

The Landlord

For Landlords and Sectional Title Owners



[Volume 4, October 2011

158 Zastron Street, Westdene
Bloemfontein 9301
051 447 4711 - 082 881 7411
mikehome@telkomsa.net

Managing Agents – You Cannot Bully Tenants for Owners Debts!

A situation recently arose when our tenants in a body corporate building complained because they were being threatened by the Body Corporate managing agents for huge outstanding debts that they did not owe. What had happened was that the managing agents had sent out letters to “The Occupant/Owner” threatening legal action for money that was outstanding and telling them that they were going to disconnect their water unless the debt was paid in full. Actions of this type are totally unacceptable, illegal and contrary to the Code of Conduct of the Estate Agencies Affairs Board and would be taken in a very serious light by all concerned. The tenants were most upset and it caused a great deal of anxiety and waste of time both for the tenants and ourselves. It is not only quite likely that the tenants and owners will take the matter up with the EAAB but that the owners would have a case against the managing agents for loss of income if the tenants moved out as a result. Managing agents that have a problem with non-payment by owners must go the legal route against owners for outstanding money. While many body corporates are experiencing large percentages of bad debt in their buildings they cannot take out their frustrations on the poor tenant. He/She is not involved in the dispute between the body corporate and the owner. NAMA, who had sight of these letters, confirmed that they were unacceptable and not in line with their constitution. Owners should keep their levies up to date and if they are not happy with the way things are run then become Trustees and put things right.

Managing Agents – They Don’t Fall Under the Consumer Protection Act

In a recent article, attorney Marlon Shevelew of Marlon Shevelew and Associated discussed whether or not the agreement between Managing Agents was covered under the new Consumer Protection Act or not.

It was a very interesting, if rather technical article, but nonetheless important that Trustees and Managing Agents as well as owners understand that the Management Agreement does NOT fall under the act for a number of reasons.

Firstly, the way that the Sectional Titles Act deals with the “employment” of managing agents is that it deals with it in much the same way as an employment contract. It actually talks about “Master and Servant” relationships. The Managing Agent acts in many ways in an employer relationship with the Body Corporate and clearly the CPA excludes all employment contracts. The CPA deals essentially with commercial agreements. The article deals with those managing agents that are not natural (real) people and where the managing agent is some sort or legal body. While employment contracts are normally considered to be between individuals and not legal entities the Sectional Titles Act is considered to be specific legislation which legally creates the situation that the managing agent is “employed” by the body Corporate.

It was interesting to note in the article that the managing agents are frequently given responsibility by the Body Corporate to act on their own when employing contractors (Plumbers, Electricians etc) when they may not be acting the explicit instruction of the Body Corporate. It was quite clear from the article that managing agents are able and frequently do work almost independently of the Body Corporate, after they have a broad agreement by the Body Corporate, as to what they are able to do on behalf of the Body Corporate. Clearly in the real world, most good managing agents, will simply undertake the day to day running of a Body Corporate without any direct direction from the Body Corporate via the Trustees. Nonetheless they are still seen as employees in terms of the Sectional Titles Act and the CPA.

A further reason that the CPA would not apply would be that the Sectional Titles Act is an established legal framework for the management of Body Corporates and as such will take precedence over the new CPA. This is based on the fact that the Sectional Titles Act is a very specialised act for a very specialised purpose and as such dictates how the body corporate and the managing agents should be handled. Managing Agents, Trustees and the Body Corporate do not have a choice on how a body corporate must be run but have to comply with the way that it is set out in the Act.

For the same reason individual owners cannot take the Body Corporate on – or the Managing Agents- in terms of the CPA because they are not providing a service in terms of a profit making business but are rather acting on behalf of the owners when negotiating with outside parties for the running of the scheme. Again the Sectional Titles Act must be followed when individual owners are aggrieved. In reality however a sensibly well run sectional title scheme should result in very few occasions when owners are unhappy with how they are being looked after. If owners are not happy then they know what the solution is – get involved and become a Trustee. In well run schemes the Trustees job is actually a rather easy one – ask our Trustees they know!

Levies for New Developments

A new scheme is usually built and registered in phases and this brings its own special problems for the Managing Agents and Trustees. The levies for new developments need a LOT of thought and need to be communicated to ALL owners – not just the registered ones. Platinum Global have found that the best way to smooth the transition is to hold a “welcome” get together where all buyers are invited. At this function we introduce our company and staff and let owners know what functions they manage. We allow owners to understand how body corporates work and the right way to handle queries. It also gives us an opportunity to meet the new owners in a more relaxed atmosphere. A glass of wine and a few snacks are a great way to get to know people.

