



[Volume 4, July 2011

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## Don't Cry When You Don't Attend

Body Corporate meetings are held to inform owners and to receive their guidance. If you don't attend these meetings your input will be missing. Typical AGMs are thinly attended and few owners ever bother attending a Trustees meeting. Platinum Global encourages input from all owners and especially at the Trustees Budget meeting that is held just before the financial year end in order for the Trustees to set the levy for the new financial year. At this meeting the Trustees discuss the proposed budget in detail. These budgets are set out on an item by item basis, month by month. It shows what must be paid and when. Many costs are single events during the year, fire hydrant servicing, annual leave. Others are month on month but even these usually have increase dates, water, electricity, rates etc that usually increase at the beginning of July each year. Good managing agents go through their proposed budgets in detail and get agreement from owners for each item for each month. Once this has been done it will show just how much the building needs to collect in the year and divided by twelve gives the amount that must be collected each month. Using the PQ (participation quota) from the sectional title plans each owners monthly levy can be calculated. The budget should be realistic and based on previous costs plus escalation. If it is done properly it will mean that your scheme is financially well run. Recently we increased the levy on a new scheme by 150% because this is what the budget said we needed. But if you don't attend, don't cry when your levy is changed more than you would like.

## The Dangers of Duets?

One of my long term clients presented me with an intriguing problem this month. He had purchased the right of extension in a duet sectional title development (the right to build a second building on a previous house erf). The sectional title register was opened and the two units had been (the house and garage) had been transferred to the current owner from the person who had opened the sectional register and thus the sectional title scheme had come into being. The sectional title scheme comes into being when the first unit is transferred to somebody else other than the developer.

The right of extension entitled my purchaser to an area of the ground that was defined in the sectional title plans and was registered in the Deeds Office. There was however one major flaw. In terms of the sectional titles act the developer must, when opening the register present the Deeds Office with a detailed building plan approved by the local authority showing what will be built in the scheme when it is completed. In other words the buyer of the very first unit knows exactly what will be built in the last unit including the materials that will be used. The Act says that the units must be built substantially in terms of this plan and materials list – the developer is not entitled to change anything, unless it becomes IMPOSSIBLE to do so. For example if Harvey Tile roof tiles are specified but the factory closes it would be impossible to use Harvey Tiles and close substitute would be used. This would not mean that the developer could use IBR but would have to use the closest possible alternative.

The real problem is that there was NO plan. Was he entitled to build – nothing? My client had discussions with the owner of the other units to discuss the problem but they did not see eye to eye and the other owner refused to agree to my client building the house that he had designed. The local municipal building plans office had approved the design plans but would not approved the building until such time as the sectional title body corporate had approved the building plans! Remember the sectional title act says that you may not make any changes to the exterior appearance of the common property without written approval of the body corporate (the other owner who refused to agree). This left my client with the problem that he had bought a right of extension without a set of approved plans.

At the end of the day he found a way in which the local authorities decided to approve this new house. The other owner is going to have a fit when by client starts building his new home!

This whole episode just confirms for me just how important it is for people to understand what they are doing. Even a two unit duet is still a sectional title scheme. One owner cannot just go ahead and make changes and build on without getting the approval (in writing ) of the body corporate (not the other owner) before doing so. It is also important to remember that no changes greater than 5% can be made to the size of your unit without also getting permission of your bond holder. You will need to notify your bondholder, in writing, giving details of the changes that you want to make BEFORE you can start making these changes. You ALSO have to get permission from the bond holder of ALL the bond holders in your scheme – in this case your neighbours bondholder. This can be a very expensive exercise because the bank will normally notify the body corporate about where they domicilium is ie their legal address. The body corporate will have to notify them in writing at this address. Luckily they have 30 days to object otherwise you can assume that they have no objection. But if they are not happy with what you have done then they can demand proof that you have sent this notice to the right place. If you cannot they would be entitled to take you to court to have any extensions removed.

The reason for these requirements is that the common property (exterior of the building and ground) belongs to everyone in joint ownership. You are not entitled to take over part of the common property (extend your unit) unless you have gone through the right process. Don't be upset if your co-owner is not happy about you cutting off part of his common property. Things have to be done properly.

### **You have to tell buyers the bad things!**

In the past Sellers were able to sell their houses and include a clause called Voetstoots. In other words you buy the property as is. But times have changed.

