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**LIABILITY FOR LEVIES ON TRANSFER OF
A SECTIONAL TITLE UNIT**

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1) THE AMENDMENT TO THE SECTIONAL TITLES ACT

Section 37(2) of the Sectional Titles Act has been amended to the effect that any contributions levied by the trustees of the Body Corporate may now be recovered from the person who was owner of the unit **at the time that the resolution determining the contributions to be levied, is passed**. Previously, section 37(2) stated that the contributions levied may be recovered from the person who was owner of the unit **at the time when the contributions became due**. From our investigations, it appears that the reason for the amendment was to deal with the issue of special levies. However, the amendment was not properly worded and accordingly the intention behind the amendment has been lost.

In its present form, the amendment to the Act basically states that Body Corporates may now recover levies from the person who was the owner of the unit at the time that the resolution determining the levies was passed. This means that if the Body Corporate fails to recover the entire balance of levies owing before registration of transfer, it will not be able to recover levies from the new owner for the remainder of that financial year. The Body Corporate will then have to look to the previous owner to recover the outstanding levies, which could at this stage prove both costly and futile.

Accordingly, to safeguard themselves, Body Corporates/ Managing Agents are now asking for all levies for the current financial year to be paid prior to them issuing Levy Clearance Certificates. Although the Act says that the Body Corporate may recover the outstanding annual levies from the seller, most Sale Agreements state that levies must be apportioned between the Seller and Purchaser depending on when date of occupation is likely to take place. This has obvious additional financial implications for purchasers of Sectional Title Units as a purchaser could, if occupation is to take place shortly after the commencement of the financial year of the Body Corporate, be called upon to pay nearly the full annual levy upfront.

(2) OUR VIEW ON THE AMENDMENT

We are of the view that the following options are available to deal with the amendment:-

1. A clause may be inserted in the agreement to the effect that the seller shall not be liable for the levies due and payable to the Body Corporate as from date of registration of the transfer into the purchaser's name and accordingly, the purchaser shall be liable and shall pay all the levies due to the body Corporate from such date. The clause may further state that the purchaser indemnifies the seller against any claims in terms of Section 37 of the sectional Titles Act.

The problem with this approach is that it is unlikely that the Managing Agents will be happy with such a clause as they will now assume the risk in the event of the purchaser failing to effect payment of the outstanding levies. Further, from our discussions with a number of Managing Agents, it appears that the idea of collecting the annual levies upfront certainly appeals to them as it is quicker and easier.

2. A Tripartite Agreement may be entered into between the body corporate, the seller and the purchaser, in terms of which the purchaser will assume liability for

any outstanding levies due by the seller for the remainder of the financial year and the Seller will stand surety for the purchaser's due fulfilment of the obligation.

The problem with this approach is that it is extremely unlikely that the Seller will agree to bind himself as surety for the due fulfilment of the purchaser's obligation i.e. to pay the outstanding annual levies. Furthermore, from our discussions with Managing Agents, it appears that some of them consider the possibility of entering into a tripartite agreement with both the seller and purchaser as contrary to the law.

IN CONCLUSION:

On further investigation, we were advised by a leading Managing Agent that the National Association of Managing Agents have been legally advised to accept undertakings and tripartite agreements, where the purchaser assumes liability for the outstanding annual levies. However, on taking this up with the KwaZulu-Natal Association of Managing Agents (KAMA), we were advised that they do not agree with the legal opinion received and that they are continuing to adhere strictly to the amendment. Accordingly, KAMA will continue to request payment of the outstanding annual levies prior to issuing a Levy Clearance Certificate.

Not all Managing agents agree with the approach by KAMA and certain Managing Agents have made it quite clear that they will accept undertakings from the purchaser and they will continue to issue Levy Clearance Certificates if they receive payment of levies a month in advance. It is anticipated by these Managing Agents that there will be a further amendment to Section 37(2) shortly, which will clarify the intention for the amendment.

As stated above there are options available, but it will depend on the particular Managing Agent we are dealing with whether or not the options will be acceptable to them. We will endeavour to reveal the benefits of accepting letters of undertakings or entering into tripartite agreements to the various Managing Agents, as and when we deal with them and we hope that we will succeed in the main.

Accordingly, there appears to be no finality on the matter and the position is such as at the date hereof. We will nevertheless continue to keep updated on the new developments and we shall, in turn, keep you advised thereof.