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NEW
LOOK!

Bodies Corporate News has a whole new look and a whole new outlook too. As the only national magazine in South Africa focusing on the legalities and lifestyle of communal sectional title living, Bodies Corporate News started its life as newsletter-style publication. A few months back negotiations began to produce a new, improved Bodies Corporate News – with a fresh, modern design and layout and including lifestyle articles of interest to people in close-proximity living situations – and here it is, our very first edition of the new-look Bodies Corporate News magazine. Hope you enjoy browsing it.

Rob McWilliams
The Managing Editor

GET IN ON THE ACT

From 1 July the City of Cape Town will be billing the owners of sectional title units separately and directly for Municipal rates and taxes. BCN interprets the implications of the new Municipal Rates Act for trustees and owners.

Up till now, your Body Corporate has been receiving one single account for services such as sewerage and solid waste removal, and the rates and taxes on the value of the property. That's all about to change with the introduction of the Municipal Rates Act which sees the implementation of an individual billing system for sectional title owners.

It doesn't take much imagination to foresee the kinds of teething problems this system is likely to have, and, in fact, has already encountered – for example, there were serious errors when the City published their valuations of individual units and the City does not even have a data base of owners and their addresses. Although the City hasn't given an indication of how the individual accounts will be calculated, experts like Graham Paddock and Tertius Maree are predicting that individual owners will end up paying more than

they were when the rates were calculated as a group.

Despite these issues, Propell's legal expert, Simone, describes the new Act as 'fairer to the individual and workable'. She and Propell CEO, Charles Coetzee, helped BCN to get to grips with some of the immediate and longer-term implications for Bodies Corporate. These are some of the issues you must think through and plan for.

Bodies Corporate

It's all about the Annual Budget. A portion of it is made up of the rates and services owing to the City. Because Bodies Corporate prepare their budgets annually and many of them are already set, and, therefore the levies are also set, there may be a period of 'double-paying' for some owners who will not only have to pay their individual accounts but also their full levies. It is imperative that Bodies Corporate find out what they are legally permitted to do to prevent this or compensate owners. Your managing agent should be able to advise you – alternatively, feel free to call the BCN Helpline. Of course, if your AGM comes up after 1 July, you will have far fewer complications. Simply adjust your budget to exclude the rates and services. In situations where most of the budget is taken up with rates, the difference will be quite significant – but in cases where the levies cover lots of common ground like parks and swimming pools, security etc, the reduction will not be as significant.

Trustees

In some ways you are being relieved of responsibility. However, bear in mind that,

although each individual owner now becomes personally responsible for his or her rates account, you are still obliged to sort out any arrears the Body Corporate has with the City of Cape Town – and that means you are still going to need to chase down bad payers who owe the Body Corporate. We're not sure yet how the City will respond if certain individuals consistently neglect to pay their accounts – will they hold the Body Corporate as a whole, responsible, and withhold services from the entire complex? It's an unpredictable situation so make sure you have adequate fidelity cover. (see interview with Paddy Herbst in this edition of Bodies Corporate News).

Owners

If, as the experts are predicting, the new Act requires more from you than you were paying previously, you may need to pass this on to your tenant. Be prepared to make rental adjustments. Furthermore, be aware that you will now need two Clearance certificates in order to sell your unit – one from the Municipality and one from the Body Corporate – but that if the Body Corporate is in arrears, this may well affect your individual clearance.

Managing agents

You are likely to be inundated with queries and be pressured to call meetings or bring AGM's forward. Make sure you are well informed about the Act and that you have a plan in place to discuss with trustees and owners. Obviously new budgets will need to be drawn up for 2008.

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Professional Indemnity for Managing Agents launched (PIMA)

Does your managing agent have professional indemnity cover?

Says NAMA chairperson Dr Gerhard Jooste "All professional people that take their status as professional service suppliers seriously take out PI Insurance to protect themselves and their clients. As Managing Agents we believe that we are delivering a professional para-legal service"

Over the past couple of years there have been great strides in developing the managing side of sectional title into a more formalized and professionally recognized industry. We have seen involvement of NAMA (The National Association of Managing Agents) from previously less formal regional associations, more interaction between authorities and the managing agents, formal education through Paddocks / UCT for managing agents, code of conduct and communication means for sectional title managing agents and more interaction with other key role players such as insurance advisors, valuation experts, attorneys, banks, levy financiers, educators and so on. Graham Paddock, an industry expert and the leader of the government project to create an Ombud service, explains that "professional indemnity for managing agents is a welcome addition in an industry that is becoming more professional every year and in which increasing standards are being expected and required". As Mike Addison of Addsure puts it "The concept of Professional Indemnity is part of maturing into a truly professional industry. Insurance and Financial Advisors for example, are required by legislation to disclose whether or not

they hold professional indemnity cover on introduction to a prospective client. The managing agents are not required to do this, however, now trustees and owners can ask the question – Do you, Mr Managing Agent, have professional indemnity cover?"

What does this mean to all stakeholders? GOOD NEWS! If your managing agent by way of his / her professional error or advice, causes your body corporate to suffer a loss, and has this sort of insurance cover – the body corporate is more likely to be successful in being reimbursed for such a loss.

This product, PIMA, is brought to the industry by Sectional Title Insurance specialists Addsure who have, together with NAMA, negotiated this with Phoenix Underwriting Managers. More information can be obtained from Addsure 021 5515069 or NAMA 012 3311782.

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Lawns, gardens and recreation facilities

As soon as something new is erected on common property, or something is changed thereon, every one seems to jump on the improvement bandwagon. This is so because the term improvement is easy to understand and is contained in the Management Rules.

It is often difficult to obtain the necessary permission from the owners to effect an improvement. A non-luxurious improvement may require a special resolution (75%) by the owners if the trustees receive a written objection from an owner. It is interesting to note that such special resolution must be taken at a general meeting of owners. It cannot be taken by way of the round robin method.

A luxurious improvement requires a unanimous resolution by the owners.

Section 38(d), dealing with the powers of the Body Corporate, is often overlooked. It states as follows:

The Body Corporate may exercise the powers conferred upon it by or under this Act or the Rules, and such powers shall include the power where practicable, to establish and maintain on the common property suitable lawns and gardens and re-creation facilities.

In terms of section 39 of the Act, the powers of the Body Cor-

porate shall, subject to the provisions of the Act, Rules and any restrictions imposed or directions given by the owners, be performed by the trustees.

Quite often the trustees want to establish new gardens or change the appearance of existing gardens. This can include planting new trees, the replacement of lawn with sections of paving or stones etc. This only requires a trustees' resolution and is not an improvement for the purposes of Management Rule 33.

The Act goes further and empowers the trustees to establish and maintain recreation facilities. Here it becomes difficult to distinguish between an improvement for the purposes of Management Rule 33 and a recreation facility. Factors such as the cost of the new structure, the type of structure, the effect it will have on the common property, costs of future maintenance, the need to raise a special levy, the effect on accumulated reserves and the added value to the scheme as a whole should be taken into account. Therefore a simple braai facility at small cost can be seen as a recreation facility and only requires a trustees' resolution. But put a huge roof over it at great expense it is probably best viewed as an improvement. The building of a new swimming pool or tennis court is a further example of an improvement, not a recreation facility, for purposes of Management Rule 33.

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ACKNOWLEDGEMENT

This publication acknowledges the contribution made to the Sectional Title Industry by Tertius Maree and the late Bob Gould, whose published work provides us with additional insight.

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