

OWNER NOT PAYING LEVIES: WHAT SHOULD THE BODY CORPORATE DO?

For many of us, our homes are the single most expensive item we purchase in our lifetime and therefore the proper care and maintenance of this investment is of the utmost importance. Owning property in a sectional title scheme has the advantage that all owners contribute to the maintenance of the scheme, to the obvious benefit of all. But there is always the risk that one of the owners may be in default of the proper and punctual payment of levies. The body corporate should act without delay to collect the outstanding contributions.

INTRODUCTION TO LEVY COLLECTION IN A SECTIONAL TITLE SCHEME

A body corporate utilises levies for the day-to-day expenses necessary for the effective management of a sectional title scheme. This includes, amongst other things, the costs relating to general maintenance, payment of building insurance levies, obligatory contributions to the Community Schemes Ombud Service and service providers. Further, in terms of the Sectional Title Schemes Management Act, the body corporate is obliged to establish and maintain minimum reserve funds for purposes of future maintenance (and schemes are obliged to draft 10-year maintenance plans for the schemes and to provide in the reserve fund for the costs relating to these anticipated expenses).

If the body corporate is unable to keep a healthy balance sheet, it means that there will not be enough funds for the necessary upkeep of the scheme. In turn, this not only has a negative impact on the condition of your investment, but also has the additional consequence of putting you and all other owners under financial strain, as it could mean that the body corporate would need to raise special levies to make up for any shortfall in funds. The question therefore arises: What action can a body corporate take in instances where owners fail to make payment of their levies?



STEPS A BODY CORPORATE MUST TAKE TO COLLECT LEVIES

The first thing to bear in mind is that owners fall in default of levy payments usually because they can no longer afford to own the property. It is therefore best practice to avoid any arrears from spiralling out of control, as there is no guarantee that monies due and owing would be recovered in full. It could either mean that an owner must contemplate selling the property or leasing the property to tenants so that funds may be generated for purposes of payment of the arrears.

However, an owner that is in default may not necessarily see any of the aforementioned as viable options, which can leave a body corporate in a sticky position. In the past, a body corporate could only rely on the judicial system in an effort to recover any arrears, which not only proved to be costly, but also time consuming. Fortunately, in October 2016 the Community Schemes Ombud Service Act (hereinafter “the Act”) was proclaimed. In terms of the Act, an Ombud was established for community schemes to serve as a more informal and accessible forum whereby any person or association who is party to or materially affected by a dispute, may lodge an application to have the dispute addressed at this forum.

Generally no legal representation is permitted at the proceedings, unless there are special circumstances. In such an instance the adjudicator, with the consent of all parties involved, will agree to the presence of legal representation.

It must be borne in mind that the Act does not give the Ombud unlimited jurisdiction in the sphere of disputes in community schemes and only certain relief can be sought. As an example, the Ombud can order a debtor to make payment of levies which are in arrears and if the debtor disputes the liability. Another order which the Ombud may make if levy liability is disputed, is for a tenant to make payment of his/her rental directly to the



body corporate and not to the landlord, as part payment of the landlord's outstanding levies.

Such orders are regarded, in law, as if it they were handed down by a Magistrates' Court or a High Court. Therefore these orders can be enforced in a Magistrates' Court or a High Court, depending on the amount of money involved and the relief ordered. One way in which an order by the Ombud can be enforced is by obtaining a warrant of execution against the debtor's movable assets. In such an instance, the Sheriff will write up and remove the necessary movable assets which are to be sold in execution (i.e. an auction).

To avoid any delays in commencing the proceedings with the Ombud Service, it is advisable that a body corporate keep proper record of the AGM minutes, the trustees' resolutions whereby the levies were determined, the participation quota schedule, the levies schedule, a copy of the approved budget and a thorough accounting of what the debtor owes. It is also prudent of anybody corporate to have a contingency plan in place in the event of disputes and make the necessary provision in their budget for any expenses that may be incurred as a result.

