

THE COMPEG REVIEW

JOURNAL OF SECTIONAL TITLE MANAGEMENT

13th Issue
1 July 2003

As promised in the April issue of the Compeg Review, many exciting changes are afoot at Compeg and in this issue, we are very excited to introduce our new "system" and the advantages which it offers you, our clients.

We are pleased to report that the opening of our Bedfordview office has proved to be an unprecedented success. We would also like to take this opportunity to congratulate one of our Directors, Paul Connell, on his recent marriage to Debbie. May their married lives be filled with joy and love!

We have not dispensed with the other items that make our Review an interesting read and we invite you to delve in and enjoy!

PLEASE NOTE:
THE VIEWS AND
OPINIONS EXPRESSED
IN THIS PUBLICATION
DO NOT
NECESSARILY
REFLECT THE VIEWS
OF MANAGEMENT
OR STAFF OF
LANDSEC-COMPEG!

NEWSFLASH

INTRODUCING
OUR NEW IMPROVED
SYSTEM!

NEWSFLASH

NEWSFLASH

SEE PAGE 2
FOR DETAILS!

NEWSFLASH

An article appeared in the MCS Courier, a sectional title Internet newsletter, in May 2003, which we strongly believe should be brought to the attention of our readers. We consequently present a summary of, and excerpts from this article, which was entitled:

High Court censures House Rules

A recent decision of the Cape Division of the High Court criticized several flawed practices common to sectional title management and sounded a stern warning to bodies corporate to ensure that rules are not only put in place properly, but are closely adhered to by Trustees when seeking to enforce compliance.

In the unreported decision in *Body Corporate of the Cape D'Azur Sectional Title Scheme v Intercom Properties CC*, Case No. 4668/01, application was made by a body corporate for an order that a wooden structure on the balcony of the respondent's section be removed.

The application was dismissed and the body corporate was ordered to pay the owner's costs. In addition, it was ordered that no portion of the costs of the application be recovered in the form of levies from the owner concerned in his capacity as a member of the body corporate.

In the founding affidavit of the body corporate, a particular "house rule" was relied upon which prohibits the placing of items on balconies which are, in the discretion of the trustees "aesthetically displeasing or undesirable when viewed from the outside of the building". The affidavit continued to state that "it was decided by the trustees that the structure is aesthetically undesirable".

The Court pointed out that the rule referred to was a "House Rule" which was not established in terms of the procedures prescribed in s 35 of the Act, with no indication that they may have been properly adopted by the community.

CONTINUED ON PAGE 3

INTRODUCING OUR NEW SYSTEM

NOTE:

ONLY 1 DETACHABLE
DEPOSIT SLIP →

STATEMENT SERVES
AS RECEIPT IF
BANK TELLER'S
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COMPEG

Tax Invoice
 PAYMENTS DUE ON 1st DAY OF EACH MONTH

PROPERTY NAME: _____
 OWNER NAME: _____ VAT NO: _____
 ACCOUNT NO.: _____ PREM. NO. _____
 STATEMENT DATE: _____ RECEIPT TO: _____

DETAILS	Amount	VAT	Amount incl. VAT
Total Amount Due			

E.S.O.E. All payments accepted without prejudice to the Body Corporate and/or Compeg Services rights.

Bank Teller Stamp

Please note all amounts are due and payable on the first day of each month. Interest will be charged on overdue accounts. Payments accepted without prejudice. Payments will be credited against arrears if any.

PAYMENT INSTRUCTIONS

BANK TELLER WILL DETACH AFTER STAMPING STATEMENT
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A Division of FirstRand Bank Limited Registered Bank
Reg. No. 1992/01/235/08

Credit Krediteur: **COMPEG SERVICES (PTY) LTD, TRUST** Date / Datum: _____
 Adres Address: **P.O. BOX 943 JOHANNESBURG, 2000**

Bankrekening / Bank rekening: _____
 Bank No. / Bank No.: _____
 Branch No. (for 6th numbers) / Takkode (6e syfers): _____
 Account Number / Rekeningnommer: _____
 Tran. Code / Trans. Kode: _____

2 | 5 | 1 | 3 | 0 | 1 | 5 | 1 | 0 | 1 | 4 | 5 | 0 | 1 | 0 | 3 | 8 | 2 | 1 | 1

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THE NEW COMPEG STATEMENT

OUR NEW SYSTEM, Which comes into effect from the 1st of August 2003, has been introduced to ensure that we keep pace with rapid advancements in the I.T. sphere and to offer our clients the most up to date and efficient systems available.

As can be seen above, we have done away with 2 deposit slips and introduced one detachable deposit slip, which the bank teller keeps. The remaining portion of the statement, which you retain, serves as your official bank receipt, provided that the teller stamps it with the official bank stamp.

In the near future, we will be able to Email your monthly levy statements directly to you, thus eliminating the need to rely on postal services.

