

TO PAY OR NOT TO PAY – ARE YOU ALLOWED TO WITHHOLD CONTRIBUTIONS?

When it comes to a dispute with the body corporate, we are often asked by an owner in a sectional title scheme, as to whether they can withhold payment of their contributions, until such time as their dispute has been resolved. The simple answer to this question is no!

An owner cannot refuse to pay their duly raised contributions to the body corporate. Despite the dispute, the day-to-day running of the body corporate must continue, and as such, it requires payment in order to pay the expenses of the common property.

In this article, we will take a look at the process to follow should disputes relating to the validity of contributions or charges raised.

The trustees are responsible for determining the amounts to be raised, as contributions, in proportion to the quotas of the respective sections within the scheme.

The body corporate must ensure that it accounts for all contributions and any other charges debited to members' levy accounts in its annual financial statements, and that on the written request of any member, it makes a full and detailed account of all amounts debited and credited to a member's account, available.

The trustees must give each member written notice of the contributions and charges due and payable by that member to the body corporate, within 14 days of the approval of the budget at the annual general meeting. The notice must state that the member has an obligation to pay the specified contributions and charges, specify the due date for each payment, state the interest payable on any overdue contributions and charges, and must include the details of the dispute

resolution process that applies in respect of any disputed contributions and charges.

It is important to remember that after the expiry of the financial year, and until they become liable for contributions in respect of the next financial year, as per the notice required above, members remain liable for contributions in the same amounts and payable in the same installments as were due and payable by them during the past financial year.

Should an owner not pay a contribution and/or charge on the due date/s, the body corporate must send a final notice to the member. As above, the notice must state that the member has an obligation to pay the overdue contributions and charges, as well as, any applicable interest, immediately, and if applicable, the amount of interest payable at the date of the final notice, and the amount of interest that will accrue daily until payment has been made. The notice must further state that the body corporate intends to take action to recover the amount due if the overdue contributions, charges and interest owing, are not paid within 14 days after the date the final notice is sent.

Should a member be in arrears, and the body corporate is forced to take legal action against such defaulting member, the member is liable for and must pay to the body corporate, all reasonable legal costs and disbursements, as taxed or agreed by the member, as incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such a member to the body corporate.

Article reference: Paddocks Press: Zerlinda van der Merwe is an admitted Attorney of the High Court, specialist Sectional Title Attorney (BA, LLB, LLM), Zerlinda brings a wealth of experience and forms part of the Paddocks Private Consulting Division.

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