

The maximum interest rate that a Body Corporate can charge

What is the maximum interest rate that the Body Corporate can charge on levy defaulters arrear accounts with the Body Corporate? The attorney spells out the position to the Chairman!

The Statutes that are relevant to the maximum interest rate that a Body Corporate can charge and what rate that is, are as follows:

1. **Management Rule 31 (6) to the Sectional Titles Act 1986** provides that the Trustees shall be entitled to charge interest on **arrear amounts**(which includes levies, administration charges, consumption charges, interest and other amounts) at such rate as they may from time to time determine.

2. The **Consumer Protection Act 2008** provides protection to consumers in regards to the supply of services to consumers. The Act includes in its definition of a 'juristic person', a Body Corporate. It is yet to be determined by the Courts as to whether a Body Corporate supplies services in terms of the Act to the owners in the scheme and therefore the Acts applicability.

3. The **National Credit Act 2005** provides that a juristic person includes a body of persons, corporate or unincorporated and therefore seemingly a Body Corporate.

3.1 Section 4 of the Act provides that the supply of a service can constitute a credit facility (see Section 8(3) for what constitutes a credit facility) or incidental credit, to which the Act will apply in certain respects.

3.2 The provisions of Chapter 5 of the Act which regulate interest are applicable to a credit facility and to incidental credit and interest may not be charged in an amount exceeding that, as set out in the Act.

3.3 In terms of Schedule 3 to the Act, the maximum rate in terms of the Usury Act (despite the repeal of such Act) remains in force until the Minister of Trade and Industry prescribes a maximum rate of interest.

3.4 In terms of Regulation 42 to the Act, the maximum interest rate prescribed by the Minister which can be charged on credit facilities is the repo rate (currently 5%) x 2.2% + 10% per year and on incidental credit is 2% per month equalling 24% per year.

3.5 The Supreme Court of Appeal in the **Dlamini vs Frenoleen Case** in March 2010 ruled that a Body Corporate does not supply services to the owners and therefore that levies charged are not incidental credit. The North Gauteng High Court in June 2010 in the **Mitchell vs Mansions Case** added that levies are not payable in terms of an agreement and that the Act seemingly does not apply to the imposition of levies and the charging of interest

4. The **Usury Act 1968** has been repealed by the National Credit Act.

The Attorney summarises the position to the Chairman

1. **The Management Rules** provide that a Body Corporate may determine the interest rate and charge compounded interest.

2. **The Consumer Protection Act** may not be applicable as a Body Corporate may not supply services in terms of the Act. In any event the Act presently does not contain any provisions as to

what rate of interest may be charged.

3. **The National Credit Act** although decided by the Courts, that the charging of levies is not incidental credit may still be applicable to levies raised by a Body Corporate, in certain respects. The Act provides that the maximum rate of interest in respect of incidental credit is 24% per year.

The Trustees must ensure that they convene a lawful meeting in respect of which a quorum is present and minute a majority vote determining such rate of interest on all arrear amounts, it's applicability from what date and the fact that it is to be compounded monthly.

[The views herein are not intended to be and should not be construed as legal advice. If legal advice is required, a suitably qualified attorney should be consulted with.]

Source : Alan Levy - Alan Levy Attorneys - alan@alattorneys.co.za