

Short Notes on:

SECTIONAL TITLE SCHEMES MANAGEMENT ACT: BODY CORPORATES PART 2

Introduction

In the previous article on the Sectional Title Schemes Management Act¹(hereinafter referred to as the Management Act), the role players, functions and powers associated with body corporates were briefly explained. In this article, I will discuss a few additional key elements involved in the management and operation of development schemes

Body Corporate Meetings

It is common practice for formal meetings to follow a set of processes and directives to ensure its proper convention. The Management Act similarly lays out the process to be followed when convening a meeting of the body corporate. When deciding on matters, a consensus is reached by the holding of a vote. The vote can be to decide on general or special matters that have been included on the agenda for the meeting, by the passing of a resolution.

The elected trustees are the ones who drive the process of convening body corporate meetings. At least 14 days' notice must be given to all parties including owners, registered bondholders, holders of future development rights and managing agents (if any).² However, where a special or unanimous resolution is to be decided on, the body corporate is to provide at least 30 days' notice.³ In terms of the Management Act's Prescribed Management Rules (hereinafter referred to as the Prescribed Rules), trustees can resolve that 7 days' notice be necessary due to urgency, as long as the resolution does not relate to alterations or improvements to the common property or the installation of pre-payment meters to control water and electricity usage.⁴

Sectional Title Schemes Management Act's Prescribed Management Rules

As referenced earlier, the Prescribed Rules that govern the operation of a body corporate can be found as an annexure to the Management Act. Although prescribed, the rules can be

¹ 8 of 2011.

² Rule 15 of the Sectional Title Schemes Management Act's Prescribed Management Rules.

³ Section 6(2) of the Management Act.

⁴ Rule 7 read with Rule 29(2) and 29(4) of the Prescribed Rules.

amended, substituted or added to upon application for the registering of a development scheme. If any such amendments or substitutions are included, the chief ombud considering the application would need to confirm its approval.⁵ Approval of such diversion from the Prescribed Rules would depend on the proposed amendment's reasonableness and cannot be aimed at irreconcilably departing from the Prescribed Rules. Additionally, the proposed alterations need to apply to all owners equally.⁶

Recovery of Debt Against a Body Corporate

Interestingly, the Prescribed Rules make specific reference to the recovery of debts owed by a body corporate. The intention here is to ensure that members of a body corporate do not use the access to a separate legal identity to behave or conduct themselves in a reckless manner, whether financially or otherwise. As one can imagine, the effects of such behaviour would adversely affect the owners' interests, and it is therefore always advisable to nominate trustees whom the owners can trust to act in good faith and in the owners' best interests.

Section 15 of Management Act nevertheless states that where a creditor of a body corporate has obtained a judgment against the body corporate and wherein such an instance a writ to attach property remains unsatisfied; the creditor can then approach the court to join the members of the body corporate to the debt in their personal capacities as a joint judgment debtor. The only way for an owner to avoid liability in this instance is if they had previously paid their portion of the contribution before the judgment was obtained.

Conclusion

As the landscape for ownership remains subject to new ways to share ownership interests, it would always be to your benefit to understand the legal implications of being part of a shared development scheme.

Should you require any assistance in addressing body corporate matters, it is advisable to consult with an attorney with the necessary experience to guide you adequately.

⁵ Section 10 of the Management Act.

⁶ Section 10(3) of the Management Act.

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