J., (2010). *Sectional Titles and other fragmented property schemes*. Cape Town: Juta.

The Electricity Act of 1987

The Estate Agent Act 112 of 1976

The Sectional Titles Act, 66 of 1971

The Sectional Titles Act, no. 95 of 1986.

Shandling A., (1983). *Your Property and the law*. Johannesburg: Silke Divaris Stein.

Thomas, K.W. (1992). Conflict and Conflict Management: Reflections and update. *Journal of Organisation and Behaviour*, vol.13, pp. 265-274. Doi:10.1002/job.4030130307

Van der Merwe, C.G. (1981). *Sectional Titles, Shareblocks and Time-Sharing*. Durban: Butterworths.

Welman, J.C., Kruger, F. & Mitchell, B. (2005). *Research Methodology*. Cape Town: Oxford University Press.

Woudberg, T. (1996). *Basic Sectional Titles Book Two*. Durban: Butterworths.

Yow, V.R. (1995). *Recording Oral History: A Practical Guide for Social Scientists*. London: Sage Publications.

List of Appendixes

Appendix A : Managing Agent Questionnaire

Respondent (Managing agent): _____

Background:

1. Name of the scheme: _____
2. Total number of units in the scheme: _____
3. Appointment date of managing the above scheme: _____
4. Total number of schemes managed by your managing agent (including one mentioned above): _____
5. Experience in sectional title management (period): _____
6. Does your managing agent possess a Fidelity Fund Certificate and how long ago was it issued? _____

Appointment process:

1. Who appointed you managing agent to manage the above scheme and how were you appointed? _____

2. How long is your appointment with this body corporate? _____

3. Do you have a written contract with the body corporate? _____

4. What are the critical terms and conditions of the appointment of you as a managing agent in respect of this body corporate? _____

5. Do you have any challenges relating to the management of this scheme?
Please explain _____

6. How often do you meet with the body corporate or its trustees? _____

7. Who decided on the meetings' schedule, if any, between you as the managing agent and the trustees? _____

8. Please describe the working relationship between you as the managing agent and the trustees of the body corporate: _____

9. What influences the working relationship between the trustees and the managing agent? _____

10. How would describe the body corporate and/or its trustees' understanding of sectional title management or operation? _____

11. What impact, if any, has the trustees' understanding of the sectional title management or operation on the managing agent? _____

12. How would you describe the owners' commitment or interest in the management of their scheme? _____

13. When was the last time the scheme held its Annual General Meeting (AGM)?

14. What are the chances of the body corporate renewing the current management contract when it expires and why? _____

15. Has the managing agent or its representative/s ever been at loggerheads with the body corporate and/or its trustees, and if yes, please explain _____

16. What is the obligation of the managing agent and/or its role in respect of the following:

a). Control and management of the finances of the body corporate. _____

b). Attending to insurance matters. _____

c). Maintenance. _____

d). Appointment and management of staff and/or contractors. _____

17. How would describe the current financial status of the scheme and why? ____

18. To whom or what would you attribute the financial status you described above? _____

19. Does the scheme currently owe any authorities or service providers, and please explain? _____

20. Does the scheme currently have any special levy running? If yes, for how long and for what? _____

21. To whom are problems or complaints reported in the first instance; please explain? _____

22. Are you experiencing or foreseeing any conflict between the managing agent and the trustees of the body corporate, and what do you think is the cause of the said conflict?

Appendix B: Former Managing Agent Questionnaire

Former Managing Agent

Respondent (Managing Agent): _____

Background:

1. Name of the scheme: _____

2. Total number of units in the scheme: _____

3. Start and end date of managing the above scheme: _____

4. Total number of schemes currently managed by your managing agent: _____

5. Experience in sectional title management (period): _____

6. Does your managing agent possess a Fidelity Fund Certificate and how long ago was it issued? _____

Appointment process and management:

1. How and by whom were you appointed to manage the scheme? _____

2. What challenges, if any, did you face when managing the scheme? _____

3. How would you describe the working relationship between the managing agent and the trustees of the body corporate then? _____

4. What led to the termination of the managing agent's contract? _____

5. Which party initiated the termination of the managing contract, the body corporate or the managing agent? _____

6. How would you describe the success of the scheme when it was still under your managing agent control? _____

7. What was the role of the managing agent in respect of the following and what was the status of each then?

a). Financial management of the body corporate: _____

b). Appointment and management of staff and/or contractors: _____

c). Insurance matters: _____

d). Maintenance matters: _____

8. Was there any conflict or tension between the managing agent and the trustees of the body corporate then and what do you think was the cause of conflict? _____

9. How would you describe the overall success of the managing agent in managing the scheme, and why? _____

9. What form of contract did the managing agent have with the body corporate and who were the representatives of each party? _____

Appendix C: Body Corporate and Trustees Questionnaire

Questions for body corporate and/or its trustees

Background:

1. Name of the scheme (body corporate): _____

2. Total number of units in the scheme: _____
3. Where is your scheme located? _____

4. How long have you been a member of this body corporate? _____

5. Are you currently a trustee of the body corporate and for how long have you
being a trustee? _____

Management questions

1. Who manages your scheme? _____

2. Are you happy with the management of your scheme and why? _____

3. What do you like and do not like about your scheme? _____

4. If your scheme is using the services of the managing agent, what is the name of the managing agent and where is their office? _____

5. Is this the first management of your scheme and if not, what happened to the previous ones? _____

6. How long is the contract of the current managing agent and when does it expire? _____

7. Are you satisfied with the services rendered by the managing agent and why?

8. Who employed the managing agents and what processes were followed to employ them? _____

9. Does the body corporate have any procedures in place that govern the appointment of the managing agent? Please explain. _____

10. How long have you had the current managing agent? _____

11. What do you think are the important records of the body corporate and who keeps them? _____

12. Does the current managing agent have a written contract with the body corporate and where is the contract now? _____

13. What do you consider the managing agent's functions to be? _____

14. What are the functions of the managing agent in terms of the contract concluded between itself and the body corporate? _____

15. Are you satisfied with the services of your current managing agent? Why or why not? _____

16. How would you describe the relationship between your body corporate and its trustees, and the managing agent? _____

17. How would describe the relationship between the previous managing agent/s, and the body corporate and/or its trustees? _____

18. How would you describe or rate the knowledge of the current managing agent in respect of managing sectional title schemes? _____

19. Do you know any conflict or tension that exists between the managing agent/s and the body corporate, and what in your view is the cause of the said conflict? _____

20. Do you think the body corporate will renew the contract of the current managing agent, and why or why not? _____

21. Who manages the funds of the body corporate? _____

22. In your opinion do you think the funds of the body corporate are properly managed? _____

23. How would you describe the current financial status of the body corporate?

24. Is there any special levy that is currently running and what is it for? _____

25. What are the challenges currently facing your body corporate? _____

26. Do you think other members of the body corporate are aware of the challenges facing their body corporate and why? _____

27. Do you think members of the body corporate are interested or apathetic when it comes to the matters of the body corporate, and why? _____

28. When last did your complex have an Annual General Meeting (AGM)? ____

29. Is the quorum always present at the general meetings of the body corporate?

30. Do you think members of the body corporate understand the rules and/or laws that govern sectional title schemes, and why? _____

31. Who decides on the levies of the body corporate and what determines their rate? _____

32. Are you satisfied with the current levies? Why or why not? _____

33. Does the body corporate owe any service providers or authorities? Please elaborate. _____

34. Have any major improvements or repairs been carried out? If yes, please state the nature thereof and how was the improvement financed? _____

35. Do you actively participate in the management of the scheme? Please explain. _____
