

Managing property properly

Levy contributions authorised by trustee resolution

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One of the items which I will discuss in this article is the consideration, confirmation or variation of an itemised estimate of the anticipated income and expenses of the body corporate for the ensuing year – more commonly known as the **budget**.

The budget must ensure that there is an **income sufficient for the establishment and retention of an administrative fund**, as required by section 37(1)(a) of the Sectional Titles Act 95 of 1986 (“the Act”). This **fund is required for expenses** such as the repair, upkeep, control, management, and administration of the common property, and includes a reasonable provision for future maintenance and repairs, the payment of rates and taxes, and other municipal charges related to the common property.

The income required by the body corporate is determined by the trustees in terms of section 37(1)(c) of the Act, and **recovered from the members** of the scheme in accordance with section 37(1)(b) of the Act, in the form of **contributions to the administrative fund**.

According to section 37(2) of the Act, the liability for these contributions accrues from the passing of a **trustee resolution**. Once such a trustee resolution has been passed, any arrear contributions may be recovered by the body corporate by action in any court of competent jurisdiction, from the persons who were the registered owners of units, at the time when the trustee resolution was passed. Should there be a change of ownership of a particular unit, the purchaser or successor in title becomes liable for the pro rata payment of the contributions raised as from the date of registration of the transfer of the unit. Section 15(3)(a)(i)(aa) of the Act authorises the body corporate to withhold the issue of a levy clearance certificate until such time as all contributions have been paid to the body corporate in respect of a unit prior to transfer.

It is very important to note that without a valid trustee resolution authorising the budget and the contributions raised, the body corporate may face the very possible risk of unsuccessful levy collection procedures in court, as the court will unlikely grant an Order for payment of arrear contributions which have not been authorised by a trustee resolution, resulting in a potential substantial loss of income for the body corporate and prejudice being suffered by the members of the scheme by an unsuccessful claim for arrear contributions from an recalcitrant owner.

Footnote from Compeg:

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