



From the President's Desk



A very warm welcome to the next edition of the SA Valuer.

Thank you to the members who took the time to congratulate me on my appointment as President of the SAIV, I do hope that I can continue to lead in the same vein as the previous Presidents and continue to guide the Institute forward.

We have come off a very successful National Seminar and AGM held in May, with a great turnout of Valuers. It was encouraging to hear the enthusiasm for the speakers and topics and in particular, the emotive and topical discussions around Expropriation without Compensation.

I would like to encourage you to keep in touch with us on our official social media accounts on Facebook, Twitter and LinkedIn. We are actively utilising these platforms to interact with other organisations in the Built Environment in promoting our point of view on issues of national importance.

As you have seen from our mass mail, Lerato Pooe has joined us as our General Manager. In the short time she has been with us, she has already made a large inroad into understanding our business and developing relationships with our stakeholders in the industry as a whole. Join me in welcoming her to our organisation and wishing her well in her future.

Our main drive this year is Education - in particular with our student members, we do have exciting plans and will keep you informed as they are finalized.

Whilst we are all in the grips of winter, and thankfully Western Cape is getting lots of rain, I hope that you all keep warm and dry.

Tracey

Welcome Lerato Pooe - General Manager SAIV



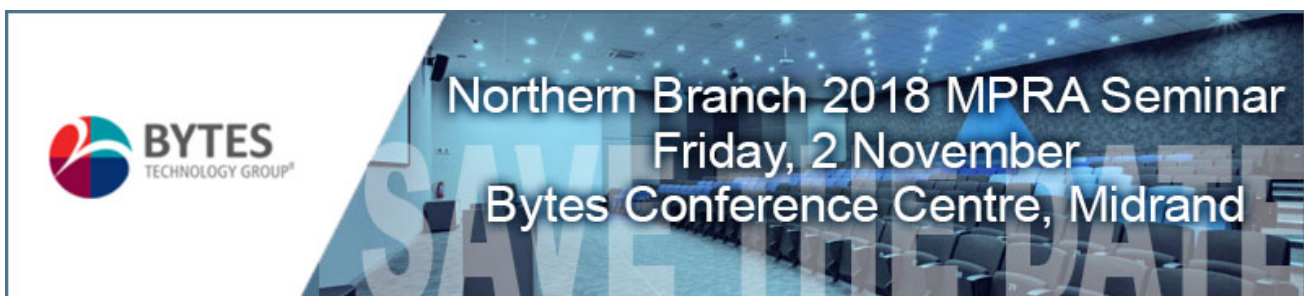
We would like to welcome Lerato Pooe to the South African Institute of Valuers family. Lerato has been appointed to the position of General Manager.

Lerato's experience in the property sector includes a lengthy spell as Operations Manager and Real Estate Agent at Jozilet CC, a family owned and managed property management company with a focus on residential property rental, management and advisory in the Johannesburg inner-city and surrounds. She has also served as a Warehouse Manager at the South African Breweries (SAB) Rosslyn Brewery where she also acted as Operations Manager in the incumbent's absentia.

Lerato has a Bachelor of Commerce (BCom), Logistics Management Degree from the University of Johannesburg (UJ) which she obtained while also serving as a student assistant at the university's Transport and Supply Chain department. Upon completing her studies at UJ she joined supply chain solutions company, Safcor Panalpina as a Logistics/Supply Chain Graduate Trainee before joining the SAB as an Operations Management Trainee prior to her role as Warehouse Manager.

Lerato completed her Post Graduate Diploma in Marketing Management at the University of South Africa (UNISA) and is a Full Status Agent with the Estate Agency Affairs Board.

We are looking forward to harnessing Lerato's tremendous capabilities and hope she will enjoy working with us as we grow in leaps and bounds.