Sellers were always liable for defaults that they knew about and didn't tell or faults that they should have known about – ie a roof leak or damp in the basement. But buyers were expected to make a detailed inspection of the property they were buying for themselves.

New legislation now says that the Seller must tell the Buyer if they are aware of any problems They must, preferably in writing, be included in the contract bringing to the Buyers attention such things as roof leaks, cracks, damp, faulting plumbing and electrics. Some municipalities are now beginning to bring in a requirement for a plumbing certificate in addition to the current electrical certificate.

Buyers, though their agents, should actually ask Sellers what faults there are in the building that they are buying and the Sellers have to tell them everything that they are aware of. Failure to do so will simply result in the Seller having to pay for the cost of repair or even give the Buyer a right to demand that the Seller take the home back again. The whole concept is that the Buyer should be put into a situation where they can make an informed decision as to what price they are going to pay for the property. The seller can always sell a property with problems as long as he discloses them to the Buyer before he signs. So it means that a badly cracked house can still be sold as long as the Seller has disclosed the problems in the sales contract. Then the Buyer has no comeback.

This especially important when you are selling an investment property you don't know. If you live in the same town it is better to go and have a look for yourself. If not get somebody to do you an inspection.

It is difficult to know just how broad you should be. Not having a key for the bathroom door I don't think is important but not having keys for the front and back door would be.

It is actually better to over disclose rather than try to hide anything. Remember the default does not have to be physical so knowing that there is going to be a big special levy tomorrow would also be a default.

### **Trustees Must be Fair to All**

Being a Trustees makes you responsible for making sure that your sectional title scheme must be run properly. Trustees are elected representatives of ALL owners and have the obligation to be even handed and fair to everyone. We recently came across the situation where Trustees had decided that owners that were letting out their units would be charged an extra levy to compensate the Trustees for the extra work that the Trustees perceived the tenants were causing!

Clearly this is wrong as one owner may not be treated differently from another one. The decision had to be reversed when some of the rental owners threatened to take the trustees to court.

Some other examples of unfair practice would to allow some owners to have pets and others not – providing that the trustees must have put their minds to the problem. So it would not be unfair not to allow people living in high rise flats to have cats and dogs while letting those on the ground floor to keep a dog or cat. It would also seem to me unfair to have a blanket ban on owners having any pets at all even in a high rise flat. For example I would think that it would be unreasonable of trustees not to allow fish and budgies to be kept in a flat. What about snakes and spiders? As I say Trustees must apply their minds.

Trustees cannot create rules which they want to enforce. Even so called house rules have to be agreed by the owners at general meeting and registered with the Deeds Office before they can be enforced. Even then rules have to be reasonable. For example elderly trustees cannot register a rule that says that nobody can use the pool on a Sunday afternoons because they like to sleep at that time. For most people living in the complex this would be just the time when they would like to use the pool. This would be similar for Trustees who try to prevent children from playing in the gardens of the complex – that's just where children should play. But the scheme can insist on reasonable behaviour and noise levels – and parents will remain responsible for any damage that their children do to the plants.

Trustees do sometimes have a difficult time looking after their complexes but they need to be careful that they treat everyone equally and reasonably.

### **Can an Owner be Restricted to Whom He can Sell?**

There have been body corporates that have written or unwritten rules about having to request permission to sell your unit to a particular buyer. This is especially common in Group Housing and Housing Association communities.

The intention of these rules seems to be to give the other owners in the scheme and opportunity to buy in or find another buyer if they are not happy with the buyer that an owner has concluded a deal with.

While it may be possible to put such a rule into your body corporate where you have a retirement village for example it would almost certainly be wrong if you tried to limit the type of person who could buy into your scheme in most other circumstances. While you as a seller can decide who you would like to sell too the Trustees and other owners would find it very difficult to explain why they were discriminating against any particular buyer that you had found on racial, religious, or other reasons. It would be very suspicious to any outside person that they were acting against the constitution if they did so.

### **Trustees Cannot Give away Common Property**

Common Property belongs to all the owners! Trustees have no right to give it away. Sometimes Trustees think that they can do things that they cannot. For example they cannot give away parts of the garden for exclusive units to a particular owner. If they wanted to do this then they would have to make it a special item at the next general or special meeting. In a similar way they cannot simply allow people to make extensions, enclose balconies, change carports into garages etc. They need to get the approval of the owners in general meeting before this can be done.

