

Managing property properly

TRUSTEES ARTICLE 6

How Much Legal Costs are Recoverable by a Body Corporate from an Owner?

The attorney leans back at the head of the table with the Trustees gathered around him. The Trustees furiously ask the attorney "why can't we charge the owner the legal fees that you have charged the Body Corporate? It is not our fault that the owner was in arrears! Why should the Body Corporate lose when instituting legal action against owners who refuse to pay their levies?" The attorney starts sweating. How am I going to explain to the Trustees that the complicated issue of legal costs.

Let me start from the beginning he says:

First of all one has to understand that there are different costs tariffs. These are:

- Party/Party costs – these are the costs that are prescribed by the Magistrate's Court Act and the Supreme Court Act and are in most cases quite nominal (the lowest tariff).
- Attorney and client costs – this a term to describe costs which may be awarded to a party, which are calculated on a slightly higher scale than the party/party costs. Usually about 20% higher (the middle tariff).
- Attorney and own client costs - this is a terms used to describe the highest award of costs, in my view normally an amount of about 50% above party/party costs (the highest tariff).

When one commences legal action, normally one would claim party/party costs (the lowest tariff). If successful at court, normally the court orders the losing party to pay the successful parties costs on this tariff.

The Sectional Titles Act however and more specifically Management Rule 31 (5) thereof provides that an owner being in arrears with his levy payments is liable for costs on an attorney and client scale (the middle tariff).

Therefore strictly speaking the owner is only liable for costs on the middle tariff and these are which should be charged by the attorney to the Body Corporate for collecting the arrear levies.

Furthermore the owner can insist that the charges raised by the attorney be taxed by the Taxing Master at court in order to ensure that they are in line with what can be charged by the attorney.

Should the owner insist upon this, the attorney draws a "bill of costs" and sets the bill down for taxation, where the owner can be present and where the Taxing Master decides what costs to allow and what not to allow?

Once this taxation is complete, then the taxed amount must be debited to the owners account and the owner must make payment of such costs immediately.

In most cases, owners do not insist on taxation and make payment of the attorney's charges, as charged originally.

The attorney smiles confidently. The Trustees now know what legal charges the owner is liable for and what legal charges can be recovered from the owner.