At the Inaugural General Meeting the managing agents need to be well prepared to ensure that the meeting runs smoothly. As there is not Chairman or Trustees one of our senior staff normally handles this meeting. The proposed budget MUST be ready – in detail, month by month, item by item. Everything is about communication so for the period up until all the phases are registered we invite all owners – whether they have had transfer or not – to all the general meetings. Remember they are the future owners and they should be involved in the decision making even if they have not yet had transfer. Minutes of these meetings are sent to ALL owners – registered or not – so that ALL owners know what is happening in their building and why!

Managing agents must remember that the developer is the owner on any registered but un-transferred units and must pay the levy for these. Right from the beginning the levy must include a future maintenance reserve portion – even if the developer does not like this.

Some of the expenses will have to be covered by the early owners (security for instance) and this can make the first levies quite high with the levy dropping somewhat as each new phase comes on stream. This is a fact of life and should be explained to the owners. Ideally the developer should have included a “donation” amount in the selling price which can be used to pay deposits for water and electricity at the local authorities, and the basic equipment (garden hoses, spades, dustbins etc). Without this a special levy will be needed. If you need a special levy be open and up front about its need and why. You will get super co-operation if you do – but get hell if you don't.

Why not Cats?

As an animal lover I would be devastated if I had to put down my two dogs if and when I needed to move to a town house – so I can understand the problems that the rules about dogs and cats can cause.

The basic rule, in the Sectional Titles Act, is that no pets may be kept without the written approval of the Trustees – which approval may not be unreasonably withheld. Most schemes write in specific rules regarding dogs and cats taking into account the particular building.

To me it generally seems impractical to have dogs in flats but I cannot see why dogs are not allowed in townhouses. Sometimes the rules are a bit unfair. Why for instance is it acceptable to be able to keep a tiny yappie dog but not a Labrador that lays around all day and never barks? Surely it is about the barking rather than anything else that is the problem. To me the rule based on size is not that logical. Numbers of dogs is another thing.

But don't forget other types of pets – what about parrots, monkeys etc. Again my feeling is that pets should not, unreasonably disturb their neighbours by noise, smell, viciousness etc. It would be unacceptable to keep a quiet duck which attacked the meter reader every time they came to read the meters!

Cats? Yes cats! I actually do like cats but cats are definitely a problem in complexes. They cannot be kept in your own garden and tend to find a place for a toilet in other owners gardens. The toms leave a rather unpleasant smell in their nesting areas and tend to fight over the lady cats. There is no doubt that they steal food from other peoples homes and this is one of the biggest problems in places where cats are allowed. Whilst dogs are fairly recognizable cats often are very similar and this makes knowing who the culprit is and where they come from a problem. Cats also tend to attract other cats. It seems that stray cats are attracted to the domesticated ones and especially any food that is put out for them. Yes cats can be a problem in a complex.

Either way Trustees must be realistic. Unless the approved registered rules say so they cannot have a blanket ban on pets. Remember the act says ...with written approval of the Trustees **which may NOT be unreasonably refused!**... In other words the Trustees must have reasonable reasons for not approving a pet “any pet”. It cannot be that they don't like snakes! Snakes can be contained inside the house and it can be a rule that they may not be allowed to wander on the common property. Makes you think!

Do Trustees Need Portfolios

The Sectional Titles Act provides that the Trustees should elect a Chairman from amongst their numbers at their first meeting – though for practical reasons this is usually done just after the AGM. But do Trustees need to be so formal as to have a Vice- Chairman, Secretary, Treasurer etc?

I suppose it depends on a number of factors. Firstly how big is the scheme, is it being run by the trustees or is there a competent managing agent, how is the complex designed?

For example in a retirement village with say 200 units, there will be lots to do besides the running of the sectional title complex – organizing keep fit classes, holding garden competitions and so forth – nothing actually to do with the Body Corporate as such. In such a large complex with other functions there would be a need for other positions – remember money raised for organizing holidays has nothing to do with the trust money raised for paying levies and should be kept totally separately.

Small complexes of ten or so units should really never have a need for a managing agent and again they may feel the need to designate somebody to look after the finances and keep the books.

