A Developer's quandry
By Clint Riddin

In the new-built property market, developers have become increasingly creative in the types of developments they design and build in order to attract buyers and investors. The original idea behind cluster schemes was aimed mainly at providing security estates, but over time this was seen as the minimum which a development should offer and lifestyle estates have become the order of the day. These lifestyle estates vary both in size and type, ranging from gentlemen's estates of a few units on large plots to wine estates to multi-dimensional golf and equestrian estates with a few thousand units built on them. A further aspect to these large developments is that units range in price to cater for the different income levels.

Given the multi-dimensional aspects of these estates, the management and structures to support the management, need to be carefully considered to ensure that the development is a success and that the lifestyle estate becomes an attractive option for purchasers in years to come and as such insure the investment value of buying into such an estate.

History has shown where some of these developments have failed in not providing the correct management structures. Most disputes centre around the calculation of the levy, as little thought was given to this in the past. Often the prescribed management rules are the applicable determining factor in calculating the levy, which gives rise to these disputes. This is especially true where the estate contains a commercial element or where there is a mixed use element, in that owners in the mixed use development are under the impression that their levy is subsidising costs for another part of the estate, which they do not use or may not have access to.

Another factor is how the erven have been zoned in terms of the development; such as consolidated erven or a number of erven in a particular township where a local authority has as a requirement the establishment of a home owners' association. This gives rise to the situation where some erven form part of the home owners' association and then, where possible, a sectional scheme may be developed on one or more of these erven. In these circumstances, there would be a home owners' association structure and a body corporate being managed under the Sectional Titles Act. The decision also needs to be made as to what legal entity should be used for the establishment of the home owners' association being either a section 21 company or a common law association. Whatever the decision, the management aspects contained in the home owners' association needs to complement the management and conduct rules that govern the sectional scheme within the home owners' association, with specific emphasis on the levy calculation.

As VAT is applicable to home owners' associations, where the annual levy is in excess of a million rand per annum, careful structuring of the levy calculation and budgets may well prevent the HOA needing to register as a VAT vendor. Consideration should also be given to the income tax part of the levy structuring, as here too, careful tax planning could prevent SARS determining that a particular income group be deemed taxable in terms of their Practice Note 8.

To prevent disputes of the levy calculation and liability, careful thought needs to be given to the accounting structures of the estate, which includes monthly and annual financial reporting. In some instances the management structures could be too elaborate or cumbersome resulting in disputes and so a happy medium needs to be sought to ensure a well run lifestyle estate.

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