Kindly advise us at cliveg@compeg.com OR admin@compeg.com and as soon as we are able, we'll send your levy statement to you via Email.

At a later date the system will allow access to your statement via the net!

BUT PLEASE TAKE NOTE: Your account/reference number will be changing as from the August statement, so please ensure that if you have been paying your monthly levy by internet transfer, you will need to change your reference number to ensure that payment reaches us!

CONTINUED FROM PAGE 1

Accordingly no basis existed upon which such "house rules" could be considered as binding on members. The Court held this view in spite of the fact that the respondent had not even disputed the existence or validity of the "House Rules".

The Court made the following remarks with regard to the body corporate's case:

1. The allegation that the trustees had decided that the structure was aesthetically undesirable was made in the boldest possible manner without reference to the date, the identity of the trustees involved, or to the actual minutes of the trustees' meeting.

2. In its first letter to the "transgressor" the trustees merely stated that the structure was erected contrary to the management rules. No mention was made of any decision by the trustees in terms of the House Rules.

3. Further correspondence addressed to the respondent also contained no reference whatsoever to the trustees having resolved that the structure was aesthetically displeasing or undesirable.

4. The minutes of the subsequent general meeting, which the trustees referred the matter to, contain no reference to a decision of the trustees that the structure was aesthetically undesirable. It was clear that the decision was made because the structure had been erected "without permission". There was in fact nothing on record that indicated that the trustees had ever complained to the respondent that the structure was aesthetically undesirable.

5. The Court also focussed on the fact that that the minutes of the trustees' meeting at which it was decided to refer the matter to the members, were only recorded 15 months after the meeting, and then only after the respondent had filed its opposing affidavit in the matter.

The Court emphasised that any decision that may or may not have been made by the trustees, as required in terms of the house rule referred to, was made without

allowing the respondent to put his case to the trustees AND without regard to the aesthetic merits or demerits of the structure. It was thus the view of the court that the decision (if taken at all) was not taken for reasons contained in the house rule referred to. In effect, the trustees had failed to apply their minds properly to the house rule in question and to the relevant facts.

On these grounds the court dismissed the application with costs.

Comment:

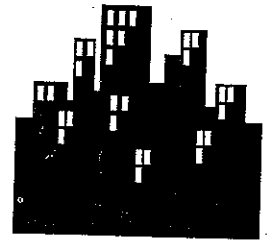
It was clearly foolish of the Trustees to rely on "house rules" for their procedure against the transgressor. It has been pointed out over a number of years that so-called "house rules" are not valid or enforceable. This fact has now been highlighted by the Cape High Court.

Other aspects raised by the Court relate to body corporate governance in general and should be noted by trustees and managing agents alike:

- where a rule requires trustees to exercise discretion, or to follow a prescribed procedure, they should do so meticulously, and be seen to do so, with proper consideration of all relevant factors;
- trustees', when exercising a discretion in terms of the Act or rules, MUST allow the other party the opportunity to present his side of the matter, to ensure that constitutional requirements for a fair administrative hearing are complied with;
- rules are not to be applied in a cavalier manner by trustees when seeking to enforce compliance;
- before attempting to enforce compliance, consider carefully which rules are relevant.

In conclusion the writer of the article states that trustees should take note that s 35(1) stipulates that bodies corporate are controlled and managed by means of rules, subject to the provisions of the Act. This is an unambiguous directive that resolutions are only effective if made in terms of rules, that the trustees should inform themselves as to the actual meaning of their rules, and apply them in a legally defensible manner.

The Back Page!



DOROTHEA SE

KOMBUIS HOEKIE

Crusty Home-Baked Wholewheat Bread

- 4 Cups wholewheat bread flour
- 4 teaspoons baking powder
- 1 teaspoon salt
- 2 teaspoons sugar
- 2 eggs
- 50 ml oil
- 500 ml buttermilk
- squeeze of lemon juice

Mix all ingredients together and bake for 1 hour at 180 degrees Farenheit.

There's no doubt that winter has arrived!

It's a perfect time for wholesome soups and crusty home-baked bread!

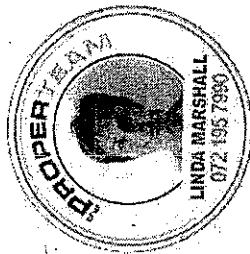
You grow up the day you have the first real laugh - at yourself!

Ethel Barrymore



THE PROPERTEAM
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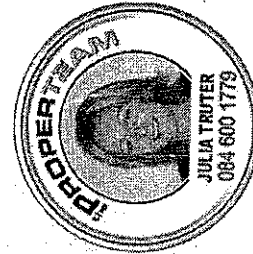
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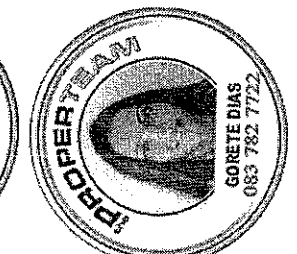
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