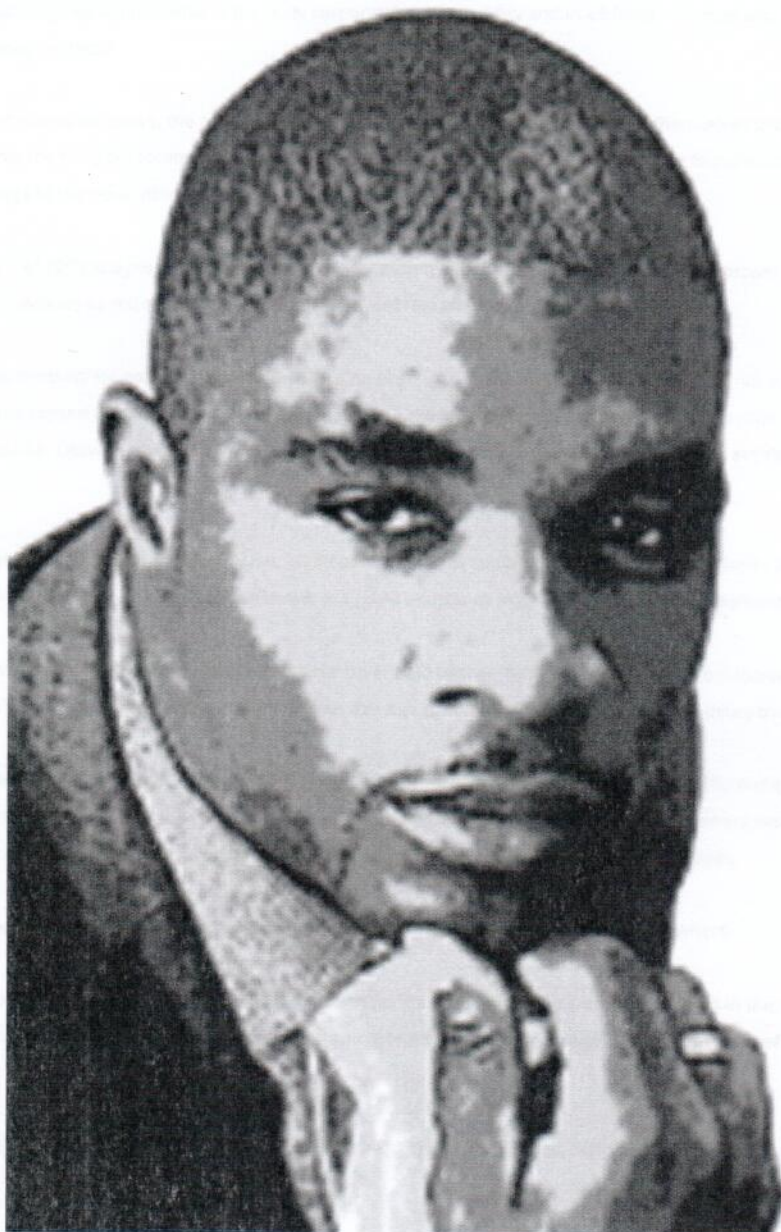


## Sectional Title (Flats) Repairs and Maintenance – Owner or Body Corporate?

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**OWNERS OF SECTIONAL title schemes or 'flats' as they are known in Namibia often think the body corporate is automatically responsible for the repairs and maintenance of their sections (units) and common property.**

Basic maintenance and repair functions are the responsibility of the body corporate as set out in the management rules for sectional titles under the Sectional Titles Act, 2009.

The act stipulates that the body corporate must maintain all the common property, and keep it in a state of good and serviceable repair, while the owner must repair and maintain his or her individual section in a good repair state.

Of course, failure to maintain the section (unit) for which one is responsible often has a challenging effect on other sections of the property. Things like

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leaking roofs and showers may damage the unit, the unit below, or the next unit if they share a wall.

However, not all damage is due to negligence. Another example that might be of serious nature may be a sinking foundation or foundation failure, which are not maintenance-related. This may cause cracks on the walls and floors, and in some extreme cases compromise the building's structural integrity.

While the damage to properties is not always extensive, water leakages may cause damp problems (wetness) that may be difficult and expensive to fix. Thus, with two scenarios already highlighted, what is the body corporate's responsibility and in addition, one may ask, does it extend to the repair of damage to individual sections or units?

It is obvious that, in the two scenarios above, the owner who has a leaking shower must repair the leak themselves since that is a sectional (unit) damage. On the other hand, the body corporate must repair the leaking roof, and remedy the failure of the foundations. But do they have some responsibility for the damage to the other (third party) damaged unit?

The Sectional Titles Act no 2 of 2009 assigns the legal responsibility for maintenance and repair of the common property to the body corporate, and maintenance and repair of sections (units) to their registered owners, not "tenants" or "occupants".

The act is silent on the responsibility for consequential or resultant damage, so this means the body corporate is not automatically responsible for the repair of damage to sections caused by a failure of common property, but the legal owner concerned can make a claim for the reasonable cost of the repair from the body corporate. Likewise, the owner whose section is damaged by a leak from another section is entitled to claim the cost of their repair from the other owner.

Making a claim from the body corporate, or another owner, could be as simple as sending a copy of the repair invoice and payment receipt with a polite request for reimbursement. If the request is refused, the owner may seek assistance from the Office of the Ombudsman.

With this in view, all unit owners must be aware of exact insurance cover held by their body corporate. It is also important to know the value of the insurance cover to ensure it is sufficient to protect you from loss or damage to common property or personal injury that may arise.

The Sectional Titles Act makes it clear that it is the responsibility of the body corporate to insure the building. The owners, through special resolution, may prescribe all improvements to the common property within the scheme to be insured to their full replacement value, which is the current cost to replace a building, or to reinstate a property to its original state, if destroyed, against any such risks and damages.

The body corporate will then recover the insurance premiums required from the levy fund paid by all the owners.

This insurance should cover against fire, lightning, malicious acts, storms, floods (especially in flood-prone areas in the northern parts of Namibia), earthquakes, bursting pipes, impact of any buildings by a motor-vehicle or other object, housebreaking, and the loss of income or rent due to any of the aforementioned.

This is not a complete list. I only wanted to provide an indication of the types of damages that are generally covered by the insurance taken out by the body corporate.

Worth mentioning is that the body corporate should take all reasonable steps to ensure that all the unit owners are insured against any liability which may arise in respect of death, human injuries, and loss of property or damage to property. These liabilities may arise as a direct result of or in connection with the common property.

One important thing many sectional unit owners should know is that they are not covered for their household contents in their unit, and they must cover those themselves. If there was a fire, the insurance cover would pay for the structures, including built-in wardrobes, but not for their personal possessions like televisions, computers and beds.

Under-insurance can also pose a big and serious problem in sectional titles, and it is very difficult to explain to owners, as it has to be approved in the budget. Many owners understand the insurable value to be equivalent to the selling price of their unit, but there is no correlation between the former and the latter in most cases.

With this in mind, I stress the importance of owners making enquiries regarding the quality and value of the insurance held by their body corporate, and not just to assume that this is adequately provided for. It is, therefore, crucial for owners and tenants of sectional titles (flats) to familiarise themselves with the relevant provisions of the Sectional Titles Act no 2 of 2009.

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