

## *Managing property properly*

### **Proposed cap on penalty interest 'bad news'**

A draft management rule that will cap the interest that bodies corporate can charge owners who default on their levies has been sharply criticised by sectional title specialists.

The draft regulation, issued under the Sectional Titles Schemes Management Act, states that the rate may not exceed the maximum rate of interest a year under the Prescribed Rate of Interest Act, compounded monthly in arrears. If the regulation were introduced now, the cap would restrict the trustees to imposing penalty interest of nine percent.

Currently, a body corporate can decide on the rate of interest.

Sectional title attorneys Tertius Maree and Marina Conostas say the interest-rate limit protects debtors, without taking into account that nonpayment by some owners shifts the financial burden to others.

"A low interest rate will encourage the non-payment of levies. It is the most easily obtainable and cheapest form of credit available, and the other owners, who may also experience financial pressures, are obliged to extend it to the defaulter. If the body corporate is compelled, due to nonpayment, to obtain a loan, this will have to be done at a much higher rate of interest, again mostly serviced by the diligent payers," Maree says.

Charles Coetzee, the chief executive officer of Stilus, which provides levy insurance, says about 20 percent of the 800 000 owners of sectional title property do not pay their levies on time.

The only way for a body corporate to recover money from persistent nonpayers is to obtain a sequestration order, which can take up to four years. He says the courts are reluctant to grant sequestration orders when the amount the claimants want to recover is relatively small, which means that owners who don't pay their levies can freeload for a number of years.

Removing the incentive - in the form of meaningful penalty interest - for owners to pay their levies will have a negative effect on the sectional title property market, Coetzee says.

Sectional title attorney and educator Professor Graham Paddock says the regulated reserve fund and maintenance plan will provide people who are considering buying into a sectional title scheme with a far more accurate idea of the scheme's true financial situation. Currently, it is difficult for prospective buyers to ascertain exactly what liabilities they could incur, and whether the body corporate has made adequate provision to maintain the scheme's common property.

Paddock, whose law firm is advising both the Department of Human Settlements and the Community Schemes Ombud Service, says owners in schemes that have not built up savings will probably experience financial hardship in the short term, because levies will have to be increased sharply to meet the required reserves.

However, he says the current situation, where owners are hit by special levies whenever major repairs must be undertaken, or where an owner who knows that a special levy is about to be imposed sells his or her unit, passing the liability onto the purchaser, is unfair.

The reserve fund and maintenance plan are intended to ensure that owners pay while they derive the benefits of a common property that is properly maintained, Paddock says.

Constas and Maree welcomed the moves to combat the practice of schemes using "revolving" special levies to finance maintenance and repairs. They say owners tend to take a conservative approach when the budget, on which their levies are based, is discussed and approved at annual general meetings.

Constas says the requirements for drawing up a maintenance plan are quite onerous and most trustees will need expert help. This is likely to create opportunities for people with experience or qualifications in construction and property maintenance to provide services, including software, specifically to advise trustees.

Paddock says the cost to schemes of funding the Community Schemes Ombud Service (CSOS) should be seen in the context of how the service will benefit owners and residents when they encounter disputes and problems.

He says the CSOS and the new management rules have significant implications, and it is important that owners in community schemes use the opportunity to study and comment on the draft regulations.

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