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A free newsletter to the sectional title industry by Tertius Maree Associates

# Much ado about Nothing ?

Finding a proper balance between slack management and management by dictatorship in housing schemes is an ongoing challenge, and a particular solution is not necessarily appropriate for all schemes.

We know that if the administration or management of a sectional title scheme or home owners' association is neglected, it will inevitably lead to loss of unit values. On the other hand, too tight a rein on the lifestyle of owners leads to unhappiness and disputes.

Adding to the problem of finding a suitable balance is the fact that many owners are not prepared to serve as trustees, but are quick to complain when things are not done to their taste. The opposite side of this coin is that owners who are prepared to serve are sometimes inclined to wield excessive authority and forget that the management of a home owners' association or body corporate is supposed to be based on democratic principles.

A further factor is that owners, and even trustees, are often not sufficiently conversant with basic legal principles, the provisions of the applicable legislation, or even their own rules and constitutions.

Drawing the line between a despotism and disorder is seldom easy, as is demonstrated by the recent judgment of the Western Cape High Court in the matter of Kenrock Homeowners Association v Mewett.

The dispute was about the fact that the respondent, an owner of an improved erf within the scheme, had erected a wire fence around his property which the executive committee regarded as being "*in clear contravention of the Kenrock Architectural and Landscape Design Manual*."

This manual allowed the use of a "*simple black metal fence*" and alternatively a fence of "*Bekeart Mesh - 50m X 50mm supported on 125mm diameter machined and treated poles with round tops, to a maximum height of 1,8 on the side and common boundaries*."

Clause 13.6 stipulated as follows:

> "*Fences not permitted include –*
> *13.6.1 Vibracrete type fencing*
> *13.6.2 Timber fences*
> *13.6.3 Face brickwork*."

Clause 2.1 4 states:

> "*Under no circumstances will vibracrete walls or walls in an unsuitable style or colour be allowed*."

Clause 2.1.5 encouraged the use of creepers on fences.

The fence erected by the owner was of the ordinary mesh type, the pattern of which is different to the specified Bekeart Mesh.

The owner offered to cover the fence with creepers, but this was rejected by the committee, which insisted upon the fence being removed and replaced with a fence which complies with the provisions of the design manual. The matter was not resolved and penalties were imposed.

Eventually the owner indicated that he would remove the fence, provided that the penalties were waived. At that time the penalties imposed amounted to R 7 880,00. The committee was not prepared to accept this offer and proceeded to launch an application for an interdict to enforce compliance.

The judgment commences with the words:

> "*This matter has a long and protracted history and is reminiscent of the Shakespearean comedy Much ado about Nothing*."

This introduction was already a clear indication of the judge's feelings about the matter and the representatives of the home owners' association must have uttered a collective sigh of disappointment upon hearing this.

Judge Traverso found that "*a proper interpretation of the constitution makes it clear that the provisions regarding the fences are not absolute or peremptory*."

The only peremptory parts of the provisions, in her view, were the provisions which prohibited vibracrete, etc.

The judge was of the opinion that the difference between Bekeart Mesh and the ordinary wire mesh used by the owner was hardly noticeable to the untrained eye and if creepers were planted (as encouraged by the provisions) it would be impossible to tell the difference.

The application to enforce compliance was dismissed with costs.

After initial hesitation I found myself in agreement with the judge that the clauses referred to are not absolute or peremptory. This conclusion is based upon the words "*may be used*" when referring to the types of fencing and affirmed by the fact that clause 2.1.4 in effect allows the use of walls, provided that they are not "*in an unsuitable style or colour."* This means that even walls (although not facebrick walls) are allowed and that the 'prescribed' fencing is no more than a suggested type.

What should we learn from this judgment?

Firstly, constitutions, rules and architectural guidelines should be drafted with great care and expertise.

