Can a Body Corporate Lend Money to its Employees?

This question comes up repeatedly in our discussion forums. It is difficult to answer because neither the Sectional Titles Act nor the prescribed rules make a definite provision one way or the other. There are **strong indications** that a body corporate can't lend money to its employees.

The functions of the body corporate are specified in detail in **section 37.** They cover establishing a fund from which to pay scheme expenses, getting the money for that fund from the owners of units in the scheme, making sure that the buildings in the scheme are properly insured, maintaining the common property and several other administrative functions. Making loans is **clearly not** one of the body corporate's normal functions.

The powers of the body corporate are contained in **section 38** and very roughly correspond with and complement the list of functions. Powers to do with money are to invest body corporate money, to borrow money and to secure the loan either with the levy income or by mortgaging property vested in the body corporate. Nowhere does it suggest that the body corporate has the power to lend money. In fact, prescribed management rule **(PMR) 26**, which deals with the powers of the trustees, specifically prohibits them from making loans to themselves or to owners from scheme funds.

But the prohibition contained in PMR 26 **does not include employees of the body corporate** or anyone else. It only mentions trustees and owners…

Furthermore, **section 38** does contain a pretty wide "catch all" provision. It says that the body corporate has the power to do all things "...reasonably necessary…" for the "...administration of the common property."

This seems to suggest that, while making loans to employees is not one of the stated or implied powers of the body corporate, there is **no absolute prohibition** on doing so and so there is an argument that, under the right circumstances, the body corporate could **justifiably lend money** to an employee if it were reasonable and necessary to do so. But since this is potentially a source of such dissention and conflicting opinion, not to mention recrimination if things go wrong, how could this decision be made?

The body corporate is an **independent legal** entity and once owners have paid their levies, the money in the levy fund is an asset of the body corporate. The functions and powers of the body corporate are exercised by the trustees, so one might argue that the trustees can make the decision to lend body corporate money to a staff member. But if the money is not repaid, it would be the owners who would have to make some additional contribution to replace those funds, so really, **the decn needs to come from the owners. Section 39(1)** provides that the owners may give directives to the trustees or place some restriction their activities. Directives and restrictions are made by ordinary resolution at a general meeting.

The correct procedure therefore, if the trustees consider lending body corporate money to an employee, is for them to **seek a directive from the owners instructing them**, by majority resolution, to do so. As the consideration of directives and restrictions is one of the compulsory items on the agenda for the annual general meeting, it would be best to use that forum but if the matter were urgent, the trustees could call a special general meeting, remembering, of course, to state this contentious purpose of the meeting in the notice!

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