

New sectional title regulations could cause friction - Constas

Specialist sectional title attorney Marina Constas, a director of BBM Attorneys and co-author of the book, "Demistifying Sectional Title", says recent amendments to the sectional title regulations could cause ructions in sectional title complexes.



Constas

Constas explains that one of the new sectional title regulations specifies that a sectional title owner who has arrear levies may not serve as a trustee. "This is an issue we have been lobbying for, and it is heartening to see that it has finally been addressed," Constas states. "It will ensure that trustees can now be relied on to hand over the debtors of the complex for legal action. In the past, a trustee who himself was in arrears would be loath to initiate legal action, as he would be implicated."

Potential problems

The amendment to Annexure 8, Rule 7 states the nomination or appointment of a trustee cannot be made if that trustee is in arrears with any contributions payable by him in respect of his section and his undivided share in common property. In addition, there can be no nomination or appointment if the individual has persisted in breaching conduct rules, despite written warning by the trustees or managing agents.

"This will get especially interesting when an individual who has been nominated disputes that he is in arrears, or that he is in breach of conduct rules. We suspect that many lively annual general meetings lie ahead," adds Constas.

A further potential problem situation is where a trustee is already in his position, and falls into arrears. "The latest amendment now says that if he is in arrears for more than 60 days with any levies or contributions payable by him, and he fails to bring such arrears up to date within 7 days of being notified to do so, then he ceases to hold office," Constas explains, adding that she believes this amendment is way overdue.

Further amendments

Another new amendment relates to a rule which has been deleted, Rule 31(4A), which catered for the temporary increase in the levy between the financial year end of the scheme and the annual general meeting, by allowing an escalation of 10%. Constas elaborates: "Since this rule was deleted, there was a question mark hanging over what would replace it. The answer may lie in the insertion of Rule 31(4B) which says that 'the trustees may, from time to time, when necessary, make special levies upon the owners or call upon them to make special contributions in respect of all such expenses as are not included in the budget'.

"In other words," she explains, "you could utilise this new regulation to raise the levy during the interim period between financial year end and the annual general meeting."

An amendment has also been made to the regulation of the Deeds Registries Act which is relevant to sectional title, Constas reports: "Effective from 2 May 2013, this amendment stipulates that a fee of R500 will apply when any person seeks to resolve a dispute by applying to the Chief Registrar for an arbitrator."

The next development in the pipeline for sectional title role-players will be the passing of the Sectional Title Schemes Management Act and Ombudsman Act, which Constas believes should become effective within this year. "We are aware that a board has been constituted, and once the Ombudsman's office has been set up, the Acts will be passed into law. Exciting times lie ahead, but only time will tell how the sectional title industry will be impacted," she concludes.

For further information, go to www.bbmlaw.co.za.

For more, visit: <https://www.bizcommunity.com>