Q&A with Jennifer Paddock - 2010 08
By Jennifer Paddock

Contravening the conduct rules

Q1: Please advise whether fines or penalties for contravention of the conduct rules can be imposed for persistent transgressors.

A1: Neither the Sectional Titles Act nor the prescribed rules provide for the imposition of fines or penalties on apparent transgressors of a scheme's conduct rules.

It is possible for a body corporate to adopt a rule, either a management rule by unanimous resolution or a conduct rule by special resolution, which gives the trustees the authority to impose fines on persons found guilty of breaching a conduct rule, but such a rule will only be valid and enforceable if it complies with the principles of natural justice – particularly audi alteram partem, which means “let both sides be heard”. In the context this means that the apparent transgressor must be summonsed to a hearing at which he has an opportunity to state his case. If the trustees then find that the person is guilty of breaching the conduct rules, they can impose a reasonable fine.

It is important to note that for a fining rule to be enfoceable it must be carefully drafted. I would therefore recommend that you employ the services of an attorney specialising in sectional titles to draft it for the body corporate.

Outstanding levies

Q2: Is there a standard procedure for recovering outstanding levies? Can the trustees draft and implement a procedure or is approval by the owners required?

A2: The usual procedure used to collect arrear levies is to hand over the defaulter to a collections attorney who will use the court process to recover the money for the body corporate.

Something the trustees may consider before going this route is to resolve by majority vote to charge interest on arrear amounts at such a rate as they may determine from time to time. This may serve as a deterrent for owners considering not paying their levies and will ensure that the body corporate ultimately does not lose any money.

Hot water installation issues

Q3: I am the owner of a flat located on the ground floor of a two-storey block. The hot water cylinder (HWC) that supplies my flat is located under the tiles in the roof space above the upper flat’s ceiling. Who is liable for payment should the HWC need repairs or replacement and who is liable for any damages incurred whilst such work is being carried out?

A3: The answers to your questions are contained in prescribed management rule 68(1)(vii), which says:

"In addition to his obligations in terms of section 44 of the [Sectional Titles] Act, an owner shall maintain the hot water installation which serves his section, or, where such installation serves more than one section, the owners concerned shall maintain such installation pro-rata, notwithstanding that such appliance is situated in part of the common property and is insured in terms of policy taken out by the body corporate."

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