Secondly, elected officers seeking to enforce provisions of their founding documents should make sure that they understand the material properly and should obtain legal advice in the case of any uncertainty. In the Kenrock case the committee probably did obtain legal advice to the effect that they had a sound case. And this brings us to the third lesson:

A private residential township or sectional title scheme is not a military compound and management should resist an impulse to blindly suppress all forms of individualism to the tiniest detail.

Tertius Maree

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# LEVIES AND THE NATIONAL CREDIT ACT

## *Has the spectre been laid to rest?*

*Ex Africa semper aliquid novum*

In the recent past there has been widespread speculation about the applicability of the National Credit Act in respect of sectional title levies. With few exceptions the feelings of persons within the industry have been that it does not, and this view is based upon a distinct feeling that it *should* not, for a simple but important reason: Should a defaulting owner be protected by the National Credit Act, it would simply mean that the burden of his or her levies would be shifted, albeit temporarily, to the other owners. This would be an untenable position as will be more clear when a large percentage of owners should invoke NCA protection, or to take an extreme example, if they *all* should.

The as yet unreported Kwazulu-Natal High Court case of Dlamini v the Body Corporate of Frenoleen represents the first beacon towards a realistic view on the matter, when it upheld the following arguments:

(a) A body corporate does not supply goods or services to its members, nor does it advance money or extend credit as envisaged by the NCA.

(b) Levies charged by a body corporate to its members do not constitute an 'incidental credit agreement' because the levies do not constitute an 'account tendered for goods or services provided by the body corporate to a consumer.'

(c) Levies are not payable by members by virtue of an agreement as defined in the NCA, but by virtue of the provisions of the Sectional Titles Act.

Accordingly the court held that the NCA does not apply to sectional title levies, irrespective of whether interest is raised on arrears or not.

Before trustees and managing agents break open the champagne, it must be remembered that other divisions of the High Court may not hold the same views and that the game may not be over until the Appeal Court delivers its stamp of approval.

That cautionary note aside, I am optimistic that other courts, if confronted with the question, are likely to agree with the views of the Kwazulu-Natal High Court.

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## BOUNDARY WALLS ON EXCLUSIVE USE AREAS

*Who is responsible for maintenance?*

It is generally known that the body corporate is responsible for maintenance of common property, including the exterior walls of sections to the median line of such walls. The costs of such maintenance are paid from the levy fund of the body corporate, to which all owners contribute in accordance their the participation quotas.

However if the median line of the exterior wall of a section forms the boundary of its exclusive use area, for instance a garden, the exterior wall of the section from the median line of such wall will form part of the exclusive use area. Unless the rules of the scheme determine otherwise, the body corporate will be responsible for the

maintenance of the exclusive use area (garden) including for the maintenance of the exterior wall of the section from the median line thereof, and the owner will be liable to pay an additional contribution to the body corporate to defray the costs of such maintenance.

The median line of a boundary wall of the scheme may similarly form the boundary of an exclusive use area, and the body corporate will be responsible for the maintenance of that wall, but the owner with the exclusive use right will also be liable to pay an additional contribution in respect of the portion of the wall which forms part of the exclusive use area.

Recovering the costs of maintenance of exterior walls of sections and boundary walls adjoining exclusive use areas from the owners with exclusive use rights may be perceived as unfair by the owners with exclusive use rights, especially where structural defects exist in such walls.

It is advisable to adopt special Management Rules in order to adjust this difficult situation, whereby the body corporate assumes responsibility of all outer walls of sections and boundary walls of the scheme.

*Ilse Kotze*

## SUBSIDENCE AND LANDSLIDE

### *Apportioning the costs of consequential damages*

The costs of repairing damages caused to buildings in sectional title schemes as a result of subsidence and landslide may be substantial. In addition, apportioning such costs between the body corporate and the owner may be tricky.

The body corporate is not obliged to insure against the risk of subsidence and landslide unless so required by the members by special resolution.

