



# Nama News

National Association of Managing Agents

Newsletter serving the  
Sectional Title Property Community



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## When can an owner not vote?

### Management Rule 64

Article by  
**JUDITH VAN DER WALT**



**In terms of Prescribed Management Rule 64 of the Sectional Titles Act No. 95 of 1986, an owner is not entitled to vote at any Body Corporate meeting if his levy contributions are in arrears or if he has persistently breached a conduct rule and he has been warned by the trustees in writing to refrain from breaching the relevant conduct rule.**

The rule specifically provides that no owner "shall be entitled" to vote, which is an absolute prohibition on owners whose levies are in arrears taking part in voting on **ordinary** resolutions.

This prohibition could have unfair consequences, especially in circumstances where the amount which is in arrears is insubstantial.

#### **Incorrect calculation of levies**

The other question which arises where an owner is prohibited from voting is:

"What happens if the outstanding levies have been incorrectly calculated, or if a number of owners believe that a special levy has been invalidly raised and they refuse to pay the special levy, leaving their contributions in arrears if the special levy is valid but not otherwise?"

Can an owner still be prohibited from voting if there are such unresolved disputes?

If such disputes are not resolved, or capable of being resolved at the meeting, the only remedy available to such an owner who has been denied the right to vote, is to approach the High Court for an order declaring that his levy contribution was not in arrears at the time of the meeting taking place and that he could therefore not have been validly prohibited from voting.

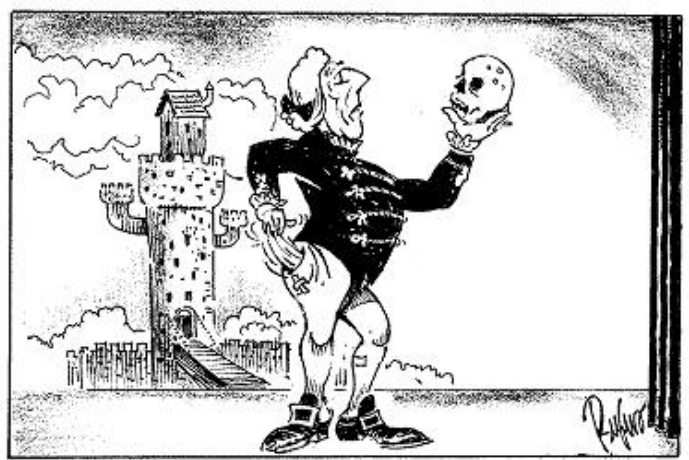
The court will, in all probability, take into account whether this owner's vote would have made any difference to the results of the vote and whether he suffered prejudice by being precluded from voting.

An owner who has paid the disputed outstanding amount to an attorney, to be held in trust pending the resolution of the disputes regarding the outstanding levy contributions, and thereby arguing that no levies are outstanding, can ask the court to take this payment into account when it has to decide whether the levy contributions are outstanding or not.

#### **Written warning to owner**

The members are not entitled to resolve at the meeting that an owner who is in arrears will be entitled to vote on ordinary resolutions, as that would be in direct conflict with the provisions of Prescribed Management rule 64.

In circumstances where the trustees rely on the breach of a conduct rule by the relevant owner to prohibit him from



**"TO VOTE, OR NOT TO VOTE."  
Non-payment of levies removes your vote.**

**"An owner who has paid the disputed outstanding amount to an attorney . . . can ask the court to take this payment into account when it has to decide whether the levy contributions are outstanding or not."**

voting, they will have to produce the written warning sent to the defaulting owner at the meeting if there is any dispute as to whether the owner is entitled to vote or not.

Where an owner is in arrears with his levy contributions or in breach of a conduct rule the holder of a bond over his unit is entitled to vote at the meeting on behalf of such an owner, irrespective of whether

the bondholder has received notice of the meeting or not.

