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Attorneys Notaries Conveyancers

1st Floor, 2 Albury Park, Albury Road, Dunkeld West, 2196. DoceX 11 Hyde Park. t +27 11 560 7100 f +27 11 759 7960. Stellenbosch Office: t +27 82 287 3173

GENERAL AND SPECIAL LEVIES

General levies are raised by the Body Corporate at an annual general meeting (AGM) held by the owners of units within a Sectional Title scheme.

General levies are based on the annual budget and are approved by the Body Corporate and are applicable for the following financial year.

Special levies are raised at the discretion of the trustees (trustees are elected by the body corporate at its first meeting and at every subsequent Annual General Meeting (AGM))

Special levies can cause disputes between individual owners and the Body Corporate.

Prescribed Management Rules (PMR) 31(4) in terms of the Sectional Titles Act 95 of 1986 gave trustees the power to raise special levies to provide for unforeseen expenses, as long as the following requirements were met:

1. the expense for which the special levy was raised was necessary; and
2. the expense had not have been included in the budget approved by the owners at the last AGM.

The trustees would decide whether to make the special levy payable in one lump sum or in installments, as they saw fit.

It must be highlighted that PMR 31 (4) was deleted with the changes made to the Prescribed Management Rules for sectional title schemes in October 2012. This deletion was however made in error and will be reinstated once the Sectional Title Schemes Management Act comes into operation.

The Sectional Titles Schemes Management (STSM) Act 8 of 2011 was gazetted and signed by the President in June 2011 and this Act will come into operation on a date fixed by the President and published in the Government Gazette. Until such time, the provisions of PMR 31(4) does not apply.

Currently, the trustees can still raise a special levy according to section 37 (2a and 2b)

The only requirements are that:

1. the special levy is raised for an expense as listed in section 37 (2a);
2. it must be deemed necessary; and
3. it must be paid before it can be added to the new year's budget.

It must be noted that in terms of section 37(2) of the Act, the persons who are owners at the time the special levy was raised are liable to pay the special levy. This becomes especially important when a special levy is raised and becomes due and payable after an owner has sold his unit but before the transfer of ownership has taken place.

As soon as the unit has been transferred from the seller to the purchaser the seller may believe that he is no longer liable to pay the special levy, as he is no longer the owner of the unit. However because the seller

was the owner at the time the special levy was raised and became due and payable - the body corporate is entitled to recover the special levy from him and has no legal entitlement to recover the special levy from the purchaser as the new owner, in the absence of some other contractual arrangement.

It is therefore important to establish whether any special levy was raised prior to entering into an offer to Purchase to buy a Sectional Title unit. Even if the levy has been raised but payment has been postponed or arrangements made to pay the special levy in installments, the seller of the unit remains liable for the full special levy, which will be payable in full prior to registration of transfer.

It is imperative that the Offer to Purchaser is thoroughly perused to establish whether there are any contractual arrangements pertaining to special levies. The manner in which some agreements deal with special levies differs from the provisions in Section 37 (2) of the Act.

Should a purchaser sign an Offer to Purchase which contractually binds him to the payment of any special levy, he will be obligated to settle this.