Although the body corporate is responsible for maintenance of the common property (including the land), it will not automatically be liable for damages suffered by an owner to his section (house) as a result of subsidence or landslide.

Ordinarily the body corporate will, in respect of the damaged house, be responsible for the repairs of the common property, whilst the owner will be responsible for the repairs to his/her section. The bulk of the costs of repairs will be for the account of the body corporate, including for underpinning, soil stabilisation and the reinstatement of building damage in respect of the common property, whilst the owner will be liable for the reinstatement of damage to his/her section.

The body corporate may only be delictually liable for the damages suffered to a section as a result of subsidence or landslide, if the owner of the section can prove all the elements of a delict, including:

1. Conduct: An act or omission by the body corporate (the trustees), for example the failure of the trustees to maintain the common property.
2. Wrongfulness: The conduct of the body corporate (the trustees) must be legally wrong.

3. Fault: The conduct of the trustees must have been intentional (with the intention to cause damage) or negligent (without taking proper care and not acting as a reasonable person).
4. Damages: The section must have been damaged., which must be quantifiable.
5. Causation: There must be a causal connection between the conduct of the trustees and the damage which was suffered.

The owner, who suffers damages to his or her section, should limit or minimize the damages by reasonable means and his/her claim may be proportionally reduced if failing in this duty.

*Ilse Kotze*

# What are the Determinants of Value for Sectional Title Homes?

A warning sounded in MCS Courier a decade ago has become topical in respect of applications for mortgage finance for sectional title homes and is beginning to cause a very serious problem in the marketplace. Let me explain:

As pointed out in the earlier article, the market value of a sectional title home depends on much more than criteria such as the quality and size of the accommodation provided. The external condition and the condition of the common property and other dwellings in the scheme are equally important. In the 'younger days' of sectional titles these criteria were less prominent, because most schemes were new and the markers of neglect were not yet visible. Neither were investors and financiers as aware of the underlying criteria whereby value is determined.

Unfortunately buildings do not remain beautiful and in sound condition by themselves. Unless maintenance is performed adequately and regularly, they will unavoidably fall in a state of disrepair.

We also know that the responsibility to ensure that a sectional title scheme is properly maintained rests squarely with the body corporate and that the required funds are 'extracted' from the owners in the form of levies. The annual levies, in turn, are determined on the basis of a budget, approved by the owners themselves on a yearly basis.

In my dealings with owners it is noticeable how often the body corporate is regarded by individual owners as a vague, distant, and somewhat malevolent entity, whereas in fact it is no more than the community of owners themselves. Granted, the individual owner is in a sense at the mercy of the will of the majority, and this is where problems arise:

Whilst most homeowners are capable and prepared to make meaningful and considered decisions about his or her own assets, the ability to do so apparently disappears when joint decisions are required regarding communal assets, their maintenance and funding.

In the 1990's I made the statement that the value of a sectional title unit is ultimately more closely related to the quality of scheme management and administration than to most other factors. I then predicted that at some stage banks were bound to realise the importance of the quality of management when assessing unit values for purposes of mortgage finance.

Sound management includes proper financial administration and maintenance practices, and it is possible to predict how well maintenance will be performed in future by looking at certain management indicators. This is exactly what banks are now starting to do when considering bond applications. The most important indicators are the following:

- Are levies sufficient to defray expenses of the body corporate, including maintenance, in other words do the owners adopt realistic budgets?
- Is provision being made to build reserves to defray future and incidental expenses?
- Are annual general meetings held regularly and timeously? Are the agenda requirements being complied with?
- Are the financial statements up to date and duly audited?
- Is the arrears ratio within acceptable limits and are effective steps in place for recovery of arrears?
- Does the scheme have adequate insurance and are the premiums up to date?

It should be expected that the above requirements will soon be universally applied by all banks.

