

HOA space registrations should be checked carefully

In typical Homeowners' Associations the various areas such as roads, the entrance and parks or green spaces within the development are split into categories: public open spaces or private open spaces and these various areas are often remain registered in the developer's name and are not transferred with the first transfer when the scheme is established. In some HOAs, the roads could be private roads, in which case the scheme is responsible for their upkeep and public, where the municipality would maintain and own them. Some of the spaces within the estate, such as parks or walkways, are usually private open spaces, which should be transferred to the HOA.

Attorneys should from the first transfer of a property in this estate transfer all the public and private open spaces to the HOA, but this sometimes is not done and could lead to cases where it is found that the municipal bills have been mounting up for these various areas over several years because they were never transferred, says Michael Bauer, general manager of the property management company IHFM.

"I have seen cases where after ten years there is a massive municipal bill due (in one particular case, over R500 000) for the rates and services for an estate and no one is sure of who the various sections of land are still registered to as the developer has by that stage moved on and possibly closed that business," said Bauer.

The bigger the estates are the bigger the private open spaces are, and the bills for rates and services to these spaces can be astronomical, he said.

Where problems creep in is where one home in the development is in the process of being sold, and has applied for a rates clearance certificate, but because his property is linked (via the business partner number) to the outstanding amounts owed in rates or services, he will not get his rates clearance until all municipal accounts have been paid.

The first thing that has to be established is what is owed by the developer and what is owed by the HOA. The HOA could then try and recover some of the money owed from the developer, if he is to be found or if he is willing to pay towards the outstanding amounts. Many, however, will not volunteer payments as they would have moved on to other business and developments.

"The unfortunate part of this is that the amounts outstanding will have to be paid by the HOA because the development company will in all likelihood no longer be in existence and there is no entity to claim the money from," said Bauer.

The HOA could challenge the amount outstanding but this will take time and they will still have to make some arrangement to start paying off the arrears while they build their case. They would also need to start the process of transferring the various spaces to the correct entities.

"There are lessons to be learnt from this case," said Bauer.

With new developments, the first thing the newly appointed directors or trustees of the HOA should do is an audit, checking the erven and checking if they are transferred to the right entity. The developer will have run a separate set of books up to the first transfer taking place and the HOA must check that all the contracts or services have been transferred to the separate entity names. It is very important for the HOA members to read their constitution carefully and verify that the setup is done correctly to avoid problems later, where it is more difficult to sort out, said Bauer.