Q&A with Jennifer Paddock - 2010 06
By Jennifer Paddock

Contractually obligating owners

Q1: I would like to know if the trustees can contractually obligate owners without notifying owners.

In our case, our trustees signed a contract with a garden service that we cannot get out of, and we are under financial constraints. Also, can trustees be removed and banned from being trustees again in the future?

A1: The trustees are the elected managers of the body corporate and are the people who are empowered in terms of the Sectional Titles Act, 1986 to carry out the functions and powers of the body corporate. One of the body corporate's powers is to appoint such agents and employees as it deems fit. Provided the budget approved at the last AGM made provision for maintaining the gardens in the scheme, the trustees would be entitled to enter into a contract for garden services on behalf of the body corporate.

As for removing the trustees, the prescribed rules allow the owners in general meeting to remove a trustee by passing an ordinary resolution to that effect, but the notice calling the meeting must disclose the intention to vote upon this removal. There is no provision in the Act or the rules for banning a person from acting as a trustee in the future.

Roof in dire need of repair

Q2: We are a body corporate of 11 units and we share one roof. We have been having problems with leaks from our roof for the last 2 years and in time, the problem has only gotten worse. We tried claiming from the insurance about 2 years ago to have the leaks repaired but the insurer has refused to pay out, citing that the body corporate has not maintained the roof for years and therefore cannot claim for it now. We now face bearing the cost of repairing the roof ourselves. Due to the cost, we have been unable to get majority on this issue and have delayed it each year. Obviously, each year, the cost of repairing also goes up.

This year, the trustees have decided to declare a special levy to fix the roof. However, we are worried that some owners might default in paying as "their part of the roof" is not leaking. How can we enforce this special levy?

A2: The owners need to understand that they own undivided shares in all of the common property and therefore they cannot differentiate "their part of the roof" from any other part of the roof. The roof is common property and therefore the whole roof is owned by all owners.

Before the special levy is raised, the trustees must ensure that they have set a rate of interest to accrue to arrear levies in terms of PMR 31(6). Then they must raise the special levy and if owners default, the trustees can warn them in writing that if they don't pay the overdue amount within a certain period (for example 7 days), they will be handed over to a debt-collecting attorney and will be responsible for the legal costs involved in terms of PMR 31(5). The trustees must then hand the defaulter over to a debt collecting attorney if s/he does not rectify the default within the given period.

It's a tough route to follow but there really isn't an alternative.

AGM

Q3: The recent AGM minutes from the managing agent clearly indicate I am entitled to the names and addresses of the owners, and the Sectional Titles Act verifies this. The managing agent has reneged on his word and mentions the right to privacy as "some" owners don't want this revealed! Strange, since most people are in the phone directory, on Twitter and so on, and one can push the DELETE button on emails if one doesn't want to answer.

What is the position and how does one exercise this right without litigation, which is an expensive process?
The Promotion of Access to Information Act, 2000 also indicates transparency and the right to such info.

A3: In terms of section 37(1)(l) of the Sectional Titles Act, 1986 it is one of the functions of the body corporate "to comply with any reasonable request for the names and addresses of the persons who are the trustees of the body corporate... or who are members of the body corporate".

The functions of the body corporate are carried out by the trustees and the trustees may delegate some of their functions and duties to the scheme's managing agent. So either the trustees or the managing agent are obliged to comply with your reasonable request for the names and addresses of the owners in the scheme.

Jennifer Paddock is a sectional title expert. Click here to see the schedule of training courses, or for free sectional title advice go to www.sto.co.za.

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