One aspect which remains problematic is the timeous preparation and auditing of financial statements. This is usually also the reason why annual general meetings are not held within the prescribed period. In view of the emphasis nowadays placed by banks upon the availability of the audited financial statements, trustees should do everything within their power to ensure that these are produced timeously.

I have previously mentioned what I call the '*cycle of decline*' –a phenomenon which may reach an unstoppable momentum when allowed to progress beyond a certain point. This malevolent succession may be outlined as follows:

1. For whatever reason, XYZ Body Corporate does not comply with the standards listed above.
2. As is typical of such schemes, some owners extend their sections without complying with the strict provisions of section 24 of the Act.
3. Due to financial pressures, some owners decide to sell their units. In the present economic climate, some buyers are found, with difficulty. The owners who have extended illegally are unable to sell.
4. Buyers apply for bond finance, but their applications are declined due to non-compliance with the bank's requirements. Accordingly the sales are cancelled.
5. The owners wanting to sell experience increased financial pressure and fall in arrear, or further in arrear, with their levy payments.
6. Because of non-payment of levies, the trustees are not able to initiate planned maintenance projects. Special levies are raised, with the previous defaulters once again not paying their dues.
7. The scheme falls in disrepair. Units are inevitably sold at deflated prices. Some new owners, attracted by the low prices, are again unable to pay the high levies necessary to perform maintenance.

And so on and so forth.

In order to combat a cycle of decline, it is essential that owners and trustees ensure that realistic budgets are maintained, that all statutory and administrative requirements for sound management are complied with, that maintenance is performed meticulously, and that levy defaulters are dealt with firmly.

Whilst one must sympathise with owners who struggle to make ends meet, it must always be kept in mind that non-payment by one owner merely shifts the burden to the other owners, that it undermines unit values and that it exposes the scheme to the risks of a spiral of decline resulting in irretrievable loss to all owners.

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# Rapid Urbanisation

## *A High Road and Low Road*

At this point in time there can be no doubt that South Africa is in the midst of a cycle of rapid and uncontrolled urbanisation. '*Cities without Slums,*' the slogan of the World Bank, is but a dream. So is the stated objective of the South African Government to eradicate informal settlements by 2014.

The tumultuous political changes of the 90's have led to unbridled and rapid urbanisation, coupled with unrealistic expectations. With illegal immigrants pouring over our borders and joining the endless influx to our cities, a goal of '*one family, one home*' seems utterly beyond our reach.

What we have to know in the first place is that South Africa is neither the only nor the first country to experience this phenomenon. One is inclined to think that rapid and uncontrolled urbanisation is something that only happens in third world countries. The fact of the matter is that developed countries in the West have all experienced this process to various degrees at one time or another. They have, over a period of time, succeeded in assimilating the informal sector into the mainstream housing and economic sectors. Many countries outside the West have failed, and are still failing, to do so. The question is why some countries succeeded and others did not. The presence or absence of a system of formal housing may be an important part of the answer.

Of course, the problem is not merely one of housing - the facts that these citizens remain outside the formal sector and unable to share in the spoils (such as they are) of the economy, present a number of tough problems, such as crime, illegality in many forms, planning difficulties, non-inclusion in the tax base, and political instability.

Professor F Smit[1] lists a number of reasons why it is extremely difficult to eliminate housing backlogs:

- Urbanisation occurs faster than was expected. In the Western Cape migration to the cities takes place at 10% per year.
- The influx of unknown millions of illegal immigrants was not taken into consideration in planning frameworks.
- Families divide more rapidly with children leaving their homes as perceived opportunities of acquiring free homes increase.
- Suitable land is becoming scarcer and more expensive. Long delays are experienced with rezoning.
- Building costs are escalating. At the present rate of financing in the Western Cape, for example, it will take 20 years to eliminate the existing backlog.
- Free housing fosters a damaging sense of dependence and escalating expectations. In addition, many irregularities occur: In underhand ways recipients of free housing let, and even sell their houses and return to the squatter camps.
- Due to poor building standards many houses have to be rebuilt.