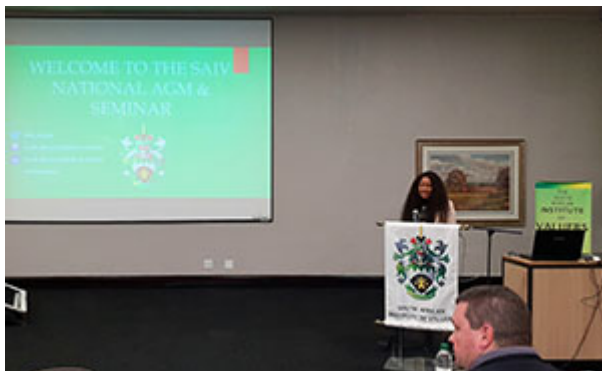
Leading experts at SAIV AGM and Seminar



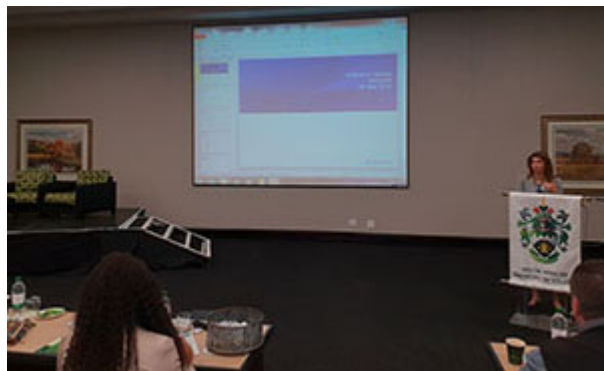
The SAIV National annual general meeting (AGM) and Seminar took place on the 18th and 19th May at the Birchwood Hotel and Conference Centre close to OR Tambo International airport in Gauteng.

The two-day session brought together leading experts including government officials, valuers and built environment professionals. The AGM and Seminar also served as a platform for engagement and networking. The MC was Nedbank's Pelo Maamogwa who did a stellar job over the 2 days.

The Keynote Speakers were Bulelwa Mabasa, Director at Werksmans Attorneys who discussed 'Expropriation without Compensation' and Matsobane Seota, Registrar at SACPVV presenting 'Plant and Machinery'. The opening address was delivered by Standard Bank's Vanessa Murray.



Pelo Maamogwa



Vanessa Murray

There were a number of prominent speakers at the event. Corne de Jager from Terracopta gave a presentation on the 'Uses of Drones and Lightstone's Michael Wedgewood discussed 'Artificial Intelligence and Machine Learning'.



Bulelwa Mabasa



Matsobane Seota

Experienced Town Planner, Bertus van Tonder delivered a presentation on 'Illegal Additions and Alterations', while immediate past president, Patrick O'Connell's presentation was on 'Land Expropriation without Compensation'. The latter was then joined by Bulelwa and Professional Valuer, Saul du Toit in a panel discussion around 'Land Expropriation without Compensation'.



Bertus van Tonder



Patrick O'Connell

John Booyens from ClearAsset delivered a presentation on 'Machinery and Equipment Valuation Services', prior to joining Matsobane in a panel discussion on 'Plant and Machinery', moderated by Patrick O'Connell.



John Booyens



Kundayi Munzara

Co-founder and Executive Director at Sesfikile Capital, Kundayi Munzara kicked off proceedings on day 2 where he delivered a presentation on 'Valuations for Property Funds'. Malusi Mthuli, Head of Valuations at Rand Merchant Bank, delivered a presentation on 'Ethics: The real threat to the Market and Valuation'.

Profession'. There was a lively panel discussion moderated by Malusi where he was joined by Kundayi Munzara and Patrick O'Connell.

Specialist Sectional Title Attorney and Director at BBM Inc Attorneys, Marina Constas was the final speaker at the seminar. She delivered a lively presentation on the 'Sectional Title Developments Update'.



