

A fair share of the levy

By Anton Kelly

A rather large home owners association (HOA) has another HOA as a subsidiary, which in turn has a sectional title scheme as one of its subsidiaries. This sectional title scheme has 12 sections, one of which is a hotel. The hotel section, which is allocated 65% of the participation quota, is likely to cause a disproportionate amount of wear and tear to the scheme, so a simple percentage breakdown on working out costs for maintenance seems unfair.

The question asked about this situation is: How do you work out how much the hotel should pay for maintenance of the sectional title scheme and how do you change the current contribution if it is unfair? A complication is that the participation quota determines the hotels contribution to the schemes administrative fund and, since the register is already open and the scheme is operating, the participation quota cant be changed to make the hotels contribution more realistic.

The overall scheme maintenance costs and the maintenance costs directly attributable to the hotels operation must be accurately established. Some sort of expert team should be brought in to do this if it is too complicated for the trustees or managing agent. If it is confirmed that the hotel should contribute in a different proportion to the 65% of the participation quota, a rule must be made to alter the effect of this quota.

The participation quota determines the size of the undivided share of the common property allocated to each section, the value of the vote the owner of each section has and the share of the levy that they must pay. Section 32(4) of the Act allows the vote value and the share of the levy contribution to be changed by making a rule. This allows certain specific expenses to be isolated and paid for by specific owners where this is appropriate. Note, however, that the participation quota itself is not changed by this rule and the rule may not alter the undivided share in the common property allocated to the section.

The rule must be authorised by a special resolution and, additionally, any owner adversely affected by the rule must consent to it in writing. The meaning of adversely affected is open to interpretation but it is worth mentioning that merely having to pay a larger proportion of the levy is not necessarily an adverse effect.

Anton Kelly is one of the Course Conveners of the University of Cape Town (Law@Work) Sectional Title Scheme Management course. The next presentation will start on 20 June 2011.