Prof Smit points out that the reality of squatter camps as an inevitable part of the process of urbanisation should be accepted. He also expresses the view that security of tenure is more important than formal homeownership, due to the highly mobile nature of the informal community. Ownership of a house would tie one down to one place, which is impractical in an unsettled society of individuals looking for employment.

Whilst the latter argument has merit and non-formal housing may present a stop-gap remedy in the short term, sight must not be lost of the high, in fact overriding, importance of attaining formal housing for the extra-legals to ensure a stable society of responsible, law abiding, contented, self-sufficient, prosperous, and tax-paying citizens.

As pointed out convincingly by de Soto[2], the presence or absence of formal housing (private, registered home-ownership) is one of the crucial aspects which determines whether a developing country will succeed to integrate its citizens in a flourishing, formal economy, or whether it will fail.

The fact that the extra-legal sector may not desire formal ownership, only means that they are unaware of the benefits thereof to themselves.

De Soto points out that there may be a surprising amount of money floating around in the poor, extra-legal sector, but there is hardly any formation of capital. And

[1] 'Rooi Ligte flikker vir Stede en Dorpe' in Die Burger, 25th March 2010.
[2] Hernando de Soto, The Mystery of Capital, published 2000 by Basic Books.

capital formation is what makes the wheels of the economy spin and lifts people from the doldrums of poverty. Participation in a formal economy is what removes the "bell jar" at present only inhabited by the prosperous, to the understandable envy of everyone on the outside looking in.

Formal ownership of property has the following beneficial consequences:

- A sense of exclusive ownership engenders pride and a higher degree of protectiveness and care.
- It allows owners to enter the formal housing market, with all its benefits, including to realise a truly market related profit when selling and the ability to obtain mortgage finance for a variety of purposes and projects.
- It broadens the tax base for local authorities.
- It provides authorities with a reliable, fixed address where a home owner may be found for service delivery and administrative purposes and it facilitates the procurement of statistical data.
- If introduced on a meaningful scale, formal housing will counteract illegality on a broad front and will reduce the present untenable crime rate.

Similar to informal traders, home seekers prefer to remain outside the formal sector in order to avoid taxes and regulation. The challenge in this regard is to bring the message home to both groups that the way to their true prosperity is via formal recognition of their businesses and home ownership. Of course this is the more difficult route, but it is the only one to promise a better future for everyone.

As long as home seekers are not assisted and encouraged to enter the formal housing and commercial markets, so long economic progress in their communities will remain stunted. They will be looking from the outside the glass boundary at the inside of the "bell jar" and conclude that apartheid has allowed the Whites to appropriate, and still enjoy, all the rich fruits of the economy and land ownership to the exclusion of themselves. Of all the flickering red lights, that may be the most urgent one.

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# WATTER VEREISTES GELD VIR STRUKTURE OP GEBRUIKSGEBIEDE?

'n Kaapstadse leser doen navraag omtrent verbouings op stoepe wat gebruiksgebiede is. Volgens die leser is daar baie teorieë oor wat die wet toelaat en wat trustees en eienaars reken hulle weet van die wet.

In die leser se geval het heelwat eienaars braaikamers met dakke aangebou op hul stoepe. Verskeie variasies het ontstaan. Sommige is heeltemal toegebou met vloerbedekking, plafonne, en is slegs van binne die huis toeganklik. Laasgenoemdes se

Extract from the series *DeeltitelForum* which appears in Die Burger every Saturday.

deelnemingskwotas is wel 'aangepas'. Die leser wil graag verneem wat die wet daaromtrent bepaal, naamlik wanneer is 'n stoep net 'n stoep en wanneer word dit 'n 'braaikamer' wat deel moet vorm van die vloeroppervlak van die huis.

