

# Special levies can be raised without body corporate's consent

By [Marina Constat](#)

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Two words likely to upset any sectional title home owner are special and levy - particularly in the current tough economic times, when many South Africans are struggling to make ends meet.



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While monthly levy payments are part and parcel of sectional title home ownership, special levies should not be. It is imperative that the trustees of a complex put money aside each month as a buffer for unplanned expenses. A well run, proactive scheme will not be raising too many special levies as the body corporate and trustees will foresee their expenses and plan carefully at the AGM. They will budget for future maintenance costs with thorough consideration.

In terms of the Sectional Titles Schemes Management Act, which is due to become effective in the near future, sectional title bodies corporate will be legally obliged to put aside an amount directed by regulation.

## Attend meetings

Owners in complexes are urged to attend meetings and ensure that they are aware of the financial challenges facing trustees, but trustees may in fact raise a special levy without consultation with the body corporate. We are often contacted by irate owners who expected to be involved in this decision. We have to advise them that trustees are fully entitled to raise a special levy at any time, without the body corporate's prior consent, to cover items that were not budgeted for at the AGM.

These items could have been overlooked or unforeseen. There is no limit to how many times special levies can be raised in a year, save to say that the special levy must be necessary and it cannot be raised to pay an expense that was already included in the budget approved at the last AGM. Special levies might be raised for emergency maintenance items, or even for legal fees. The trustees may decide whether the payment of a special levy should be in a lump sum or in instalments, and they are permitted to set a deadline for the payment.

However, special levies are for emergency situations, and should not be viewed as a method of financing maintenance projects. Special levies can also only be raised for payment in the ensuing year, so cannot continue for longer than one year.

## **Bone of contention**

An owner who does not pay a special levy can be sued. A home owner may not withhold the payment of special levies, even if they question the necessity of the levy or complain that there were sufficient funds in the kitty.

Special levies have often proved a bone of contention when sectional title units change hands, but the Sectional Title Amendment Act makes it very clear that the seller must pay any special levy that was raised before the property was registered in the new owner's name. The timing of the offer to purchase is immaterial. If the property is not yet registered in the new owner's name, then the seller is liable for the payment of a special levy. The only way to avoid this is if the buyer agreed to pay the special levy in a contract.

Buyers considering a new home in a sectional title development are advised to ask whether a special levy is in place, or whether one is due to be raised, in order to be fully informed and avoid conflict over this sometimes contentious aspect of sectional title home ownership.

## **ABOUT THE AUTHOR**

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