

New sectional titles legislation to boost demand, prices

The much anticipated Sectional Titles Schemes Management Act and the Community Schemes Ombud Service Act that came into operation at the start of October are both vital for this property sector, says Sean Guy, manager of the Seeff Southern Suburbs Sectional Title Division.



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He says that sectional title property is the fastest growing property sector and the pace of growth is not going to slow down any time soon.

The nature of this type of property has introduced many complexities that often require vital and specific legislation to clarify and bring about effective management of these schemes. Guy says that this legislation should be seen as a refinement of regulations to better meet the practical needs of this type of property ownership.

The two acts introduce significant changes to scheme management law. Notably, the establishment of the Office of the Community Schemes Ombud will impact on dispute resolution in sectional title schemes, homeowners' associations and other community schemes.

More efficient management

The amendments provide for the more efficient management of schemes, says Guy. This includes an important mandatory requirement to establish a reserve fund for each scheme specifically intended to finance future maintenance, as well as new rules around the limitation of the use of proxies and an obligation to notify the Ombud of the domicile of the body corporate.

The Ombud's office will now assist schemes to recover arrear levies, remedy an inability to obtain either a special or unanimous resolution, resolve conflicting management and conduct rules interpretation and will ensure the safe storage and availability of these rules.

Guy says important points around the mandatory reserve fund include a suggested (but not yet confirmed) amount of 25% of the projected annual levy figure. Thus, should the projected levies for the next financial year be calculated at R800,000, then an additional reserve amount of R200,000 must be collected from the unit owners and specifically allocated to the reserve fund.

The aim of the reserve fund, he adds, is to ensure that funds are at hand for future maintenance and repairs to the common property. For sectional title schemes that have not been conscientious in maintaining a healthy "war chest" and have little or no reserves, this will inevitably result in a significant increase in levies.

It is important though to note that rather than add to the financial burden, these provisions meet an identified need since many sectional title properties fall into disrepair as a result of inadequate and inattentive financial planning and generally poor management. This becomes important when you want to sell and also for the buyer to, for example, obtain a home loan.

Initial difficulties

While the spirit of the legislation is to be endorsed, it may well create initial difficulties for many sectional title owners, the smaller schemes in particular, says Guy. That said, a healthy reserve fund will lessen the need for future special levies.

Trustees and managing agents have ninety days from the publication in the Government Gazette, which was the 7th of October, to implement these new statutory provisions.

Guy points out that banks scrutinise the financial statements of a scheme when considering a purchaser's bond application. Should it appear that the scheme is poorly managed and not financially sound, a financial institution will decline a bond over a unit. It is therefore in the interest of all sectional title owners to ensure the sound financial position of the body corporate.

A poorly maintained scheme results in a property that does not attract the interest of buyers and frequently sees such units sell for less than the prevailing market trend. A well-managed scheme on the other hand, he adds, will attract higher prices.

Special levy

On perhaps a more positive note, the Act has also addressed the issue of the special levy that is in place at the time of the sale. In the past the seller, the outgoing owner, was liable for the special levy in full, even that portion of the special levy that fell due after the transfer of the unit.

In terms of the new legislation, this rather iniquitous position is addressed, says Guy. From now on, a seller is liable to pay the special levy (in place at time of sale) only up until the date of transfer, whereafter the balance is for the account of the purchaser.