

Managing property properly

Can a body corporate impose fines? Fining rules in sectional title schemes

The question of whether or not a body corporate can legally impose fining rules in sectional title schemes is dependent on the rules of the scheme. In order for a **penalty rule** to be binding on the body corporate, enforceable, and the fine recoverable, it must be set in the governance documentation of the scheme. In other words, it needs to be found in either the **management** or **conduct rules**.

How fines are approved in sectional title

The first step in ensuring that the fining rule will be enforceable is that it must be accepted by the body corporate. If it is contained in a management rule it must be accepted by **unanimous resolution**. If it is contained in a conduct rule it must be accepted by **special resolution** of the body corporate. Likewise, in order for the rules to be binding on the body corporate, they must be filed at the Community Schemes Ombud Service, and the Chief Ombud must have issued a certificate of approval of the rules as contemplated in section 10(5)(c) and (d) of the Sectional Titles Schemes Management Act 8 of 2011 (“the STSM Act”).

The second step is that the penalty rule must **be reasonable and fair** in order to be enforceable. Section 10(3) of the STSM Act states that:

“The management or conduct rules ... must be reasonable and apply equally to all owners of units.”

In order for the penalty rule to be reasonable, the imposition of the penalty in the form of a fine must have a legitimate purpose. The purpose of the penalty rule could **generally** be to prevent nuisance and **specifically** to prevent breaking the rules. The fining provision could go on to list examples of transgressions that are finable, such as noise nuisance; parking on common property; washing hanging on the balcony; being in arrears with levies; and damage to common property.

What fining rules can and cannot do

The procedure that must be followed, in imposing the fine, must also be reasonably, fairly and equally applied to all owners and residents put to substantially the same purpose. Although a fining provision might give the trustees power to institute a fine, the rule cannot enable the trustees to deviate from any process. The rules also cannot contain a provision that excludes the owners’ common law rights to natural justice and due process. Taking enforcement steps to deal with transgressions requires that the owner or occupier who is affected by the decision must be notified in writing and given an opportunity to remedy the breach and to make representations at a trustee meeting.

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How fines are imposed in sectional title

1. The complainants should be required to lodge a written complaint or incident report to the trustees or the managing agent.
2. The owner and tenant should then be given a written notice of the particulars of the complaint, and a reasonable opportunity to respond to the complaint. The transgressor must be given sufficient information and adequate detail on the nature of the conduct as well as the specific sections of the STSM Act or rules that were allegedly breached in order to defend him or herself against the complaint. I suggest that the written notice should also include a reference to the rule allowing the fine to be imposed. The offender must be warned that if he or she persists with such conduct or contravention, a fine will be imposed.
3. If the owner or occupier persists with the conduct, the trustees should send a second notice pointing out that the contravention is continuing or has been repeated and inviting the person to a trustee meeting at which the person can explain or defend their actions. The notice time of this meeting should be long enough for the person to prepare a defense. The rule must therefore include an opportunity and process for a hearing for the transgressor.
4. At the meeting the transgressor must be allowed to state their side of the matter, call witnesses in their support and cross examine any witnesses the executives might have to the transgression. The trustees must take into account any representations received or made by the owner. However, the opportunity for a hearing should be given before the fine is imposed.
5. The trustees should then discuss the evidence from both sides in the absence of the transgressor and witnesses; consider all the circumstances and make a final decision on whether or not to impose the fine.

Important to note when issuing a fine

The rule should also set out the amount of the fine for each example category of transgression. The trustees should determine the amount of the initial and subsequent fine. The members in the general meeting could then approve the amounts that are to be fined. The amount that is fined must also be set out in the warning notice and in the fine notice. The fine imposed must be a reasonable amount. This does not mean that the amount cannot be substantial. The amount must be proportionate to the purpose of the penalty.

It is important to note that an immediate fine without following the due process set out above cannot be imposed for any category of contravention. The penalty rule and fining procedure must always be reasonably, fairly and equally applied to all owners and residents put to substantially the same purpose. There will always need to be a warning letter and a hearing in order for the penalty procedure to be properly implemented and the fine to be imposed.

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The fine imposed may not be claimed by the trustees as part of the monthly instalments payable by the owner. The purpose of the contributions to the administrative and reserve fund is to pay for the scheme’s expenses for maintenance of common property and rates and taxes. The duty to contribute to the administrative and reserve fund cannot include the duty to make payment of fines. The fine must be paid by the owner or occupier separately.

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