It is not that these extensions are not neat, attractive, or desirable, it is simply that the common property belongs to everyone and those decisions must be made by everyone. Something to consider is that when changes are agreed to such as installation of air conditioning units, satellite dishes and aerials are agreed to, it should be on condition that those improvements become the property of the body corporate and have to remain. The reasoning behind this is that the building has been altered during the installation process and removing those improvements will simply leave the holes behind. If they don't like it or won't agree to leave the improvement behind, then trustees should not agree to the installation



## OAKLEAVES

### 3 sales have fallen through Bains Game Lodge

Sometimes things don't quite work out how you would like. But you could be lucky. Three OAKLEAVES two bedroom flats at Bains Game Lodge have fallen through and are back in the market. 1 of them is a ground floor unit while the other two are on the first floor. Well constructed with low maintenance light face brick finishes the are of international quality according to developers from India who are about to start building in Vista Park. They were very impressed! Each of these two bedroom flats has a double carport and built in oven. They are ideal for young couples and are just a few minutes drive from UFS. Contact Mike Spencer at 082 881 4711 to buy your next investment.

## Other great buys

The rental market remains very strong with little or nothing available and rentals rising. The student market has remained surprisingly strong and rental units in the slightly better market (one and two bedroom flats in reasonable areas) are virtually unobtainable. Though there are one or two blocks of flats still to be completed very few new units are on the cards and the situation is likely to become even more tight for tenants.

This is an opportunity for investors to invest in some existing units where they can pick up flats and townhouses at very good prices compared to new units. Interestingly few owners or buyers of existing units have realized the benefits of upgrading their flats. Jill upgraded the flat that we own in Droomwereld and was able to rent this flat out at a much higher price than for a standard flat. She has also found that she has a much steadier tenant turnover rate.

Investors should look at good rental areas rather than areas that they would like to live in. Some tenants will shy away from Langenhoven Park because of the high rentals while flats in Navalsig are very scarce. Rental ratios on less expensive flats are frequently better than on "better" area units.

Some good blocks to look at buying in would be Jocapa and Blaauwberg in Navalsig (about R350,000 for a one bedroom and R420,000 for a 2 bedroom flat), Gaudeamus in Brandwag just outside the UFS gates R490,000 neg for a 1 bedroom and R650,000 for a two bedroom flat – modern neat units with nice building gardens. Rentals are high in this building with a big demand and zero vacancy factor.

Centre city flats are very popular especially for those working in government departments and who don't have a car. Library Mansions for example can give you a very affordable R195,000 for a one bedroom where gross rental income is in the region of R2,200 to R2,400. If you are a handyman there are opportunities to buy flats with poor interiors in well run buildings. 88 @ Nelson would be ideal for you. This building is now running well and looks great but a few owners simply cannot afford to fix their flats up to a lettable condition.

Flats in Westdene and Brandwag are also good buys if you can find them as they are in walking distance of work places and education places. Give Mimie 079 552 3450 or Mike 082 881 4711 and get together to talk things over with them.

### BLAAUWBERG Choice 1 or 2 Bedroom Flat From R350,000

Choice of three flats in this well run building. Great finances means that your levies should stay steady. Always a popular rental property but quite a few owners stay there too. For investors it is important to note that the tenants pay for water which helps keeps costs down. Platinum Global managed building. For more information call Mike Spencer 082 881 4711

### PELLISSIER – PALM HILLS R515,000 COSTS INCLUDED

New building, ground and first floor two bedroom flats. 2 bedrooms, bathroom, carport. Well built, early occupation can be arranged. Ground floor units lead out on to the garden. Each unit has it own braai.

A nice flat in a nice area. Easy access from either Fichardt Park bridge or Casino area.  
Contact Mike Spencer 082 881 4711 or Mimie 079 552 3450



Battling with your Body Corporate. Trustee needing advice – Owner not sure what you can do. Mike will answer your questions. Just email Mike at [mikehome@telkomksa.net](mailto:mikehome@telkomksa.net). The answer to your question may form the basis for an article in The Landlord. Forward this email to your friends. Thinking of investing in property call Mike for advice and guidance. 082 881 4711