

Financial trouble looms for sectional titles with levies in arrears

According to Andrew Schaefer, MD of property management company Trafalgar, scores of sectional title (ST) schemes and home owners' associations (HOAs) are going to be in financial trouble soon if owners don't start making up the levy payments deferred during the hard lockdown imposed earlier this year due to the Covid-19 pandemic.



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Consequently, says Schaefer, ST trustees and HOA directors will need to know how to collect arrear levies most efficiently and cost-effectively.

“With many people being unable to work during the lockdown and others losing their jobs, trustees and directors were inundated with requests for levy reductions or deferments. And since it requires a new budget approved at a general meeting to reduce levies, most of these requests resulted in levy payments being deferred for three months, provided that the owner was up to date with their levy payments at the time, and provided that they agreed to repay the deferred amounts by the end of the financial year.”

Schemes still have bills due

However, he notes, all these schemes still had bills to pay for security, cleaning, gardening and maintenance services in terms of their annual budgets. They also had to keep paying their insurance premiums and the city council for services, and they had to keep up the contributions to their own reserve funds and statutory payments to the office of the Community Housing Schemes Ombud (CSOS).

“And because most of them operate on very lean budgets as it is, the failure of even a few owners in each scheme to start repaying their deferred levies and making up the arrears now will put the finances of the scheme – and the investments of all their fellow-owners - at severe risk.

“So while it may be an unpleasant task, especially considering the economic hardship that many people are still facing, trustees/ directors do need to be prepared to start taking action to collect arrear levies – and they should know that this is most likely to be successful with the assistance of a professional managing agent who is already registered with the National Debt Collectors Council, which is a legal requirement for anyone collecting any kind of outstanding debt.”

Schaefer says there are also five more ways in which managing agents make arrear levy collections easier for trustees/ directors. These are:

1. Having efficient billing systems to ensure the monthly provision of detailed levy statements that are always up to date. This greatly lessens the chance of owners who are in arrears being able to dispute what they owe as a “delaying tactic”.
2. Having existing systems and resources to manage “soft collections”, including repeated telephonic and email reminders to defaulters to pay their arrears, sending letters of demand at the correct intervals, keeping track of the collection costs and concluding debt repayment plans where possible.
3. Advising on debt collection via mediation or adjudication at CSOS, which is provided for in the Sectional Title Schemes Management Act and may be preferable where the amount outstanding is not large. It is important to note that CSOS will not take on any matter unless the trustees can show in writing that they have already tried to resolve the dispute in-house. In this regard a paper trail created by a managing agent can be very helpful.
4. Being able to provide access to a panel of attorneys with expertise in debt collections through the courts and charge lower rates. This is beneficial not only to the trustees/ directors in terms of efficiency but also to defaulters who ultimately have to pay the legal costs of collections.
5. Keeping track of any legal actions on behalf of the trustees/directors and advising them on outcomes such as debt judgments, property attachments and sheriffs’ auctions and the prospects for debt recovery.

Professional managing agents are also able to advise trustees/directors about various measures they might consider taking to inconvenience levy defaulters and possibly induce them to pay, says Schaefer. “For example, trustees may not, under

any circumstances, disconnect the electricity or cold water supply to any ST unit.

“And unless their conduct rules make provision for such actions, they will also not be able to block access to a communal DSTV or internet connection, to communal facilities such as a swimming pool or tennis courts, or to biometric security systems that allow fast entrance to the complex.”

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