But normally it would not be necessary to be so formal. Good managing agents make the Trustees job a very easy one. The managing agent would handle all the day to day running of the complex, keep the books of accounts, pay creditors, collect levies and generally run the complex on behalf of the Trustees. They would normally liaise with the Chairman when they have matters that need to be approved between Trustees meeting and report in fuller detail on what they are doing at the regular Trustee meetings. In this case there would usually not be much point in appointing specific Trustees to specific positions.

Unless it is specifically agreed, most managing agents are not responsible for the detailed, on site, running of a complex. For example they would not normally be in a position to give detailed instructions to the gardener. Their job is to employ a gardener on behalf of the body corporate, pay his wages, pay his UIF, and to give him general instruction guidelines and perhaps a work schedule. One of the trustees might, in these circumstances, be appointed to look after what parts of the building he works in and what he does specifically.

The answer really lies in what is practical, realistic and needed.



Langenhoven Park Townhouse

Choice of two modern secure two bedroom townhouses in Langenhoven Park. Platinum Global managed with good finances. 2 bedrooms, double carport, 1 or 2 bathrooms, private garden. Suitable for senior students, young working couples or retirees. Few minutes drive from UFS in modern well liked suburb. Considered one of Bloemfontein's premier suburbs. Contact Mike Spencer 082 881 4711



Opposite UFS Main Gates R650,000

Platinum Global managed well financed. Low maintenance, modern two bedroom flats with carport in secure complex. Just minutes from UFS and surrounding facilities. Wonderful safe and convenient place for your student daughter or son. Open plan kitchens with built in oven. Large open gardens for quiet, comfortable atmosphere. Mainly occupied by young working professionals. Contact Mike Spencer 082 881 4711 or Mimie 079 552 3450



Smallholdings Bainsvlei R1,500,000

Neat, modern 3 bedroom 2 bedroom home with double garage on 4.28 ha small holding just minutes from Langenhoven Park. Love the country? Just the right place to bring up children – let them have the horse that they always wanted – yet actually be no further from school than you now are – with an easier run into town. Having 3 small holdings of my own, I understand the delight and educational potential of living out of town. No noisy neighbours, grow your own vegetables, keep your own horse, chickens and sheep. Living on a small holding in a great area is one of the pleasures of life.

Come look at this and other small holdings in the Bainsvlei area if you would like to get away from the rush of town. Mike Spencer 082 881 4711 or Mimie 079 552 3450

Other great buys

Du Midi – Union Ave

Exceptionally spacious double storey townhouse. Architect designed by award winning architect. 3 bedrooms, lounge, dining room, kitchen, maid's wc, 2 bathrooms, garage, carport. Something really special. Call Mike 082 881 4711.

Droomwereld – Fourth St.

Serious seller of very large 2 bedroom unit with lock up garage. I own one in this building and it is managed by Platinum Global. North facing with large stoep that can be enclosed as an office. Big bathroom with extra WC

General Hertzog St – Dan Pienaar (investment/own use)

Massive house with big rooms plus huge 2 bedroom cottage. Zoned residential but homes in this street commonly used for offices, professional rooms and even shops. Would make ideal doctors rooms plus income from cottage as home or office. Grounds can be converted to give lots of parking. Opposite to Preller Walk shopping centre – easy to find.

Maxie- Cape Gardens – Uitsig

Huge 4 bedroom, 3 bathroom townhouse. At only R756,000 this is less than the listing agent's valuation. Owner has permission to fence of garden. Really great price for huge home. Excellent value for money.

Kiepersol – Zastron St

Affordable one bedroom flat would suit UFS student – 1 kilometre from campus. Also makes great rental property or own first home. Includes carport.

Naval View – Union Ave

At only R392,00 the cheapest 2 bedroom flat that we have. Includes lock up carport. With rising rentals would make a good investment property. Our family own 2 units here. Platinum Global managed.

Warden St – Noordhoek

R680,000. Owner retiring. Neat individual house in good condition with large private garden. Corner property close to shops. Would make wonderful first time home. Very realistically priced to sell quickly.

Pass this "The Landlord" on to your friends or get them to subscribe to mikehome@telkomsa.net. If you have questions about letting residential property or the management of your scheme you are welcome to write to the same email address and we will do our best to give you professional guidance. Contact Tania at 051 447 4711 in connection with letting out residential homes.