

Click on the logo for more information



Click on the logo for more information



Click on the logo for more information



SPECIAL LEVIES



Article by
IZAK DU PISANIE
EY Stuart Attorneys

I received the following scenario for consideration: Following a resolution of the trustees of the Body Corporate X they instructed the managing agent to raise a once off special levy of R100 000-00, which is payable immediately.

The reason for the special levy is that the City Council presented an adjustment on the water account of the Body Corporate after a water leak was detected.

Owner Y now raises the following questions:

1. The letter for the special levy was issued today and the instruction for payment is immediate. Is such short notice legal and allowed?
2. The total amount of the arrear levies exceeds the special levy amount of R100 000-00 and the managing agent had advised that legal collection has been instituted to collect the arrears. If the managing agent acted timeously on the arrear levies the special levy would not be necessary. How is this justified?

3. Why did the trustees and managing agent not act sooner by investigating the possibility of a water leak when they noticed the increase in the water bill?
4. Can owners refuse to pay the special levy and hold the managing agent liable for poor financial management?

Herewith my answers:

Question 1:

Yes, provided the special levy was validly raised by a trustees' resolution. Section 37(2A) & (2B) and Prescribed Management Rule 31(4B) of the Sectional Titles Act No.95 of 1986 permits the trustees of the body corporate to raise special levies to be paid in one sum and at such time as the trustees deem fit.

The managing agent acts on the instructions of the trustees and cannot implement a special levy. The trustees of the body corporate must resolve to implement the special levy and the managing agent must simply notify members of the special levy payable.

Question 2:


The arrear levies have nothing to do with the special levy. The arrear levies stem from levies raised in accordance with a budget and for specific expenditure. A special levy is for unforeseen and unbudgeted expenses and there are no reserve funds available to cover this expense. The purpose of a reserve fund is primarily to carry out required maintenance such as repainting of the units, therefore although the body corporate may have accrued sufficient reserves to cover this expense they cannot utilise these reserves earmarked for a specific purpose and are therefore justified in their actions to raise a special levy to fund this unforeseen and unbudgeted expense.

Question 3:

This is an open question and one would have to look at the terms of the management agreement to establish whether a responsibility rested on them to for e.g. regularly test water consumption and to detect any leaks It would therefore be very difficult to hold them liable for any loss that is not the direct result of any negligence on their part.

Question 4:

Owners are obliged to pay any levies lawfully raised and defaulting owners may be handed over for legal collection as provided for in section 37 (2) of the act. If objections are raised due to poor financial management, the trustees may terminate the mandate of the managing agent in terms of agreement entered into, failing which aggrieved owners may by resolution of a general meeting remove the trustees from office provided that the intention to vote upon such removal from office has been set out clearly in the notice, refer PMR 13(e) and PMR 53.

Furthermore, although a member may place the extent of a special or increased levy in dispute, the payment of such levy may not be withheld until the dispute has been resolved. The aforesaid was confirmed in the matter of *Body Corporate of Fish Eagle v Group Twelve Investments 2003 (5) SA 414 (W)*. 

Click on the logo for more information



Click on the logo for more information



Click on the logo for more information



REGISTER NOW

NAMA EVENTS

Gauteng North Region

30/07/2016 – Sectional Title Training Seminar, CSIR Convention Centre, Pretoria

Entry level training for all Managing Agents, Trustees, Owners or anybody with an interest in the sectional title environment!

Presenters : Dave James, NAMA KZN Regional Director with experts in certain fields of sectional title – more information to follow

Email namanorth@nama.org.za for more information

KwaZulu-Natal Region

23/06/2016 – Sectional Title Breakfast Seminar, Umthunzi Hotel & Conference, Umtentweni

24/06/2016 – KZN Regional Golf Day, Port Shepstone Country Club

Email namakzn@nama.org.za for more information

Gauteng West Region

20/07/2016 – 120 Breakfast Seminar, Venue and Topic TBC

Email namawest@nama.org.za for more information

Gauteng East Region

11/06/2016 – NAMA Sectional Title Trustee Training Seminar, Church Hall, Edenvale Baptist Church

Presenters : Frederik Nel, Curasure | Cilna Steyn, SSLR Inc. | Mike Addison, Addsure | Marina Constat, BBM Law

24/06/2016 – Community Scheme Seminar, Glendower Golf Club, Dower Glen, Edenvale

Topics : Insurance | Maintenance | Dispute Resolution | MA Contract | Meetings

Email namawest@nama.org.za for more information

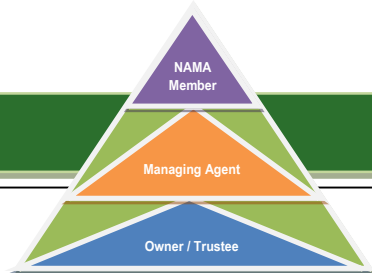
Western Cape Region

10/06/2016 – 120 Breakfast Seminar, Mowbray Golf Club, 1 Raapenberg Road, Mowbray, Cape Town

Email namawc@nama.org.za for more information

Eastern Cape and Border Regions

8/06/2016 – Regional Meeting at PPM, 15 2nd Avenue, Walmer, PE



MANAGING AGENT INFORMATION

The views expressed by the Managing Agent are not of the publisher, editor or author of the article or editorial

Publisher : NAMA - Lizbé Venter (namanews@nama.org.za)

Contributor to this issue : Izak du Pisanie (izak@eyslaw.co.za)

Copyright : NAMA – Nothing in this newsletter may be reproduced in whole or part without the written permission of the publishers.

Disclaimer : The views expressed are not necessarily those of the publisher, editor or anyone else but the author of the article or editorial.

Image Source : <http://www.iol.co.za/business/personal-finance/special-levies-what-you-should-know-1748727>