Malusi Mthuli



Marina Constas

Newly appointed SAIV President, Tracey Myers wrapped up proceedings by delivering her closing remarks. Tracey's appointment was announced at the Gala Dinner hosted on the evening of the 18th May.



Newly appointed SAIV President, Tracey Myers

Read the latest CBE Bulletin



The Council for the Built Environment (CBE) June 2018 Bulletin is out. June ticks a number of boxes – it's full blown winter...brrrr; and it means that half of 2018 is done and dusted. However, turn the half-empty glass to see a half full glass – 'half-time' presents an opportunity for you to re-calibrate and revisit the first half of 2018. Ponder your mistakes and the lessons learnt, the things you would have done differently. The positive moments and what made you happy. Realign your goals for the year, re-commit to projects that stimulate your creativity or intellect, decide to create change and step out of your comfort zone to explore uncharted personal territory.

- Let's honour and preserve the legacy of our 1976 generation
- Making sense of our rands
- SACPCMP seals its stamp of approval on professionals
- Launch of Agrément SA

[CBE Newsletter June 2018](#)

Hugh Fichardt Hangs Up His Gloves



After much thought and soul searching, well-experienced valuer, Hugh Fichardt has announced his decision to retire from being an active Valuer. In an email sent to South African Institute of Valuers (SAIV) members, Hugh stated his decision was effective 30th April 2018.

Hugh says he was first exposed to the profession when he joined the Board of Executors in Cape Town as assistant to the late Pieter Theron in 1966. "I will always cherish the memories of the many challenging, interesting, fun-filled and testing valuations," he states.

Over the past 52 years, Hugh has had the pleasure of working with, and getting to know and learn from, very able and revered valuers across the country. He has had the privilege of serving on the Western Cape Committee for a number of years.

In conclusion, Hugh said he has had the thrilling experience of visiting countries such as Rwanda, Namibia and Mozambique to undertake valuations for various clients. "In short, my life as a valuer has been exciting and stimulating and could not have been more satisfying. I wish the profession and all who work in it, exciting times ahead living in our country which is about to launch itself into a new era of growth and prosperity."



Reminder!

Submit your CET points to the SACPVP

Click here to obtain forms

What is the difference between a Sectional Title development and a Home Owners' Association?



The new buzz words around town at the moment, and more particularly in the property industry refer to 'Community Schemes'. The Department of Human Settlements, currently the umbrella body for such schemes have taken control of their regulation. But, what are these Community Schemes, and what is the difference between a Sectional Title development and a Home Owners' Association?

Community Schemes have been defined in Section 1 of the Community Schemes Ombud Service Act 9 of 2011 as:

Either a

1. Sectional Title Scheme
2. A Homeowners' Association
3. A Shareblock Building
4. A Retirement Village
5. A Gated Village with a Constitution
6. A Social Co-operative

For purposes of this article, I'll be referring to the underlined schemes.

SECTIONAL TITLE SCHEMES

Now we know that a Sectional Title Scheme is governed by The Sectional Title Schemes Management Act 8 of 2011 (STSMA). This Act is not a guideline, it is prescriptive.

Sectional Title apartments and townhouses are subject to specific provisions in the new legislation. From the 7th of October 2016 there were a few interesting changes in the STSMA, which are noted hereunder. I reiterate that these changes do not automatically relate to Homeowners' Association.

- The STSMA talks about an Advisory Council. This Council makes recommendations to the Minister about all matters regarding the legislation and is obliged to regularly review the need for amendments to the Acts. Although to date this Council has not been set up and finalised, it is foreseeable that the Ombud Service has placed its creation as a priority for the coming financial year.

