

Sectional title levies will rise

Most owners in Sectional Title schemes can expect their levy payments to increase now that the Sectional Titles Schemes Management (STSM) Act has come into operation.

The reason, says Andrew Schaefer of Trafalgar, is that the new legislation introduces a compulsory requirement for all schemes to establish and/ or maintain a substantial reserve fund to cover the future cost of any major maintenance projects or emergency repairs to common property.

"The aim of this provision is to eliminate the need in due course for schemes to introduce onerous special levies to cover unexpected expenses, but in the short term it is likely to place an additional burden on most sectional title owners."

He explains that:

- Regulation 2 of the Act stipulates that this reserve fund must be equal to at least 25% of the scheme's total annual levy budget, and that if it is less than that at the start of any new financial year, the owners in the scheme must add 15% to their total levy budget for the next year as a contribution to their reserve fund.

"And since the majority of schemes do not at this stage have a reserve fund at all, most owners will now be facing a levy increase of 15% a year until the reserve fund is properly established - on top of any annual increase required to cover the rising costs of running the scheme."

Provision has been made for lower contributions once the reserve fund has reached 25% of the annual levy budget, Schaefer says, but owners can still expect their levies to be higher until the reserve fund is at least equal to 100% of the scheme's total levy budget. After that, they will be free to decide themselves on what their annual contribution should be in order to maintain the fund at this level.

He notes that although the STSM Act was passed in 2011, its Regulations and Annexures were only finalised earlier this year and it was only signed into law this month. The new Act replaces Sections 37 to 48 of the longstanding Sectional Titles Act of 1986, while the Prescribed Management Rules and Conduct Rules included in that legislation have now become annexures of the new Act.

Other important changes contained in the new legislation that have direct financial implications for Sectional Title owners include the following:

- A requirement in terms of Prescribed Management Rule (PMR) 22 that trustees prepare a detailed written plan for the use of the reserve fund, and report back to owners annually on the implementation of this plan.

The plan itself must list all major capital items on the common property that are expected to require maintenance, repairs or replacement over the next 10 years and must specify when these actions are likely to be necessary and what the cost is likely to be. In most cases this plan will have to be prepared by an outside consultant with the necessary expertise, so there will be a cost involved for owners.

- A requirement in terms of PMR 23 that a replacement valuation of all buildings and improvements in the scheme is professionally done every three years and that the scheme's insurance is adjusted accordingly.

- Requirements in terms of PMR 26 that separate records and bank accounts are kept for the scheme's administrative (levy) fund and the reserve fund; that separate budgets are prepared for the two funds and that the administrative fund must be independently audited at the end of every financial year by a person who has not had anything to do with the management of the scheme's accounts during the year.
- A provision that owners may be charged interest on any overdue amount payable to the body corporate (such as arrear levies) up to the maximum rate of interest payable under the National Credit Act, which is currently 35,4% per year.

Schaefer says the new legislation also sets out numerous other changes in regard to the way Sectional Title schemes are to be managed and how both general and trustee meetings are to be called and conducted.

It also contains detailed rules about the appointment and removal of trustees, and about their responsibilities for ensuring good governance in the scheme and compliance with the Community Schemes Ombud Service Act, which also came into operation this month.

Among the most important of these changes, he says, is the provision that no person attending a meeting may hold more than two proxies for other owners.

"It is also important to note that all proposed amendments to either the Conduct Rules or PMRs of any scheme must now be approved by the office of the Community Schemes Ombud (even if the scheme owners took a unanimous decision to change them). Any changes will also not be enforceable until the Ombud has issued a certificate of approval."

And finally, Schaefer says, the PMR 28 of the new Act makes provision for the first time for the owners of a Sectional Title scheme to decide to appoint (by special resolution) an "Executive Managing Agent" - to take over all the functions and powers of the trustees.

"Such a person would obviously need to be qualified and registered managing agent with the expertise and resources to run the scheme on a full-time basis, and there would once again be a cost involved. However, given the enormous demands that the new legislation places on trustees - who are usually amateurs only able to serve part-time - we expect this option to gain increasingly popularity, especially in very large schemes."

Trafalgar Press Release