



FINANCIAL SUSTAINABILITY AND ACCESS TO FUNDING



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SECTIONAL
TITLE
SOLUTIONS

INTRODUCTION

There are a vast number of Bodies Corporate and Homeowners Associations (Community Schemes) in South Africa that struggle to operate functionally as a result of levy non-payment by unit owners. This often results in paying unit owners either having to subsidise non-paying unit owners levy amounts via special levies, or doing without services and maintenance to the common property.

In some cases, the consequences of non-payment of levies is even more severe. This occurs when even necessity expenditure (such as basic utilities) cannot be paid. In these cases, there is an immediate negative impact on ALL unit owner's property values, daily living conditions, and financial obligations to their Community Schemes.

Community Schemes often find themselves in a situation where not only necessity-expenditure cannot be funded, but legal and collection fees cannot be paid to ensure the collection of arrear levies.

To assist the efficient collection of arrear levies, the Trustees / Executive Committee of Community Schemes should ensure that robust and efficient Credit Control Policies are adopted and implemented by their Community Scheme.

Whilst Credit Control Policies aim to ensure the speedy recovery of arrear levies, it is ultimately the access to adequate funding facilities that will ensure the financial stability and sustainability of a Community Scheme. Thus, it is vital for the Trustees / Executive Committees of Community Schemes to secure access to funding, that can be accessed at relatively short notice, to enable the efficient collection of arrear levies and ultimately ensure the financial sustainability of their Community Scheme.





ACCESS TO FUNDING

STS specialises in facilitating loan funding to Community Schemes, offering various lending solutions to clients that have underlying levy debtor problems, or require funding for municipal arrears, maintenance and / or capital projects, but whose unit owners cannot immediately raise the necessary upfront funds (via levies or special levies).

Funding extended by STS, utilising our lending model, assists Community Schemes to:

- ✔ Maintain their legislative and/or contractual obligations
- ✔ Protect paying unit owners from subsidising the non-paying unit owners in their Community Scheme
- ✔ Enable the Community Scheme to offer their non-paying unit owners debt rehabilitation opportunities so as to protect their property asset and to avoid expensive legal costs

Our financial solutions are also geared to recognise, and not to interfere with and/or replace, the appointed Managing Agents' functions. Our goal is to provide financial assistance to Community Schemes, which allow their Managing Agent to maintain the financial sustainability of their clients, ensure cash flow requirements are met and the payment of essential services are honoured.

Key features of arrear levy funding facilities

- ✔ There are no monthly repayment obligations on the paying unit owners in the Community Scheme (repayment only occurs when the Community Scheme collects its arrear contributions):
 - The Community Scheme will not be required to service interest or capital repayments during the collection process against its arrear levy unit owners
- ✔ Historic arrears, as well as current monthly arrear levies can be drawn down from the funding facility
- ✔ The Community Scheme is able to operate effectively on a fully funded basis, as if all unit owners had in fact paid their levies (as these are now funded) and continue to pay their levies going forward, timeously
- ✔ All interest costs incurred are added to the arrear levy debtor accounts, therefore the paying unit owners are not prejudiced by the costs of the arrear levy funding
- ✔ The Community Scheme and its Managing Agent retain control of the legal process for the collection of arrear levies



FUNDING FACILITY TERMS

The Community Scheme, at its sole discretion, decides when and how much they require to draw down on the funding facility.

Funding Amount	Will be determined by a credit assessment and property valuation of the Community Scheme, as well as a review of the arrear levy debtor balances
Funding Facility Amount	Additional facility amount provided to fund ongoing Community Scheme expenses and legal fees
Funding term	Repayable as and when the Community Scheme recovers its arrear levies from non- paying unit owners, which become due and payable only once collected amounts are paid back to the lender
Interest Rate	2.0% per month, compounded monthly
Fees	No hidden fees or charges other than the interest cost

It is important that the Trustees / Executive Committee, adopt a Credit Control Policy that includes an interest rate, on arrear levies, that matches the funding facility available (i.e. 2.0% per month, compounded monthly). Provided the interest rates match, there should be no under recovery from non-paying unit owners (except under exceptional circumstances where for example the value on sale of a unit is less than the arrear levies owing by that unit owner).