- The Reserve Fund is a new innovation which should be embraced by the Sectional Title industry. The Body Corporate must establish and maintain a reserve fund which is not less than the amounts prescribed by regulation. As at the date of writing this article the calculation of contribution is as follows:
- If at the end of the financial year, the money in the reserve fund is less than 25% of the total contribution for the last financial year to the normal levy fund, then the budgeted contribution to the reserve fund must be at least 15% of the total budgeted contribution to the admin fund.
- If the money in the reserve fund is more than 25% but less than 100% of the total contributions to the normal fund for that previous year, the budgeted contribution to the reserve fund must be at least the amount budgeted to be spent from the normal fund on repairs and maintenance to common property in the financial year being budgeted on.
- If the amount in the reserve fund is equal or greater than 100% of the total contribution to the normal fund, then no contribution is necessary

In my experience, many Trustees operationally manage their buildings very well and have always catered for a “buffer fund”. However, an inordinate number of Trustees find themselves in financial difficulty with the building being run from “hand to mouth” on a monthly basis. This reserve fund will ensure that a building does not fall into disrepair, and that the Body Corporate at every Annual General Meeting puts its mind to the collection of monies for this fund, and the maintenance plans for the building.

It is also clear that monies going into the reserve fund are:

- Part of annual levies designated for reserves or the MRR plan.
- Any amount received under an insurance policy for damage to property for which the Body Corporate is liable.
- Interest on the fund.

Monies going out of the reserve fund:

- Payments in respect of the Maintenance, Repair and Replacement plan.
- Payments in respect of urgent maintenance and repair.
- Unanimous Resolution

Importantly, a unanimous resolution which would have an unfairly adverse effect on any member is not effective unless that member consents thereto, in writing within 7 days from date of the resolution. A Body Corporate or owner who is unable to obtain a unanimous resolution may approach the Chief Ombud for relief.

Proxies

A proxy is not allowed to act for more than two members at a general meeting.

Votes

Ordinary resolutions ie: 51% must be adopted by the majority of votes calculated in value. There no longer exists the show of hands on these decisions. Also, owners of multiple units only have one vote, although they obviously have their usual vote on participation quota.

Rules

Any amendments to the Management or Conduct Rules must be approved by the Chief Ombud after the necessary resolutions have been taken. Once approved the chief Ombud must issue a Compliance Certificate to that effect.

Duties of Owners

An owner now has to notify the body Corporate of any change of ownership or occupancy in his unit. Owners may also by written consent of all the other owners, use their sections or Exclusive use areas for another purpose. If an owner considers a refusal by other owners as unreasonable, he / she can apply to the Ombud for a decision.

Insurance

Trustees must obtain valuations every three years, and owners may not obtain an insurance policy in respect of damage arising from risk covered by the policy of the Body Corporate. This will obviate cases of double insurance. In addition, the public liability insurance cannot be less than R10 million in any scheme.

Special Resolutions

If a special resolution is passed at a General Meeting by members holding less than 50% of the total value of all members' votes, the Body Corporate must not implement the resolution for 7 days after the meeting unless the resolution is urgent and it could be agreed that safety would be compromised or there would be significant loss to the scheme.

If within that 7-day period, owners holding at least 25% of the total votes in value by written request require that the Body Corporate hold a Special General Meeting to reconsider the resolution, then, the resolution can't be implemented unless it is again passed by Special Resolution or a quorum is not present within 30 minutes of the time set for the meeting.

A better explanation by way of example:

- There are 10 units in the scheme each having the same floor area.
- An SGM is called to pass a Special Resolution and the minimum quorum is present at 33.3% - round up to 4 members.
- The Special Resolution is passed, which is 75% of 4.
- Therefore only 3 members need to vote in favour of the resolution for it to pass.
- Now, in terms of Management Rule 20(9), less than 50% of the members have successfully passed the Special Resolution.

The Rules give the owners a "second bite at the cherry" so to speak, by postponing implementation to give more owners a chance to re-group.

