Mythbusters – The sectional title edition

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French journalist, writer and politician, Françoise Giroud once said: "*Nothing is more difficult than competing with a myth.*" While the wise lady certainly had a point, I welcome the challenge to "bust" some common sectional title related myths by using the ultimate weapon in the battle against myth: fact.

1. **"The trustees need my consent to raise a special levy."**

As members' contributions are based on budgets duly approved by ordinary resolution, it comes as no surprise that most members assume that the raising of special contributions would require their consent too. However, this myth is busted by section 3(3) of the Sectional Titles Schemes Management Act ("the Act"), which reads as follows:

"Any special contribution becomes due on the passing of a resolution in this regard by the trustees of the body corporate levying such contribution and may be recovered by the body corporate by an application to an ombud, from the persons who were owners of units at the time when such resolution was passed: Provided that upon the change of ownership of a unit, the successor in title becomes liable for the pro rata payment of such contributions from the date of change of such ownership."

This section of the Act makes it abundantly clear that the only people who have to agree to the raising of a special contribution (or "special levy" as it is commonly referred to) are more than half of the trustees serving on the board at the time. Their power to raise such contribution is qualified only by the fact that the special contribution needs to be required to cover a **necessary** expense that **cannot reasonably be delayed** until it can be included in the next financial year's budget, but this function remains squarely within the trustees' power and does not require the approval of any member.

2. **"I did not agree to the interest charged on my overdue levies, therefore I do not have to pay it."**

This ever-popular myth is often used as a shield by owners who find themselves in arrears with their contributions payable and feel overwhelmed by the addition of interest to their already

sizable debt owed to the body corporate. Popular as it may be, this myth is busted by Prescribed Management Rule 21(3)(c), contained in Annexure 1 to the Regulations to the Act, which reads as follows:

*"The body corporate may, on the authority of a **written trustee resolution** charge interest on any overdue amount payable by an member to the body corporate; provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005), compounded monthly in arrears;"*

The decision to charge interest on any overdue amount therefore lies solely within the powers of the trustees and no owner's consent needs to be obtained in order for the body corporate to legally charge the agreed upon interest. While this myth does not provide a valid argument against the charging of interest by the body corporate, there may be others. For example, if the trustees failed and/or neglected to pass and sign an ordinary written resolution authorising the charging of interest, or they are charging interest exceeding the maximum rate prescribed in the National Credit Act, such interest is not being validly charged.

What I find interesting about both myths unpacked above is that they are often utilised when members of the body corporate feel that the trustees' actions are somehow unfair or illegal and, while the arguments above are pure myth, there are other valid, legal arguments against these actions in certain circumstances. For example, it *is* illegal for trustees to raise a special levy if the expense they intend to cover with such levy is **not necessary** or if they are charging interest on your overdue amounts owed to the body corporate **without the necessary written trustees resolution**.

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