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Misbehaving Tenants - What to do?



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So you've decided to take an early retirement because well, you deserve it! To generate some income during one of your extended holidays to Greece, you decide to lease out your flat to Mr Lee and his family. Little did you know that you would be receiving an email from your managing agent informing you of a fine that has been issued against you as a result of damage caused to the common property by Mr Lee's hell-raising children in your absence. What now?

You're probably asking yourself why *you're* the one being issued with a fine when you are all the way in Greece keeping out of trouble. This is where we need to draw the important distinction between the 'owner-body corporate' relationship and the 'landlord-tenant' relationship. This is due to the fact that, at present, no legal relationship actually exists between the tenant and the body corporate. In terms of section 35(4) of the Sectional Titles Act No. 95 of 1986 (the "Act") and Prescribed Management Rule (PMR) 69, you as the owner of the unit are directly liable to the body corporate for the conduct

of your tenants as it is the duty of the owner to ensure compliance with the rules by tenants and occupants, including employees, guests and all members of his family. What recourse, if any, would you, as the landlord have against Mr Lee with regards to the fine imposed? Thankfully, owners are protected in terms of section 5(8) of the Rental Housing Act (50 of 1999) (the "RHA") which stipulates that a copy of the conduct rules (more commonly and *incorrectly* known as "house rules") must be attached to the lease agreement. Should this provision be complied with, you as the landlord, will be in a position to hold Mr Lee liable for the fine imposed as well as the associated damage caused by his hell-raising children. The recovery of the fine imposed by the body corporate will depend on the provisions of the lease agreement, which should provide for such recovery.

Let's assume that you were too busy planning your holiday to care about attaching conduct rules to the agreement, is Mr Lee now released of all liability? In terms of PMR 69, the rules of the body corporate, being the management and conduct rules filed at the relevant Deeds Registry, apply to you as the owner as well as to all other occupants of the unit. Even though the body corporate is entitled to hold you, as the owner directly liable for the damage caused to the property, you can enforce these rules against Mr Lee. Therefore, if the rules of the body corporate, filed with the Registrar permit for a fine to be issued for damages, you have a right to seek relief against Mr Lee.

What happens when Mr Lee refuses to pay the fine because his little angels weren't the only ones causing the damages – or even better, he argues that he was not given a first warning and that the issuing of the fine was therefore premature. In this

case, it becomes important to note and discuss the nature of the applicable conduct rules with the tenant. What most people don't realise is that the rules *must* be filed with the Deeds Registrar, in order for them to be enforceable. If the body-corporate drops the ball on filing the rules, not to worry, the conduct rules in Annexure 9 of the Act automatically become applicable. Unfortunately, Annexure 9 does not provide for the administration of a fine as a form of sanction as this is a very specific and limiting deterrent. Therefore, the best way to ensure that a fine could be imposed, would be if the rules specifically stipulate that a fine be issued in that particular situation.

In such a case, you have yet another trick up your sleeve – section 5(3)(p) of the RHA stipulates that a tenant will be liable towards the landlord for any costs in relation to a lease agreement upon the landlord's proof of expenditure. So, as long as your record-keeping skills are down to a "T" and you have documentary proof of the damages and costs incurred, good old Mr Lee can be held liable for the damage caused by his children.

You can therefore rest assured on your well-deserved holiday in Greece. Just because Mr Lee is not directly liable to the body-corporate itself, does not mean that he and his family members are automatically absolved from liability. Even though you have well-drafted legislation at your disposal as a safety net, proper administration and record-keeping is essential. Always stay on the safe side and take the time to attach conduct rules to the lease agreement and go through the rules with the tenant to ensure that he understands the content and the consequences of any non-compliance – this will definitely make for an easier paper trail to follow.



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17 August 2016 – Sectional Title Seminar, The Palace Hotel, Durban
Topic : What Sectional Title plans show you or rather, what they don't!
Presenter : Dave James (NAMA KZN Regional Director)
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Western Cape Region

27 August 2016 – Trustee Training Seminar, Belmont Square, Rondebosch.
Topic : How to run the perfect AGM
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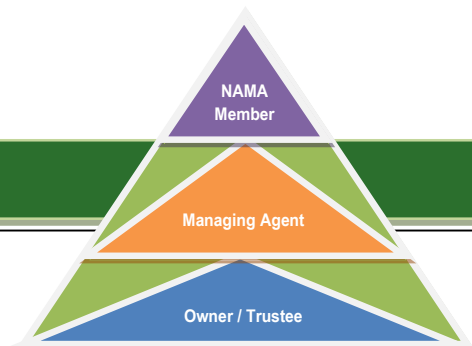
24 August 2016 – Breakfast Seminar, Bryanston Sports Club, Bryanston
Topics : Eskom Smart Meters, CoJ Rates, Water Resource Management
Presenters : Mr K Masisi (Eskom); Ms Sihle More (CoJ Rates), Dr Anthony Turton (Water Resource Management Specialist)
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13 August 2016 – Community Scheme Seminar, Sewe Damme Aftree Oord, Bloemfontein
Presenters : Tertius Maree (Tertius Maree and Associates), Corlia le Roux (Phatshoane Henney Attorneys), Dr Anthony Turton (Water Resource Management Specialist)
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Gauteng East Region

19 August 2016 - Breakfast Seminar, Glendower Golf Club, Dowerglen, Edenvale
Topics : Internal Dispute Resolution and Understanding Coatings
Presenters : Suzanne Coppin (Coppin Attorneys) and Herman Rabe (Prominent Paints)
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