Maintenance, Repair and Replacement Plan

This is a completely new innovation in Sectional Title Schemes. The Management Rule sets out that the Body Corporate must prepare a written maintenance, repair and replacement plan which sets out the major capital expenses expected to require maintenance, repair and replacement within the next 10

years. These type of capital expenses relate to wiring, lighting and electrical systems, parking, roads, paved areas, security systems, communal and recreational facilities. The plan must set out the present condition of those items, the timeline for repair, the estimated cost, the expected life of the items once maintained, repaired or replaced.

It is important to note that the reserve account will fund the plan, and the plan must be reported on at every Annual General Meeting.

Finances / Discounts / Auditors

The budget may now include a ten percent discount on levies if all owner's contributions are paid on due dates. There is no longer a reference to an accounting officer in the Sectional title legislation. Consequently, all buildings, even those with 10 or less units must be audited.

Executive Managing Agents

A brand new concept of the "Executive Managing Agent" has been included in the Rules. Distinguishable from an ordinary Managing Agent, the Executive Managing Agent actually steps into the shoes of the Trustees, has an extremely onerous fiduciary duty, and is liable for any loss suffered by the Body Corporate as a result of not applying care and skill.

The Body Corporate, may upon special resolution appoint an Executive Managing Agent
or
25% of the owners in value can force an appointment.

Ordinary Managing Agent

- Appointed by an ordinary resolution or by a registered mortgagee holding 25% in number of primary section.
- A management agreement may not endure for more than 3 years.
- Pets

If you are disabled and require the use of an assistance dog to reside with you, and accompany you on common property, you will not need the formal consent of Trustees, the Trustees are deemed to give consent. This rule is in the model rules. Every complex should, in my opinion adopt this rule.

HOMEOWNERS' ASSOCIATIONS

The above innovations do not automatically apply to Homeowners' Associations. These Associations can either be created in the Companies' office by way of a Memorandum of Incorporation, or by way of a Council stamped Constitution. They are not covered by the Sectional Titles Schemes Management Act. However, should they wish to adopt certain provisions from the Act and Rules, nothing stops them. In plain English, if I live in a Cluster Golf Estate Development, the Maintenance, Repair and Replacement plan does not apply in my scheme unless the scheme has legally adopted that particular rule. If I lived in a Sectional Title Scheme, the Managing, Repair and Replacement rule automatically applies.

The Community Schemes Ombud Service Act on the other hand, applies to all Community Schemes. The service is there to regulate, monitor and control the quality of all Community Scheme governance documentation and must provide dispute resolution. Whilst the Act does not specifically talk about a compliance certificate for Homeowners' Association rules, the Ombud's office will be effecting

amendments in the coming months to bring the law regarding registration and rule compliance for Homeowners' Associations into line with Sectional Title Schemes. In the interim the Ombud's service is encouraging Homeowners' Associations to send rules in for vetting. The Ombud will definitely have jurisdiction currently to deal with any disputes taking place in these cluster schemes, as they are mandated by statute. Over and above the oversight role, the Ombud service will be entitled to receive the Community Schemes Ombud Services levy from Homeowners' Associations whether company registered or simply in a constitution format. Homeowners' Associations not registering with CSOS will be penalised.

Admittedly, the Ombud service faced serious challenges in its infancy, however, all indications are that great strides have been made now that monies are being received by over thirty three thousand complexes. For those complexes which have not yet registered with CSOS, the mandate has been given to the Executive by the Board to start penalising such schemes. A pivotal part within this last fourth quarter for the Ombud service was the capacitation of various departments with urgently required human resources. There has been a remarkable 41% growth in the staff compliment within the 2017-2018 financial year. In this fourth quarter, 1365 (one thousand three hundred and sixty five) referrals for disputes were received. Out of 1365, 879 applicants hailed from Gauteng. Interestingly only 195 of the total figure relates to disputes within Homeowners' Associations. Sectional Title Schemes registered the most disputes, being 1124. The balance constitutes retirement schemes and shareblocks. Now that the Ombud's office is gaining traction, there will be time to augment and improve the provision of services, and to some extent to flesh out interesting issues in the industry, such as the Air BnB onslaught. I feel honoured to sit on the Community Schemes Board, and look forward to a study trip in Washington DC during May to attend a Community Schemes Conference, and to benchmark our service against international policies and infrastructure.

