

New sectional title regulations leave owners, agents confused

The Sectional Title Schemes Management Act (STSMA), which came into operation on 7 October 2016, has left many sectional title owners and managing agents confused, according to the South African Institute of Chartered Accountants (SAICA). The Act is twinned with the Community Schemes Ombud Service Act (CSOSA). SAICA says it has been inundated with queries from sectional title owners and their accountants from all over the country.



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The new Act (STSMA) is intended to regulate concerns surrounding levies, insurance, as well the maintenance and management of sectional title schemes.

So what's causing all the fuss?

“Body corporates all over South Africa want answers on the new regulations,” says Juanita Steenekamp, project director: governance and non-IFRS reporting at SAICA. SAICA recently met the legal advisor of the newly established office of the chief ombud to get some clarity on areas within the legislation which are causing consternation.

In terms of the CSOSA the term 'community scheme' includes but is not limited to: sectional title development schemes (including holiday homes and office parks), a share block company (holiday homes), home owners or property owners associations, retirement homes and multi-unit dwellings (townhouses and apartments).

But there are several grey areas. “Body corporates are calling us because they don't understand the CSOSA,” says Steenekamp. “Many are asking what is included in the definition of community scheme, for instance; does it include flats held in a share block, specifically at coastal areas? Does it include commercial buildings and conservancies?”

Payment of levies became effective from 7 January 2017 but many owners in community schemes don't know what their levy is going to be yet. “Schemes need to collect the levy, which will be up to a maximum of R40, on a monthly basis and will pay that over quarterly,” says Steenekamp.

Is this simply another tax?

While taxpayers will fund the ombud this will be in their best interest says Steenekamp. “The legislation was enacted due to owners in body corporates having difficulty dealing with disputes. Previously the only option was going to court. The ombud will be a cost effective way to assist in resolving disputes.”

Some regulations within the Act are not practical to implement.

SAICA made a written submission to government last year, communicating its concerns regarding the proposed legislation which have since been promulgated. However SAICA is working closely with the chief ombud, Themba Mthethwa, to address areas of concern.

The CSOSA has also had unintended consequences on duets and smaller communal schemes. SAICA received an enquiry from a married couple who individually own separate, adjoining properties. "In terms of the Act they now have to register a communal scheme," says Steenekamp.

Capped rate of interest charged

Another sticking point is the cap on the rate of interest charged by a body corporate on owners who default on their levies. Body corporates are worried that a low interest rate could encourage the non-payment of levies.

However Steenekamp explains that the cap on the rate of interest charged is not bad news. "It brings body corporates in line with the requirements of the National Credit Act (NCA) and where incidental credit is provided, as in this case, the NCA allows credit providers to charge 2%, compounded monthly in arrears. This will protect owners of units against unscrupulous lending practices, because by implication if you have not paid your levy, the body corporate has provided you with incidental credit."

Meanwhile auditors are also seeking answers to implementation of some areas of the STSMA. Auditors have to validate that there is "a reasonable level of protection for sectional title owners and that financial affairs are effectively managed".

Administrative and reserve funds

On a more positive note the STSMA requires a body corporate to establish two funds: an administrative fund and a reserve fund, which offers some protection to owners from incurring the expense of an unforeseen special levy and against body corporates that are poorly managed.

The STSMA requires a body corporate to prepare a plan and cover the costs of future maintenance and repair of the common property. "However most schemes will have no reserve fund as this is a new act," says Steenekamp.

"The previous act required body corporates to insure the buildings for replacement value and other prescribed risks. The new act requires insurance of buildings, etcetera as well as public liability insurance and insurance for the risk of loss of funds sustained as a result of fraud or dishonesty (fidelity insurance).

"SAICA members have indicated that levies will increase due to the changes in the regulations, referring to new auditor appointments, creation of reserve accounts as well as the requirement to physically place the reserve and the administrative fund in two different bank accounts," says Steenekamp. "But a body corporate can approve a special levy."

Implementation date

Body corporates and auditors are not comfortable with the implementation date.

"The Rules and Acts were published and made effective on 7 October 2016 and it was immediately effective. However body corporates with year-ends after 7 October would not meet the new regulations' requirements, such as the keeping of a reserve fund, and the maintenance plan. Auditors are unsure on how to report on this," explains Steenekamp.

"This may lead to non-compliance with laws and regulations. Auditors would need to report this to the regulator. But body corporates had no time to build up the fund as they were not aware of this."

SAICA is hopeful that the chief ombud will provide clarity in the near future on the concerns which have been raised.

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