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A T T O R N E Y S

**LEVIES – PROBLEMS AND CONTINUOUS
ISSUES**

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LEVIES

PROBLEMS & CONTENTIOUS ISSUES

1. COLLECTION & CALCULATION OF LEVIES

- 1.1 It is the task of the Trustees from date Body Corporate comes into being.
- 1.2 If the manner of calculation is not specifically set out in the Management Rules then it is assessed by reference to the Participation Quota.
- 1.3 Levies are approved at each AGM where an itemized schedule of anticipated income and expenditure must be tabled and then approved. Once this is approved then the Trustees must by resolution determine the monthly instalments payable and advise each owner.
- 1.4 It is often after this point that things start going wrong with the collection of levies. Either because Trustees are too soft hearted, or not well organized, arrear levies start mounting up and are not collected straight away. This is where things start snowballing because if the levies are not collected then payments for such items as electricity, rates and insurance cannot be paid let alone payments for maintenance and upkeep. We often find that suddenly when some owners are in arrears for six months then legal action is taken. Its too late as the legal process can take some time and each month the arrears grow.
- 1.5 If insurance premiums are not paid then owners run the risk that if the buildings are damaged or burn down then there is no insurance.
- 1.6 If rates are not paid then still at this point in time the Municipality has the right to proceed against the entire complex because as yet the separate rating of Sectional Title buildings has not been finalized. My investigations reveal that the eThekweni Municipality are confident that the separate rating of Sectional

Title units will be in place by 1st July, 2008. Once in place this will lessen the amount of levy required but there still will be a levy required for insurance, maintenance, communal electricity and communal water.

In the meantime we all know that what we are faced with now is a situation that many Sectional Title complexes owe thousands and in some cases hundreds of thousands of rands to the Municipality for rates and the effect of this is that it renders the units in those complexes as being incapable of being sold. What we as Conveyancers have found is that this can cause hardship especially where there is a chain of sales. Here is an example. An agent sells a unit in a complex that has arrear rates. The only suspensive condition is the obtaining of a bond. The bond is granted and so the deal is solid. Then the chain starts developing and people start buying and selling. Then about two to three weeks later the Bond Attorney is instructed and in the bond instruction is a clause stating that the Bond Attorneys must establish that rates are up to date. When after another two weeks of enquiries it is established that rates are in arrears then the Bank withdraws from the bond causing the chain to collapse with much "snot and trane". How is this prevented? Well first by good credit control and collection so that levies are kept up to date. Secondly the Trustees can take a loan from a company like Propell Finance and pay off the arrears. Its also about estate agents getting to know the situation of complexes in their area. I am not talking about red lining buildings but about simply knowing that a sale in such a building is not final until it is almost at registration. These are tough circumstances in which to function but agents have to acknowledge the reality of it.

2. **THE LAW COURTS TO THE RESCUE**

Historically and legally a levy payment has always ranked in preference second to a mortgage bond registered over a Sectional Title unit by a Bank. This meant that if a Body Corporate wanted to attach the unit because of arrear levies then it needed the consent of the Bank who had the mortgage bond registered over the property. If the mortgage bond was not in arrears then this would mean that the Bank would not consent. This usually took place where the unit owner was a Provincial or Government employee and where the bond payment came automatically off his/her salary. Such a Body Corporate felt frustrated by the inability to attach and sell the property. So a Body Corporate in the Eastern Cape took one of the Banks to Court and won.

In terms of this judgment it was held that a levy payment ranked in preference to a mortgage bond. This was a real concern for the Banks as out of control arrear levies could really hurt their security. So they proceeded to the Supreme Court of Appeal and won. So today its back to where it was before. The relief was short lived.

As an aside, it is this type of issue which makes the conversion to Sectional Title unattractive to certain Shareblock Companies. In the Shareblock Memorandum and Articles of Association it is usually stated that if an owner is in arrears then the Company can attach the owners shares in the Company and take cession of his Use and Occupation Agreement.

3. **SPECIAL LEVIES**

Trustees can call upon owners to pay special levies. This can only be in respect of an expense that was not on the schedule of anticipated income and expenditure that was tabled at the AGM. The Trustees cannot call for a special levy if they have simply overrun the budget. They can determine how this special levy is to be paid. As to who pays it when the property is sold is determined by the appropriate clause in the Agreement.

4. **S37(2) AMENDMENT AND TRI-PARTITE AGREEMENTS**

The 2003 amendment to the Sectional Title Act which introduced S37(2) in its current form was intended to deal with the issue of special levies. It however, by dint of how it was drafted, effected levies in general and brought about the well known tri-partite agreement which is now signed by Seller, Purchaser and Body Corporate at the date of transfer.

5. **EXCLUSIVE USE AREAS**

Levies should be paid in respect of Exclusive Use Areas. We have noted that particularly in self managed buildings this is overlooked. It cannot be just any arbitrary amount but must take into account the costs of rates, insurance and maintenance of the Exclusive Use Areas.

CONCLUSION

Body Corporate should act quickly on arrear levies in order to save their bacon. It is really a case of the "early bird catches the worm". Estate Agents should make sure that they know the financial status of Body Corporates in their area.