

## *Managing property properly*

### THE ADMINISTRATIVE FUND – THE BACKBONE OF COMMUNITY SCHEMES

Recently, in the matter of Aminie Body Corporate and A Kondile, the Community Schemes Ombud Service (CSOS) issued an adjudication order in favour of a Body Corporate against a property owner who was not paying his levy contribution. The property in question was leased by the property owner to a tenant and the property owner failed to meet their levy obligation. In this case, the adjudication order was granted in terms of section 39 (1) (f) of the Community Schemes Ombud Services Act, 2011 (Act 9 of 2011). A rental attachment order was issued requiring the tenant (occupier of the unit) to pay the rental amount to the Body Corporate and not to the owners of the property, until such time that the arrear levy account has been settled.

The CSOS has a vision of a reliable, transparent and recognised regulatory authority for all community schemes in South Africa. That means taking our arbitral function literally and doing so in a manner where all parties to a community scheme are aware of their rights and obligations. It is an obligation of the Body Corporate to ensure that there is an administrative fund for the management and administration of the scheme. The administrative fund is required to cover the estimated annual operating costs for:-

- (i) the repair, maintenance, management and administration of the common property (including reasonable provision for future maintenance and repairs);
- (ii) the payment of rates and taxes and other local municipality charges for the supply of electricity, gas, water, fuel and sanitary or other services to the building or land;
- (iii) the payment of any insurance premiums relating to the building or land; and
- (iv) the discharge of any duty or fulfilment of any other obligation of the body corporate.

#### **Section 3(1) (a) of the STSMA**

The determination of the administrative fund has to take into consideration the needs and operational requirements of the scheme for the financial year; the operational requirements are agreed upon and approved at the annual general meeting of the scheme. Liability for contribution to the administrative fund accrues from the passing of the resolution. In terms of the Management Rule 25, the Body Corporate must within 14 days of the approval of the budget of at the AGM, give notice to each member of the contribution and charges due and payable by each member to the body corporate.

The members of the Body Corporate play a vital role in ensuring that the scheme is run efficiently. This includes an obligation to make the necessary contribution towards the administrative fund or any levy fund raised by the Body Corporate. Non-payment by members of the Body Corporate can cripple a scheme, an industry practice which the CSOS is painfully aware of.

The Body Corporate has an obligation to enforce payment of any outstanding levies and can approach the Ombud for the recovery of the money owed as envisaged by section 3 (2) of the STSMA. Section 39(1) (e) of the CSOS Act, also provides that an order can be issued by the adjudicator for the payment or re-payment of a contribution or any other amount. The above-mentioned relief can be available to the Body Corporate and can assist in minimizing the legal costs associated with debt collection or court processes, which sometimes can take years for the case to be finalized. It is imperative that the Body

Corporate commence with the recovery process as soon as possible. In terms of Management Rule 25

(2), if the money owed is not paid on the specified date, the Body Corporate must send a final notice to the member informing such members of the obligation to pay the overdue contribution and charges and any applicable interest rate.

Should the Body Corporate opt to pursue the collection through court processes, it must be noted that even though a member of a Body Corporate is liable to pay all reasonable legal costs and disbursements, such costs must be taxed, unless agreed to by the member (Management Rule 25 (4)).

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