

## *Managing property properly*

### **Trustees Policies – What is the position regarding trustees rule-making**

We quite often hear of trustees in schemes making rules, usually unpopular rules. So what is the position regarding trustee rule-making?

A sectional title scheme must be run in accordance with the provisions of the Sectional Titles Act, 95 of 1986 (the Act) and the rules currently in force at that scheme. Those rules, for all schemes, are management rules and conduct rules and there is a set prescribed in the regulations to the Act.

When the developer applies for the opening of the register for the scheme it can either specify that the prescribed rules apply or can change certain of the management and all the conduct rules. Once the scheme is up and running, only the body corporate can change those rules or make new ones, and this has to be done by unanimous resolution for management rules and by special resolution for conduct rules.

All of this means that although many do, or try to, the trustees are not entitled to make scheme rules. They are however entitled to make procedural policy that they themselves, and in some cases, the owners and tenants must follow. Like the rules, the policies can be very roughly divided into management processes that the trustees and managing agent would follow, and conduct policies that residents must follow. Examples could be the processes to be followed in the collection of arrear levies, and steps that residents must take to apply for a new gate remote control device should they lose one. Or, closer to a conduct rule, steps residents must follow in regard to the moving of refuse containers to and from a central refuse collection area.

Whatever the nature of the policy, it must be made by a properly minuted trustee resolution, published to owners and occupiers and it should be reviewed at least every year, perhaps at or after the AGM, when any directives or restrictions on the trustees' activities can be accommodated as well as any changes to the policies the new board might feel appropriate.

One of the functions of the body corporate is to enforce the scheme's rules and the trustees have various options as to how that can be achieved. But how do they enforce "trustee policies" if owners do not co-operate? Section 44(1)(d) and (e) are general enough to apply to the kind of things on which trustees could make policies.

Both the board of trustees and the owners need to keep in mind two basic principles that can be applied to trustee policies. The first is that the body corporate is entitled to do anything reasonable to enforce the rules and manage the common property. This means that trustee policies must be reasonable and made to achieve an appropriate end. Secondly, owners can give directions to trustees and restrict their activities so, if enough owners don't like a trustee policy, they can get it changed at a general meeting.

There are many situations that need some sort of standard procedure to be followed and it isn't sensible to make a scheme rule to provide for it. These are the kind of things that can be covered by a much more flexible "trustee policy".