



Happy 2009! The management and staff of Compeg wish you all a wonderful and prosperous new year.

At Compeg we believe that living in sectional title harmony is key to a happy life and complex. If all role players

- owner, body corporate, trustees and managing agent - do their part to and play by the rules this harmony can be achieved and sustained.

In this month's edition of Management Matters the main article deals with the thorny issue of insurance excess payments. I really like to encourage all owners and trustees to make sure they understand the implications of the amendment to the rules to prevent discontentment and monetary losses.

On page 2 we deal with another important and contentious issue: the payment of special levies when selling your sectional title unit.

We trust that you will find the information helpful, informative and conducive to living happily ever after!

Clive

## TALK TO US!

Your feedback and comments are valuable to us. Please write to me at [cliveg@compeg.com](mailto:cliveg@compeg.com) should you have any comments, suggestions or questions. Please note: Letters and information will be included in this publication at the discretion of the editor.

## Disclaimer

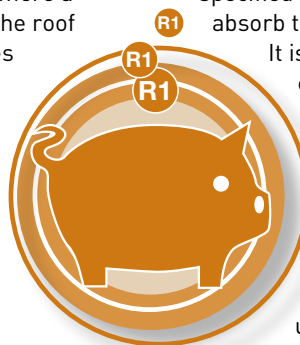
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## OWNER MUST PAY INSURANCE EXCESS

The question of who pays the excess on an insurance claim, either the body corporate or the owner has long been a grey area.

Prescribed Management Rule (29)4 was amended on 28 November last year and the situation is now clear. The amended rule states the following:

The owner is liable to pay the excess on any insurance claim, provided that a special resolution can be passed to the effect that the body corporate will carry the excess on specified damages. This new rule has many implications which may not be apparent at first glance. For example, where a Highveld storm takes the roof off a section and causes huge damage to the section belonging to a pensioner. The excess is R50 000. How on earth could that individual afford to satisfy the claim? What about if that storm destroyed three sections?



rule has provided a way to bypass this. The body corporate may pass a special resolution to ensure that it will take on the liability for the excess on specified damage, for example, roof damage and water ingress from the foundations. This is positive for owners, but it means that the trustees must take the proactive step of passing the resolution, and clearly set out the specified damages for which they will absorb the excess.

It is suggested that every body corporate should ensure that this resolution is passed, failing which owners may face huge lump sum insurance excess payments in the future. This is of concern, particularly as the trustees usually negotiate lower monthly premiums with the insurance company by increasing the excess amounts.

### >>Proportionately allocated

Since the rule change, you now have to allocate the excess proportionately to the owners of the damaged sections. It is agreed in sectional title circles that the excess should be divided proportionately to the loss per section. Although some believe that it is fair for each section owner to be responsible for the damage to their sections, it is believed that the spirit of the act did not intend the change.

### >>Increasingly vulnerable

As one could imagine, owners must now be aware that they are increasingly vulnerable to high excess payments in the event of an insurance claim on their section. The

### >>Urgent attention

It is clear that the trustees on behalf of their body corporate must attend to the insurance issue urgently. The trustees wield a good deal of power in negotiating the rate of premiums and excess depending on the financial position of the complex. In a few scary cases in Gauteng, trustees have failed to insure the building at all. That conduct amount to gross negligence. Consequently the trustees can be sued in their personal capacity.

[Source: Marina Conostas, director: BM Inc. Attorneys]

## >> RECOVERING LEVIES AFTER DEAL

### Recovering special levies when a sectional title unit is being sold can become a contentious issue.

According to the Sectional Titles Act 95 of 1986 ("the Act") the person who owned the unit when the levy became due and payable is the only person from whom the body corporate may legally recover the levy.

For example, 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 not liable to pay the special levy because he is no longer the owner of the unit. But because the seller was the owner at the time the special levy was raised and became due and payable, the body corporate is legally entitled to recover that special levy only from the seller and has no legal entitlement to recover the special levy from the purchaser as the new owner.

**“As soon as the unit has been transferred from the seller to the purchaser the seller may believe that he is not liable to pay the special levy because he is no longer the owner of the unit.”**

To avoid disputes arising regarding levy liability, the seller may assign his levy liability obligations to the purchaser with effect from the date of transfer.

Strictly speaking, the seller and the purchaser are not able to conclude such an agreement on their own. The body corporate must accept the benefits of such an agreement, releasing the seller from his statutory obligation and acquiring a contractual right to recover the outstanding levies from the purchaser.

(Source: Jennifer Paddocks, lawyer and consultant: Paddocks)

## WHAT EVERY LANDLORD SHOULD KNOW

Before anyone decides to take on the financial risks and responsibly of being a landlord, they should consider the financial implications carefully.

### Ask yourself the following questions:

- Can afford the financial burden if the property was vacant for three months?
- Is the rent you are asking for competitively priced?
- Is the body corporate able to deal with the responsibly of maintaining the property?

It is far more beneficial to deal with reputed agencies because there are industry standards that qualified agents have to adhere to. Reputed agencies within your area are up-to-speed with current industry rental rates and will be able to guide you in what to charge and how to charge.

Choose a rental agent who has a proven track record in the market.

If you want to venture into the buy-to-rent property market, contact Landsec (advertisement below) to help you find the right tenant and manage your rental properly.

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2nd floor • 9 St Davids Place • Parktown • 2193  
Tel: 011 481 3400 • Fax: 011 484 8460  
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