Marina Constras
Director
BBM Inc Attorneys

MPs hear from experts on land expropriation



8th June 2018

By: [African News Agency](#)

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Government should not be given unfettered powers to expropriate land without compensation, various experts told Parliament's constitutional review committee on Friday.

The committee is looking into the viability of amending section 25 of the Constitution, which deals with property rights and was holding a colloquium on a parliamentary resolution to expropriate land without compensation as a result of the slow pace of land reform in South Africa.

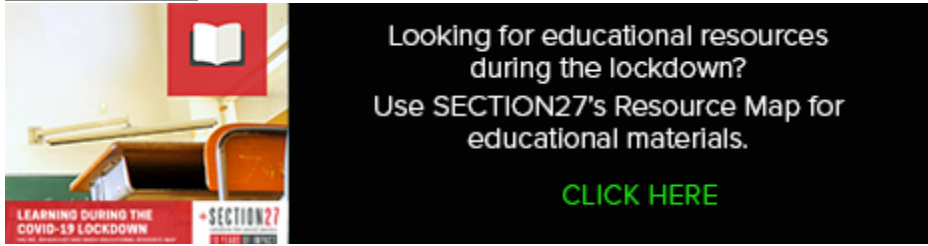
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Institute for Poverty, Land and Agrarian Studies' Professor **Ruth Hall** told MPs the current [system](#) of land redistribution and restitution was not transparent.

"This is a [system](#) set up for corruption and patronage," she said.

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Hall proposed a new expropriation bill to bring the law in line with the Constitution and alongside this a redistribution bill to ensure the rights of citizens.

Hall said despite laws which prevented land dispossession, almost a million black South Africans were forcibly removed from land since 1994.

"The rate of forced land dispossession of poor black people of the land actually accelerated in the first 10 years of democracy," she said.

Land restitution was further hampered by weak institutions set up to implement laws, Hall said.

Dr **Annika Claassens** from the Land and Accountability Research Centre agreed, saying two questions were central to the land debate: "Can we trust the executive with more powers and are our institutions up to scratch."

She suggested new laws should ensure that citizens can hold government accountable.

"Where it expropriates land, it must give effect to positive rights in the Constitution otherwise we would never address the spatial inequality," said Claassens.

Claassens said despite the reservations about how it would be implemented, land expropriation without compensation was necessary for equitable redistribution of land.

"I think that expropriation without compensation is not only possible but necessary when we speak about people having countervailing rights."

Dan Kriek of AgriSA, one of the biggest critics of the proposed land expropriation without compensation, said the move would affect food [security](#) and financing for commercial farmers.

Kriek suggested partnerships between black and white farmers was a better solution.

"We don't believe the Constitution needs to be changed. We need to deal with real impediments to land reform. We are a willing and able partner...there is a deficit of trust we need to work on.

While the Banking Association of SA had yet to adopt a formal position, it sent **Pierre Venter** to brief MPs. Venter said he was of the view a Constitutional amendment was not needed. He said there was already enough legal room for land redistribution and restitution in South Africa but it had been hamstrung by "politics, patronage, corruption, and government paralysis".

Venter said they were not opposed to redress through land redistribution but wanted it done in a manner which did not hurt banks and investor confidence.

"We do however believe it must happen in an orderly manner. If it doesn't, it undermines the [security](#) of loans for property."

Newly Published California Case Helpful to Appraisers: Tindell v. Murphy



The California Court of Appeal, Third Appellate District certified for publication its recent decision in a case entitled Tindell v. Murphy. The case involved mortgage borrowers who sued a real estate appraiser blaming the appraiser for a purchase they made in 2005 at the peak of the real estate bubble.