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ENFORCEMENT OF RULES

Article by Tertius Maree, Tertius Maree and Associates

An orderly and functional society, including any sectional title scheme, is based upon acceptance of and compliance with a system of rules and honouring valid decisions made in terms thereof, even if contrary to one's own aspirations.

However, there will always be those who refuse to comply voluntarily, and for this reason rules, and even court rulings, are of little value if they cannot be enforced against the few obstinate individuals. In fact, if this is not done, it will eventually whittle away

the willingness of other society members to comply with authority.

This is clearly demonstrated in the following fictitious, but quite familiar situation which arose at the Heavenly Bliss sectional title scheme. It consisted of free-standing dwellings, each with its own exclusive use garden area.

Contrary to the Conduct Rules, (which consisted of the standard prescribed rules plus a penalty rule adopted by the members), Owner X first built an unauthorised brick structure, being a dovecote, and proceeded to keep pigeons without the trustees' consent.

The trustees resolved to take action and, after several verbal and written communications and warnings

rendered no results, they decided to impose a penalty. Their attorney brought to their attention that, in terms of the new Management Rule 25(5), the trustees are not allowed to debit the transgressor's account with any such penalty or fine. This would render the penalty procedure useless as the fine would not be recoverable unless Owner X agreed thereto – which was a laughable prospect - or if a judgment or order by a judge, adjudicator or arbitrator is obtained. In light hereof the trustees decided to utilise sections 39(2)(c) and (d) of the Community Schemes Ombud Service Act (CSOSA) to obtain an order declaring the keeping of the pigeons to be contrary to the Conduct Rules, and an order for the removal of the dovecote. They prepared and lodged the necessary application, paid the fees, and eventually, after a failed conciliation attempt and a protracted hearing, including a debate

as to whether pigeons were 'animals' as intended by subsection (c), obtained the required orders from an adjudicator appointed by the Ombud Service.

Still Owner X did not remove the pigeons or the dovecote. Again, the trustees consulted their attorney, who explained that whilst the adjudicator of the Ombud Service was unable to issue an interdict ordering the removal of the structure and the pigeons, the adjudicator's order could be converted to a court order, but only in respect of claims sounding in money, which the trustees' claims unfortunately did not. (Please see my comment at the end).

Accordingly, the trustees had to initiate proceedings afresh in the Magistrates' Court or High Court in order to obtain an interdictory order for removal of the dovecote

and pigeons.

'Why' the trustees asked of their attorney, 'could we not just have imposed a fine, to be repeated and increased in the event of non-compliance, and so have brought the matter to a quicker and less expensive conclusion?'

Why indeed had the legislator seemingly put a stop to the effective remedy of imposing penalties?

The reason may have been the abuse of trustees' ability to impose fines by not following correct procedures. However, it is not entirely clear that the provisions of Management Rule 25(5) do in fact prohibit the imposition of fines. Let's look at the exact wording:-

'The body corporate must not debit a member's

account with any amount that is not a contribution or a charge levied in terms of the Act or these rules, without the member's consent or the authority of a judgment, adjudicator, or arbitrator.'

As far as penalties or fines are concerned, two questions arise:-

1. what does 'charge' mean? It is not defined in the Act or the prescribed rules; and
2. what does 'levied in terms of these rules' mean? If the penalty provision is contained in the Conduct Rules, would that qualify as 'in these rules'?

Possibly a fine imposed in terms of a penalty provision, properly drafted and inserted in the Conduct Rules could qualify as a 'charge' levied in terms of the these rules. But

it is definitely not a safe assumption.

I would propose the following in order to safeguard the trustees' ability to impose penalties:-

Firstly, any penalty rule must be carefully drafted in order to ensure compliance with the requirements of the Promotion of Administrative Justice Act. This requires a fair hearing at which the offender is informed of the complaints against him, given an opportunity to cross-examine witnesses, to state his own case and to call his own witnesses. The right of representation at the hearing should be formulated in a manner similar to the provisions of section 52 of CSOSA. The penalty imposed must be reasonable in relation to the offence. Such a rule could be adopted as a Conduct Rule.

