

COMPEG PROUD MEMBER OF NAMA

Welcome to the latest edition of Management Matters. I trust that you enjoyed all the public holidays and long weekends, and I am pleased to inform you that the next public holiday will be on the 16th of June!

I am also proud to announce that I have been elected as a Director of the National Association of Managing Agents (NAMA).

NAMA is a Section 21 company that aims to increase the efficiency of all managing agents that are members of the institution.

By joining this industry governing body, Compeg is showing its committed towards effective management of sectional title schemes, as well as the owners of these properties.

Not only do we stay up to date with the latest developments in sectional title management, but we also look after your interests.

And with me being in the heart of it all, Compeg can manage your affairs even more efficiently.

Enjoy the read,

Bradley

TALK TO US!

Your feedback and comments are valuable to us. Please write to me at cliveg@compeg.com should you have any comments, suggestions or questions. Please note: Letters and information will be included in this publication at the discretion of the editor.

Disclaimer

Any views and opinions expressed in our newsletter are not necessarily those of Compeg and Landsec, nor its directors and staff.

RELATIONSHIP BETWEEN BODY CORPORATE AND TENANTS: THE FACTS

Buy-to-let investors often choose to invest in sectional title units as opposed to freehold properties, first because unit prices are often lower and also they can offer better value for money due to the shared amenities.

Once the formalities of legally transferring the property have been attended to, the next logical step is for the buy-to-let investor to find a suitable tenant to rent the sectional title unit.

Once you are satisfied that you have found the right tenant, as the landlord all you need to do is sign the lease and provided he pays his rent on time you have nothing to worry about right? If your tenant turns out to be an undercover psycho and causes havoc in the scheme, it's not your problem... WRONG! The legislation governing sectional titles in South Africa focuses on the direct relationship between bodies corporate and owners in sectional title schemes.

>>Liability to tenant's actions

Buy-to-let investor landlords should know their liability in relation to their tenant's actions. The Sectional Titles Act 95 of 1986 ("the Act") provides that a scheme's rules shall bind the body corporate, owners of sections and any person occupying a section. The prescribed management rules go further by placing a positive obligation on an owner to ensure compliance with the rules by his lessee or occupant, including employees, guests and any member of his family, his lessee or his occupant.

The Rental Housing Act 50 of 1999 requires a landlord of a sectional title unit who has reduced a lease agreement to writing, to attach a copy of the scheme's rules to the lease agreement. This provision is important in that if a tenant is obliged to obey the scheme's rules in terms of the Act, he should at least know what rules he is bound by.



Unfortunately, in practice rules are often not attached to written lease agreements and the fact that every scheme's rules are public documents held at the scheme's local Deeds Registry does not mean that every tenant has seen them. Therefore many tenants are completely unaware of the rules that bind them and the consequences of breaching any of them.

We suggest that if you are a buy-to-let landlord of a sectional title unit you make sure your tenant has been given a copy of the scheme's rules and understands that s/he is bound by them.

The Act and rules effectively avoid any direct relationship between the body corporate and the scheme's tenants.

Tenants are not entitled to attend body corporate meetings, unless they have a proxy from the owner, and therefore they are not able to participate in any of the decisions made in relation to the scheme in which they live.

>>Unruly tenants

Furthermore every owner is directly responsible for his tenant's behaviour and therefore bodies corporate turn to owners when their tenants misbehave.

If an unruly tenant throws raucous parties regularly causing a nuisance to other occupiers in the scheme, the body corporate's remedy is to declare a dispute with the owner.

Story continues on page 2>>

>>Continued from page1

Yes, the trustees and managing agent may write letters to the tenant threatening all sorts of terrible sanctions should the nuisance persist, but ultimately if a tenant breaches the provisions of the Act or the scheme's rules, the body corporate cannot declare a dispute with the tenant because the rules provide that arbitration is a forum for disputes between bodies corporate and owners or between owners and other owners.

Therefore ultimately, the owner is the one with his head on the block for his tenant's behaviour.

If a tenant damages common property, for example he crashes his car into the scheme's gate, the body corporate could institute a delictual action against the tenant to reclaim the costs of repairing the gate, but the owner is the one with the capital interest in the scheme and the one who is responsible to ensure his tenant abides by the rules, so the body corporate will most likely claim these costs from the owner. The owner who can prove that his tenant caused the damage will then have a claim against him, but in the meantime the owner's pockets are feeling pretty light.

>>Levy payments

Another interesting scenario to consider is this one: a tenant has taken responsibility in terms of his lease agreement to pay the owner's levies directly to the body corporate. The tenant defaults in these levy payments.

The body corporate now wants to evict him. Can it do so? No! There is no provision in the Act or the common law which authorises a body corporate to evict a tenant or an owner.

So who should the body corporate turn to in this scenario, the tenant or the owner?

Again, it turns to the owner. In terms of the Act it is an owner's responsibility to pay levies to the body corporate and although he can contractually shift the payment responsibility onto another person, the body corporate's recourse will always be against him as an owner.

>>Direct relationship

Ultimately, as the persons occupying the scheme, tenants should have a direct relationship with bodies corporate. Some foreign jurisdictions, such as British Columbia in Canada, have acknowledged this notion and have legislation which facilitates owners giving "long-term tenants" proxies to attend body corporate meetings to speak and vote because ultimately they are the ones who live in the scheme, whose behaviour affects other occupiers and who are most directly affected by body corporate decisions at ground level.

They are also the ones who should be held responsible for their own bad behaviour. Other jurisdictions like England and Wales have leveraged the three-way relationship between a tenant, owner and the body corporate, by providing that if an owner defaults in his levies payments, the body corporate is entitled to intercept the rent payable by the tenant to the owner and use these funds to cover the outstanding levies due by the owner.

With the South African sectional titles legislation concentrating firmly on the relationship between owners and bodies corporate, as a buy-to-let investor you need to be aware of the fact that you may held be responsible for your tenant's bad behaviour and therefore you should put provisions in place to protect yourself and that allow you to cut your losses if necessary. Get your lease agreements drafted by an attorney who knows the consumer protections in the Rental Housing Act and specialises in leases.

(Source: Paddock Press)

<< MAKE SURE THAT YOU ARE ABLE TO VALIDLY AND FAIRLY TERMINATE YOUR LEASE IF YOUR TENANT BECOMES A CONTINUOUS PROBLEM.

FINDING THE RIGHT RENTAL AGENT

Finding a competent and trustworthy agent to manage your rental property is becoming increasingly important due to the work involved in making it safe and successful.

Here are a few tips on how to check the credentials of a rental agent.

Professional agents, like Landsec:

- have links to reputable credit agencies and know within minutes if the tenant has failed to pay any outstanding debts;
- know how to get references from previous landlords and to avoid being bamboozled by bogus references. If these references are denied, the agent will refuse to accept the tenant;
- have a database of reputable potential tenants, many already vetted who are looking for properties in their areas;
- have proven rental collection systems which give a "warning light" as soon as non-payment crops up. They also know how to pressurise a difficult tenant who is not paying. Furthermore, being a non-involved third party, they usually operate without the emotional strain that the landlord undergoes in such a situation; and
- check on the condition of the premises regularly through formal and informal visits.

(Source: Property24.com)

LANDSEC PROPERTY MANAGEMENT

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IF NOT,
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TODAY!

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