Tot 'n mate het die leser die vraag self beantwoord naamlik dat wanneer die stoep in geheel toegebou is met vensters, deure, plafonne en 'n vloerbedekking wat mens binne die huis sou verwag, kom dit neer op 'n uitbreiding van die deel (die woonhuis). Die streng prosedures ten opsigte van uitbreidings wat ek in DeeltitelForum van 17 Maart beskryf het, sal dan geld.

In laasgenoemde verband maak die leser melding van deelnemingskwotas wat 'aangepas' is. Hy meld nie watter prosedures gevolg is nie, maar deelnemingskwotas kan natuurlik nie op informele wyse, of deur 'n trusteebesluit of selfs ledebesluit bloot 'aangepas' word nie. Daar is twee hekkies waaroor gespring moet word, naamlik dat die gebruiksgebied (stoep) eers gekanselleer moet word, wat 'n spesiale ledebesluit plus 'n reeks registrasiehandelinge vereis. Daarna moet die deel uitgebrei word wat ook 'n spesiale besluit vereis, gevolg deur registrasie van die uitbreiding en alles wat daarmee gepaard gaan. Trustees moet verstaan dat hierdie aspekte nooit op informele wyse hanteer kan word nie, selfs al verbind die eienaar hom kontraktueel daartoe. Toekomstige eienaars sal dit eenvoudig mag ignoreer.

Maar hoe ver kan 'n eienaar gaan om strukture op sy gebruiksgebied op te rig en wat is die regsgevolge daarvan?

Volgens Standaard Bestuursreël 68(1)(vi) '*mag 'n eienaar geen struktuur of verbetering aan die gebou op sy uitsluitlike gebruiksgebied oprig of aanbring sonder die voorafverkreë skriftelike goedkeuring van die trustees nie, welke goedkeuring nie onredelik weerhou mag word nie en die bepalings van artikel 24 . . . . van die Wet nie oortree word nie*.'

Die verwysing na artikel 24 kom daarop neer dat geen verbouing wat eintlik neerkom op 'n uitbreiding van 'n deel onder die dekmantel van 'n struktuur op die gebruiksgebied mag deurglip nie. My toets is altyd om na die verbouing as 'n geheel te kyk, insluitend toegang, afwerking, plafon, vloer en vensters/deure. Dit is dan gewoonlik nie moeilik om vas te stel of 'n besondere verbouing neerkom op 'n uitbreiding van die deel of nie.

Ek raai eienaars wat verbouings wil doen op hul stoepe ten sterkste aan om-

(a) eers vas te stel of hul stoepe gebruiksgebiede is. 'n Stoep is nie outomaties 'n gebruiksgebied nie - soms word dit by die deel ingesluit. Die besluit om die een of die ander roete te volg, berus by die ontwikkelaar wat dikwels die besluit neem sonder behoorlike oorweging van die gevolge wat dit vir die latere eienaars kan inhou. Die nodige inligting omtrent die regsaard van 'n stoep kan vanuit die deelplan van die betrokke skema bekom word); en

(b) indien dit 'n gebruiksgebied is, eers aansoek te doen by die trustees en dan ook seker te maak dat hul verbouings nie so ekstensief is dat dit neerkom op die uitbreiding van die deel nie.

Kom ons aanvaar die voorbeeldige eienaar het alles na behore gedoen en geniet nou rustig sy nuwe braai op die stoep (wat nie heeltemal toegebou is nie). Is daar nog ander aspekte waarvan hy en die trustees moet kennis neem?