Once a Special Resolution for funding is established by a Sectional Title Scheme or once the Homeowners Association complied with the requirements for funding as determined by their governing documentation (MOI or Constitution), then as soon as the Community Scheme requires additional funds for unpaid levies, STS will be able to advance funds within five (5) business days of the instruction.



PROCESS TO IMPLEMENT FUNDING FACILITIES

On the 7th of October 2016, a third generation of Community Scheme legislation was promulgated after much anticipation. These changes ushered in a renewed emphasis on financial management of Bodies Corporate. In particular, a new requirement that a Special Resolution is required to be taken for any borrowings on behalf of Bodies Corporate (Homeowners Associations will differ according to their respective governing documentation).

The process by which a Body Corporate Special Resolution is taken is included in Annexure A, whilst the proposed template resolution wording is provided in Annexure B.

Following the passing of a special resolution at the AGM / SGM, or in writing as provided by the Sectional Titles Schemes Management Act ("STSMA"), the Trustees must then also resolve to enter into the funding facility agreement. The proposed template Trustee / Executive Committee resolution wording is provided in Annexure C (Homeowners Associations will differ according to their respective governing documentation).



CONCLUSION

By accessing adequate, flexible and long-term funding facilities, Trustees / Executive Committees can ensure the financial sustainability of their Community Scheme, whilst arrear levies are being collected. This is a vital component of any sustainable financial management process, which aims to protect the paying unit owners from having to subsidise non-payment of levies, maintain property values for all unit owners and enable the Community Scheme to assist its arrear levy unit owners to retain their property asset and avoid expensive legal processes and fees.

The burden of having to fund expensive legal fees, whilst the Community Scheme collects its arrear levies, as well as the assurance that funding is available for any unforeseen urgent expenses, is critical to any Community Schemes.

STS aims to assist Managing Agents, Trustees / Executive Committees in Community Schemes to adopt the correct financial management processes to ensure the financial security and legislative compliance of these entities.

ANNEXURE A

PROCESS TO OBTAIN A SPECIAL RESOLUTION

WHAT IS A SPECIAL RESOLUTION?

A special resolution is defined in the STSMA as a resolution:

- Passed by at least 75% calculated in both value and in number, of the votes of the members of a Body Corporate who are represented at a general meeting; or
- Agreed to in writing by members of a Body Corporate holding at least 75%, calculated both in value and in number, of all the votes

WHAT IS THE STANDARD NOTICE REQUIREMENT IF A MEETING IS TO BE HELD TO ADOPT A SPECIAL RESOLUTION?

In the event that the Body Corporate intends to obtain a special resolution at a general meeting of unit owners (not the AGM) the Body Corporate must give all unit owners of the Body Corporate 30 days' written notice specifying the proposed resolution.

Even if the Body Corporate intends to propose the special resolution at the AGM, it would need to alter the normal 14 days' notice period to 30 days' notice.

The Notice contemplated for the meeting wherein the Body Corporate intends to adopt a special resolution must be:

- Delivered by hand to a member; or
- Sent by pre-paid registered post to the address of a member's section in the relevant scheme; or
- Sent by pre-paid registered post to a physical or postal address in the Republic that a member has chosen in writing for the purposes of such Notice; and
- May also be sent to a member by fax or email

WHAT ARE THE QUORUM REQUIREMENTS FOR A MEETING WHEREIN A BODY CORPORATE INTENDS TO ADOPT A SPECIAL RESOLUTION?

A quorum for a general meeting is constituted -

- For a scheme with less than 4 primary sections or a body corporate with less than four members, by members entitled to vote and holding two thirds of the total votes of members in value
- For any other scheme, by members entitled to vote and holding one third of the total votes of members in value

provided that at least two persons must be present unless all the sections in the scheme are registered in the name of one person, and provided further that in calculating the value of votes required to constitute a quorum, the value of votes of the developer must not be taken into account.

ANNEXURE A

PROCESS TO OBTAIN A SPECIAL RESOLUTION

However, in the event that the special resolution is taken at a general meeting where less than 50% (fifty percent) of the members of the Body Corporate were present in person or by proxy, the resolution cannot be implemented immediately until certain other requirements are met, namely:

- The body corporate must not take action to implement the resolution for 1 (one) week after the meeting, unless the Trustees of the Body Corporate resolve that there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage to the scheme; and
- Within 7 (seven) days from a resolution of this nature, members holding at least 25% (twenty-five percent) of the total votes of all members in value may, by written and signed request delivered to the Body Corporate, require that the Body Corporate hold a special general meeting to reconsider the resolution

WHAT IF NO QUORUM IS PRESENT AT THE MEETING WHEREIN A BODY CORPORATE INTENDS TO ADOPT A SPECIAL RESOLUTION?