Preferably simultaneously with adoption of the penalty rule, an additional Management Rule should be adopted, an easy and uncontroversial one though, being merely an additional definition in Rule 1, defining a 'charge' as 'an amount other than levies validly debited to a member's account, including any amount in respect of a penalty or fine imposed upon such member in terms of the provisions of the Management Rules or the Conduct Rules.'

Wouldn't that make life easier for trustees?

COMMENT: The attorney's advice regarding the conversion of the adjudicator's finding into a court order may be incorrect: It may be possible to obtain a court interdict by submission of the adjudicator's verdict.

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CONSUMER PRICE INDEX SURVEY OF LEVIES FOR SECTIONAL TITLES SCHEMES

Dear NAMA Members

Statistics South Africa (Stats SA) is a government department responsible for a variety of official economic statistics including the Consumer Price Index (CPI). The CPI measures the rate of price changes of a fixed basket of goods and services on a monthly basis.

The CPI basket was recently revised and

levies paid by owners in community schemes now forms part of the CPI. This data assists Stats SA to calculate the housing index which contributes about 15% of the weight of the total CPI.

NAMA met with Stats SA and agreed to the importance of this survey, not only for the CPI, but it will also provide data on the average rate of increases of levies across the country. NAMA encourages all



members to assist in supporting this survey and provide Stats SA with the requested information.

Stats SA will select a sample of managing agents and send a questionnaire four times a year and will request information related to:

- the budget of a scheme,
- the square meters of properties in the scheme,
- the levies per square meter, and
- services covered by the levy.

Stats SA is governed by the Statistics Act (1999) which guarantees the confidentiality of the information provided to it and also impels sampled agents to respond to the questionnaire.

Participation of NAMA members are voluntary and should you wish to participate please contact:



STATS SA

Mr Patrick Kelly

Telephone 012-310-8290

Email: patrickke@statssa.gov.za

We would like to thank you in advance for your co-operation and reiterate that our members who wish to participate do so voluntarily.

Kind regards

COENIE GROENEWALD

[STSM -UCT] [HUMAN RELATIONS – SEESA]

NAMA: CHIEF OPERATING OFFICER

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THE BODY CORPORATE OF EMPIRE GARDENS

Article by Elmo-York Stuart, EY Stuart Attorneys.

We refer to the abovementioned matter and a request to provide a short summary in respect of the appeal which was dismissed by the Supreme Court of Appeal. The writer's colleague, Mrs. Annelize Joubert, dealt with the matter.

“A SAD DAY FOR BODIES CORPORATE (THE EMPIRE GARDENS BODY CORPORATE JUDGEMENT FROM THE SUPREME COURT OF APPEAL)”

[CLICK HERE FOR FULL ARTICLE](#)

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Find the registration form on the NAMA website.

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SPECTRUM ADDRESSES AMENDMENTS TO THE SECTIONAL TITLE LEGISLATION

The Government Gazette Nr. 40335 published on 7 October 2016 published the promulgated amendment to The Sectional Title Schemes Management Act 2011 (Act No 8 of 2011) which deals with Sectional Title Schemes Management Regulations.

Some highlighted amendments in the regulations deal, with amongst others;

- The need to maintain adequate reserves in respect of maintenance; and the reserves are qualified; and
- The need to appoint valuers to ascertain accurate replacement costs for insurance purposes.

One can fully understand why these, and other stipulations, have been introduced. Being incorrectly insured could have severe consequences should partial or total destruction of a Sectional Title complex lead to a possible claim.

In determining the replacement costs of the improvements in a Sectional Title development scheme, it is not as simple as applying a simple rate per square meter to the development. A number of important factors will need to be considered, amongst others, but not limiting;

- Detailed Schedule of Replacement Values per section and its undivided share in the common property;
- Itemised breakdown of Replacement Cost;
- Demolition and Salvage Costs;
- Professional fees;
- Pre and Post Tender Escalations;

- Accurate Assessment of Structure and Common area elements; and
- Any hazardous elements.

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120 Breakfast Seminar

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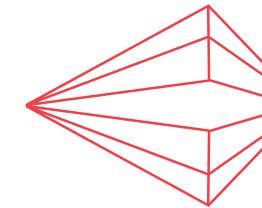
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