Natuurlik is daar – wie gaan die stoep met sy nuwe strukture in stand hou? As u sê die eienaar moet dit self doen, is u verkeerd. Volgens artikel 44(1)(c) is die eienaar slegs verplig om sy gebruiksgebied skoon en netjies te hou. Alle ander instandhouding moet deur die regspersoon verrig word. Vir hierdie doel is die regspersoon veronderstel om 'addisionele' heffings van die betrokke eienaar te vorder. In die praktyk word dit dikwels nie gedoen nie of nie behoorlik gedoen nie en dit kan lei tot dispute omtrent pligte om in stand te hou, heffings, en die koste van instandhouding. Dit het dikwels 'n onbillike heffingstoedeling tussen eienaars tot gevolg. In die leser se geval het die trustees natuurlik ook toegelaat dat dinge vir hulself bemoeilik word deurdat hulle toegelaat het dat soveel verskillende variasies ontstaan, wat elk apart beoordeel moet word ten einde vas te stel hoeveel vir instandhouding begroot moet word –'n administratiewe nagmerrie.

Alhoewel dit moontlik is om 'n spesiale reël te maak waardeur verantwoordelikheid vir instandhouding op die eienaar geskuif word, moet sodanige reël noodwendig 'n bestuursreël wees. Omdat dit 'n eenparige besluit vereis wat in die praktyk dikwels nie haalbaar is nie, word hierdie roete selde gevolg.

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# APPOINTMENT OF ALTERNATE TRUSTEES

## *An alternate view*

There appears to be some confusion regarding the appointment of alternate trustees. I am aware of many a body corporate where a trustee, unable to attend a meeting, has appointed his buddy as proxy. Is this legal? It kind of makes sense that a person should be able to appoint someone to protect his interests, or the interests of the owners he represents, or who voted him in.

The standard Management Rules provide for an owner to appoint another person as his proxy to attend general meetings. Trustees cannot appoint proxies. But is this not the same as appointing an alternate? As will be illustrated hereunder, it probably should be.

Where the confusion comes in is determining who is entitled to appoint an alternate trustee - the trustees collectively or the individual trustee? Many believe it is the former, but this may not always be the most practical situation.

Management Rule 9 states:

*(1) The trustees may appoint another person, whether or not he be the owner of a unit, to act as an alternate trustee during the absence or inability to act of a trustee.*

From the above it seems clear that the trustees must collectively appoint an alternate if one of their own is absent or otherwise cannot act as trustee.

In many bodies corporate you have trustees divided into two (or more) 'camps' representing different groups of owners. It then happens that meetings may be 'conveniently' arranged when one or more trustees are unable to attend. Maybe they are on holiday oversees or have to undergo surgery, an opportunity the current trustees have been waiting for. They may now even appoint an alternate who is sympathetic to their views without the knowledge or consent of the absent trustee.

This does not seem fair. Even more aggravating is that in terms of management rule 10(2) the trustees may appoint an alternate who is not an owner who may then claim remuneration from the person he replaced! This means that Peter, who may be sailing in the Caribbean, can be slapped with a fat bill for services rendered by an alternate trustee in whose appointment he had no say.

Even though the Companies Act does not apply to sectional title matters it is interesting to make a comparison. Article 58 contained in Schedule 1, Table 1 states:

> *Each director shall have the power to nominate any person who is a shareholder ... to act as alternate director in his place during his absence or inability to act as such director, provided that the appointment of an alternate director shall be approved by the board ...*

Further incidental support for view that an alternate trustee should be appointed by the person whom he replaces may be found in Management Rule 15(1):

> *It shall not be necessary to give notice of a meeting of trustees to any trustee for the time being absent from the Republic, but notice of any such meeting shall be given to his alternate, if he has appointed one, where such an alternate is in the republic. (My emphasis)*

Based on the above I am of the opinion that an individual trustee should be allowed to appoint his own alternate and that it should not be a decision that left solely to the trustees collectively, as it could lead to inequitable results. But in order to regulate this somewhat controversial matter I would advise that the individual trustees, at the first trustees' meeting after the annual general meeting, or any other trustees meeting thereafter, appoint an alternate to act should they be absent or unable to act. The proposed alternates should then be voted upon and approved by the trustees collectively, much in the same manner with which alternate directors are appointed in terms of the Companies Act.

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