- If within 30 minutes from the time appointed for a general meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time
- If on the day to which the meeting is adjourned a quorum is not present within 30 minutes from the time appointed for the meeting, the members entitled to vote and present in person or by proxy constitute a quorum

WHAT IF THE BODY CORPORATE REQUIRES FUNDING ON AN URGENT BASIS?

If the Body Corporate requires urgent funding, they can call a SGM:

- On 7 days' notice if the trustees have resolved that short notice is necessary due to the urgency of the matter and set out their reasons for this resolution
- On less than 14 days' notice, if this is agreed to in writing by all persons entitled to attend

Remember a meeting cannot be called on short notice as mentioned above if the special resolution is intended to be adopted for funding in respect of:

- Reasonably necessary alterations and/or improvements to the common property (30 days' notice is required)
- The installation of separate water and/or electricity prepaid meters on the common property (60 days' notice is required)

***Note that in respect of Homeowners Associations, the procedural and decision-making requirements as set forth in the relevant governing documentation (MOI or Constitution or other founding document) would need to be investigated in order to ascertain the nature of any resolution and process required for this decision-making power to be rendered valid.**

ANNEXURE B

TEMPLATE SPECIAL RESOLUTION WORDING

Special Resolution to Adopt Funding Facilities for the Body Corporate:

It is hereby resolved, by special resolution, that:

_____ and _____

The duly appointed Trustees [or Directors] for the time-being of the Body Corporate of [or the _____ Homeowners Association], are authorised to sign a funding facility agreement with BC Funding Solutions (Pty) Ltd ("BC Funding Solutions"), for funds required by the Body Corporate [or Homeowner Association] in the performance of its functions and / or the exercise of its powers, on behalf of the Body Corporate [or Homeowner Association], from time to time, with the following terms and conditions:

- 1.1 A maximum Funding Facility of up to [INSERT AMOUNT] or the arrear levy debtors balance (as per the latest Debtors Age Analysis)
- 1.2 At a maximum Interest Rate of 2% (two percent) per month, compounded monthly
- 1.3 Repayable as and when the Body Corporate [or Homeowner Association] collects its Arrear Levies
- 1.4 For the purposes of arrear levy funding, ongoing legal fee funding, and / or any other operational expense needs that are reasonably required and contained in the approved body corporate budget
- 1.5 The Trustees are authorised to obtain the above funding facility and securitise the repayment of moneys borrowed and the payment of interest thereon, in accordance with Section 4 (f) of the Sectional Titles Schemes Management Act 8 of 2011 [or clause X of the Constitution of the Homeowners Association or other founding document]

ANNEXURE C

TRUSTEES / DIRECTORS RESOLUTION

In attendance: _____

At a meeting of the Trustees [or Directors] of the Body Corporate of _____
(the "Body Corporate") [or the _____ Homeowners Association] held at
_____ (place) on this _____ day of _____ 20[] at
_____ (time).

THE TRUSTEES RESOLVED THAT:

The following Trustees are hereby appointed and authorised to enter into the funding facility agreement with BC Funding Solutions (Pty) Ltd ("BC Funding Solutions"), for arrear levy funding on behalf of the Body Corporate, as approved by special resolution of the members taken on [INSERT DATE] and to sign all documentation relating thereto in order to give effect to the obligations of the Body Corporate.

Appointed Trustee/Director #1: _____

Appointed Trustee/Director #2: _____

Signature: _____

Name: _____

Designation: #1 Trustee/Director

Signature: _____

Name: _____

Designation: #4 Trustee/Director

Signature: _____

Name: _____

Designation: #2 Trustee/Director

Signature: _____

Name: _____

Designation: #5 Trustee/Director

Signature: _____

Name: _____

Designation: #3 Trustee/Director

Signature: _____

Name: _____

Designation: Managing Agent

***Note that in respect of Homeowners Associations, the decision-making requirements as set forth in the relevant Constitution or other founding document would need to be investigated in order to ascertain the nature of any resolution and process required for this decision-making power to be rendered valid.**