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Article by  
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What can or must Johnny Owner do about the leaking balcony of his brand new flat purchased from the developer?

The balcony, which is indicated on the sectional plan as forming part of his section, has developed a leak from rainwater, leaking to the inside of his section and has caused substantial damage to his expensive carpets inside. Johnny has consulted an engineer who reported that the leak is occurring due to insufficient waterproofing on the balcony deck.

The first general meeting of the body corporate has taken place and the first question which arises is whether the body corporate has now become responsible

for fixing this problem. The answer must be no, as the balcony forms part of his section, the maintenance of which is the owner's responsibility in terms of section 44(1)(c) of the Sectional Titles Act. In the Solidatus decision of the old Transvaal Supreme Court, it was even held that an owner is responsible for the maintenance of a deck of which he had rights of exclusive use, so there can be no doubt that Johnny is himself responsible for having his balcony fixed.

The further question which arises is whether Johnny has any right of recovery of the costs of repair, and also the damage to the inside of his section, against the developer?

There is in fact legislation in place to assist purchasers of homes in situations such as this, namely the Housing Consumers Protection Measures Act. Despite the beautiful objectives of the Council established under this legislation, Johnny should however not become too excited about his prospects of direct assistance from the Council. Historically, this body has not proved its worth for many purchasers of homes, and this despite the not insignificant part of Johnny's purchase price which had gone towards the maintenance of this government body. It would nevertheless do no harm to briefly pursue this avenue as a starting point.

What is significant and helpful in respect of this legislation, however, is the statutory

imposition of enforceable warranties upon the developer that the home must be constructed 'in a workmanlike manner, shall be fit for habitation, and shall be constructed in accordance with the NHBRC technical requirements.' These warranties stand irrespective of what is stated or not stated in the agreement of sale. The Act further stipulates that on demand of the homeowner, the developer must rectify structural defects which do not comply with NHBRC specifications.

The above may be enforced in a court of law and time-wise Johnny would be OK because his right to enforce rectification only prescribes after five years from the occupation date.

Section 36(6)(e) requires that any action against the developer be authorised by a special resolution of the members of the body corporate. However, Johnny is not restricted by this as the provision relates only to actions by the body corporate and not by individual owners. I would advise Johnny to make an appointment with his attorney as soon as possible to start the ball rolling. A report by a civil engineer would be necessary, as well as some quotes by some good contractors. If matters are handled professionally, it may not even become necessary to institute a court action, as the developer might wisely prefer to settle, if confronted by the above evidence. 🏠

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## Gauteng North Region

**17/03/2016** – Charity Golf Day, Silver Lakes Golf Estate, Pretoria  
Contact: [namanorth@nama.org.za](mailto:namanorth@nama.org.za) for more information

## Kwa-Zulu Natal Region

**09/04/2016** – Sectional Title Training Seminar presented by Barbara Shingler  
**13/04/2016** – KZN Region Cocktail Evening, Blue Waters Hotel and sponsored by Prominent Paints  
Contact: [namakzn@nama.org.za](mailto:namakzn@nama.org.za) for more information

## Eastern Cape and Border Regions

**13/04/2016** – Regional Meeting, Offices of FSPA, 10<sup>th</sup> Floor, Pamela Arcade, 2<sup>nd</sup> Avenue, Newton Park, Port Elizabeth  
Contact: [chantel@bellbuoy.co.za](mailto:chantel@bellbuoy.co.za) for more information

## Free State Region

**12/03/2016** – Community Schemes Seminar, Kopano Nokeng Country Lodge & Conference, Renosterspruit, Bloemfontein  
Topics: CSOS presentation and various other presenters (TBA)  
Contact: [namawest@nama.org.za](mailto:namawest@nama.org.za) for more information

## Gauteng East Region

**15/04/2016** – Breakfast Seminar, Glendower Golf Club, Edenvale  
Topic: Disconnecting Utilities (Presenter: Peter Mennen)

**23/04/2016** – Sectional Title Training Seminar, Mannah Guest Lodge and Conference Centre, Kempton Park  
Contact: [namawest@nama.org.za](mailto:namawest@nama.org.za) for more information

## Western Cape Region

**23/04/2016** – Flagship Seminar, Belmont Square, Rondebosch

Topics: • Discussion of the draft regulation under the CSOS Act : Duties of scheme executives and what duties do trustees currently have under the Sectional Title Act of 1986?  
(Presenter: Judith van der Walt)

• Renewable Energy : Water conservation and using electricity wisely : Ways to avoid unnecessary wastage (Presenter: TBA)

• Invasive species (Presenter: Dr Guy Preston)

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