■ *Judith van der Walt is from Paddocks, a specialist sectional title firm based in Claremont, Cape Town which operates nationally. Paddocks provides various products and services to the sectional title industry and presents the NAMA accredited Sectional Title Scheme Management Course together with the University of Cape Town.*

### **ANNUAL GENERAL MEETING**

**By VANIDA MOODLEY**

NAMA'S Annual General Meeting will be taking place this Friday, 19 October 2007 at La Montagne, Ballito starting at 14h00. A seminar will be held from 09:00 to 12:30 and the following topics will be raised:

- (1) Fractional Ownership by Nike Pillay
- (2) Multi-tiered Bodies Corporate by Dr Gerhard Jooste
- (3) Homeowners Associations by Marina Constas

Please feel free to join us for these events! For more information and cost to attend please contact Vanida on (031) 309 8790 or send an e-mail: nama@eastcoast.co.za

# AGM quorums: Are they affected by levies in arrear?

## Unequivocally: Yes.

If an owner is in arrears with his levies, he cannot be counted for the purposes of determining if a quorum is present for the holding of a general meeting.

Management Rule 57 to the Sectional Titles Act states that only those persons entitled to vote, being *those persons who are up to date with their levies and other contributions*, shall be counted for the purposes of determining quorum requirements.

### Rule 64

This can paradoxically lead to the anomalous situation where, at a special general meeting for the purposes of voting for either an unanimous or special resolution, an owner who is present at the meeting but who is in arrears with his levy account will *not* be taken into account for determining quorum requirements but may nevertheless vote in respect of the resolution - this thanks to Rule 64!

The Rules further provide that if a quorum is not present within half-an-hour from the

Article by  
**KARIN BLEIJS**



time appointed for the general meeting, then the meeting shall stand adjourned to the same day, time and place in the next week.

What follows though, seems to have disturbing implications: ". . . and if at the adjourned meeting a quorum is not present within half-an-hour the person's present shall form a quorum and voting may proceed."

Does this mean that an owner who is in arrears with his levies may cast his vote?

Thankfully the answer is: "No".

Owners who are in arrears with their levies will *still* not be allowed to vote thanks to Rule 64, which places an absolute prohibition on voting for normal resolutions where owners have levy arrears.

Some confusion exists as to whether Rule 57 also applies

to meetings where special or unanimous resolutions are proposed.

My answer would be: "definitely not!" Section 1 of the Act stipulates *exact* quorum and voting requirements for general meetings at which special or unanimous resolutions are to be passed and these requirements can under no circumstances be varied.

The provisions of the Act always override the Rules. Rule 57 thus cannot apply to meetings where it is proposed to pass either an unanimous or special resolution.

### Meeting can be void

But let us return briefly to the first proposition put forward in this article: if an owner is in arrears with his levies, he cannot be counted for the purposes of determining a quorum for a general meeting. Effectively this means that if the Trustees are not especially diligent in properly determining the quorum for a general meeting, the meeting is void and any decisions taken thereat are invalid.



## LAWYERS

Q: Why won't sharks attack lawyers?

A: Professional courtesy.

Q: Why did God make snakes just before lawyers?

A: To practice.

Q: Why are there so many lawyers in the U.S.?

A: Because St. Patrick chased the snakes out of Ireland.

Q: How can you tell when a lawyer is lying?

A: His lips are moving.

## DEBT

He that dies pays all debts.  
- William Shakespeare.

Creditors have better memories than debtors.  
- Benjamin Franklin.

One can pay back the loan of gold, but one dies forever in debt to those who are kind.  
- Malayan Proverb

## Block for Managing Agents

## FAQ's

### By ELMO STUART

#### Must levies be collected in accordance with the National Credit Act?

It has been argued that, due to the nature of levies and the fact that it is normally budgeted for in a particular financial year and payable over a period of 12 months, same can be regarded as a credit to which the National Credit Act applies.

Payment of levies is a statutory obligation of Sectional Title ownership and levies are levied and payable in terms of the provisions of Section 37 of the Sectional Titles Act and Management Rule 31.

Interest on levies is not payable by agreement between the Sectional Title owner and the Body Corporate, but are charged by determination by the Trustees, at such rate as they deem fit [Management Rule 31(6)]. There is no consumer/credit provider relationship between a Body Corporate and a Sectional Title owner.

Therefore, the National Credit Act is not applicable.

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