



Nama News

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Fines are OK - but they must be reasonable!



Article by
KAREN BLEIJS

In 2000, believe it or not, London held a "Pavement Rage Awareness Week" where it was proposed to fine persons for walking too slowly during the shopping season on Oxford Street.

In view of the above I would struggle to accept any Sectional Title owner's gripe that their Body Corporate Conduct Rules are petty - and this also applies to Rules concerning pets like cats and dogs!

But enough levity, the pertinent question to be answered in this article is whether it is permissible for Trustees to impose fines upon unit owners for the late payment of levies or the breach of Rules and if so, how it should be implemented.

With regard to a means of enforcing Sectional Title rules, opinions vary widely. Can a fining system be used, or *should* it even be used as a remedy?

Undoubtedly the Act allows for a system of fining - section 38(j) gives the Body Corporate "the power to do all things reasonably necessary for the enforcement of the rules and for the control, management and administration of the common property".

This is reiterated in Management Rule 28(3) where a virtual *verbatim* re-statement of section 38(j) is found.

What is essential to permit a Body Corporate to implement a fining system though, is to specifically make provision for it in either the Management or Conduct Rules.

The Rules, when amended, must be lodged at the Deeds Office.

**Rules must
be
enforceable**

In my experience the amended Rules usually state that the ultimate decision as to whether to impose a fine or not is left to the discretion of the Trustees.

A warning must be issued loudly and vociferously to Trustees: That the term "reasonableness" always applies, and when it comes to sanctions, "fairness" is a prerequisite.

The Trustees must *never* forget that they are operating within the arena of the greater South African legal system when they make a decision to impose a fine on a unit owner - a situation that can in no circumstances be taken lightly! Ultimately each decision taken by Trustees to impose a fine amounts to an administrative decision that may in



What use is a rule without a sanction to enforce it?

appropriate circumstances be taken on review to the High Court.

Review proceedings will succeed if it can be proved that the Trustees' failed to apply their minds to the decision or acted from manifestly ulterior motives or if the decision was manifestly unfair or unreasonable.

The stakes are high but then again the imperative to ensure compliance with Body Corporate Rules is just that: an imperative - a *sine qua non* or an absolute MUST.

The answer relating to fines on

late payment of levies, is a crisp "yes".

The resolution should also state exactly how the fines will be determined and then collected from recalcitrant unit owners.

Usually the collection is done in the same way as all other expenses that are due to the Body Corporate.

At the end of the day what use is a rule without a sanction to enforce it?

And what is a Body Corporate without wise and reasonable Trustees at its helm?

FAQ's

By ELMO STUART

Can the trustees raise a special levy without the consent of the owners?

Yes. In terms of standard Management Rule 31(4) the trustees are authorised to, from time to time and when necessary, make special

levies upon the owners or call upon them to make special contributions in respect of such expenses that are allowed in terms of the Act and Regulations and which inter alia includes expenses which they have not budgeted for.

Such special levies may be made payable in one sum or in such installments as the

trustees may direct.

This mechanism can be used to raise funds for unexpected and unpredicted expenses such as damage and/or maintenance to common property.

For luxurious and non-luxurious improvements, the provisions of the Management Rules must be complied with (SMR 33).

Unit owners can now avoid paying a debt twice



Article by
JUDITH VAN DER WALT

These days it can be quite simple for a creditor to take judgment against a Body Corporate for outstanding debts, such as unpaid electricity accounts.

However, it happens quite frequently that the judgment debt remains unpaid if the Body Corporate fails or refuses to pay.

In circumstances where the Body Corporate does not own any movable or immovable property which the judgment creditor can attach, the Body Corporate could get away without paying any of its debts to its creditors.

Fortunately, Section 47(1) of the Sectional Titles Act ("the Act") addresses this situation by providing additional security to creditors who are not able to satisfy a judgment debt against a Body Corporate.

Where the Body Corporate has no assets to attach and the judgment creditor is left empty-handed, the judgment

creditor can go back to the court which handed down the initial judgment and bring an application to join the members of the Body Corporate in their personal capacities as co-debtors in respect of the outstanding debt.

Pro rata portion

Each member will be liable to pay to the judgment creditor his pro rata portion of the judgment debt.

It will be calculated either according to his participation quota or any alternative determination made in terms of Section 32(4) of the Act made prior to the judgment being handed down.

But what happens if an owner can prove that he has already paid his pro-rata share of the debt and that he does not

wish to make any further contributions to the creditor or to the Body Corporate? Prior to the amendment of the proviso to Section 47(1) in 2005 such an owner had to pay the creditor his share notwithstanding that he had already paid it to the Body Corporate. He was then entitled to obtain a refund of that amount from the Body Corporate.

Since the 2005 amendment the proviso to section 47(1) now states that an owner who has paid his share of the creditor's claim to the Body Corporate may not be joined as a joint judgment debtor.

In practice the owner who can prove payment of his share will be able to raise this as a defence to the creditor's application for his joinder.

The court will not join that owner as a co-debtor and he will not be forced to make a double payment as he would have been obliged to under the previous version of the proviso to Section 47(1).



Living on Earth is expensive, but it does include a free trip around the sun every year.



If Shoprite-Checkers is lowering prices every day, how come nothing they sell is free yet?



Ever noticed that the people who are late are often much jollier than the people who have to wait for them?



Some mistakes are too much fun to only make once.



Don't cry because it's over; smile because it happened.



The 50-50-90 rule: Anytime you have a 50-50 chance of getting something right, there's a 90% probability you'll get it wrong.

**If at first
you don't succeed,
destroy all evidence
that you tried.**

Cooper Phrases

Dale Carnegie once said that it was easier to earn a million dollars than create a new phrase. Well in Tommy Cooper's case he did it - 'Just like that'.

♦ A woman told her doctor, "I've got a bad back." The doctor said, "It's old age." The woman said, "I want a second opinion." The doctor says, "OK. you're ugly as well."

♦ A man walked into the doctor's, he said "I've hurt my arm in several places." The doctor said, "Well, don't go there any more."

♦ I went to the doctors the other day and I said, "Have you got anything for wind?" So he gave me a kite.

♦ Two aerals meet on a roof - fall in love - get married. The ceremony was rubbish but the reception was quite brilliant.

Block for Managing Agents

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