



## SECTIONAL TITLE SOLUTIONS (PTY) LTD (“STS”) FINANCIAL SUSTAINABILITY AND ACCESS TO FUNDING

### 1. INTRODUCTION

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There are a vast number of Bodies Corporate and Homeowners Associations (“Community Schemes”)<sup>1</sup> in South Africa which struggle to operate functionally as a result of the non-payment of monthly levies 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, the impact on ALL unit owner’s property values, daily living conditions and financial obligations to Community Schemes, are immediate and dire.

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 arrears.

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 by the members of their Community Scheme and implemented.

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 their 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.

### 2. ACCESS TO FUNDING

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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.

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

- Maintain their legislative and / or contractual obligations;
- Prevent unit owners who pay their levies from subsidising their non-paying co-owners; and
- Enable the Community Scheme to offer their non-paying unit owners debt rehabilitation opportunities so as to protect their home ownership 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 unlock 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.

### 3. ARREAR LEVY FUNDING FACILITIES

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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

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<sup>1</sup> As defined in Section 1 of the Community Schemes Ombud Service Act 9 of 2011.



## SECTIONAL TITLE SOLUTIONS

collection process against its arrear unit owners;

- Historic arrears, as well as current monthly arrears 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, 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; and
- The Community Scheme and its Managing Agent retain control of the legal process for the collection of arrears.

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

### **Funding facility terms:**

- 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 amounts are paid 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 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.

Once a Special Resolution for funding is established, 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.

For ease of understanding, practical examples to illustrate the funding facility and how repayment occurs, is provided in Annexure D.

## **4. PROCESS TO IMPLEMENT FUNDING FACILITIES**

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On the 7<sup>th</sup> 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 Constitutions).

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 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 Constitutions).



## SECTIONAL TITLE SOLUTIONS

### **5. CONCLUSION**

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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 home ownership 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.



# SECTIONAL TITLE SOLUTIONS

## **ANNEXURE A – PROCESS TO OBTAIN 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.

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.

Quorum is 1/3 (one-third) of the members of the Body Corporate in which there is a proposed special resolution to be taken by the Body Corporate. 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.

The Notice contemplated for the 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.

**\*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.**



# SECTIONAL TITLE SOLUTIONS

## 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:

- A maximum Funding Facility of up to R500 000.00 (Five Hundred Thousand Rand), or the arrear levy debtors balance (as per the latest Debtors Age Analysis);
- At a maximum Interest Rate of 2% (two percent) per month, compounded monthly;
- Repayable as and when the Body Corporate **[or Homeowner Association]** collects its Arrear Levies;
- 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;
- 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]**.



SECTIONAL  
TITLE  
SOLUTIONS

**ANNEXURE C – TRUSTEES RESOLUTION**

In attendance: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

At a meeting of the Trustees of the Body Corporate of \_\_\_\_\_ (the "Body Corporate") held at \_\_\_\_\_ (place) on this \_\_\_\_ day of \_\_\_\_\_ 2017 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 #1: \_\_\_\_\_

Appointed Trustee #2: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: #1 Trustee

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: #2 Trustee

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: #3 Trustee

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: #4 Trustee

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: #5 Trustee

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.**



# SECTIONAL TITLE SOLUTIONS

## **ANNEXURE D – EXAMPLE TO ILLUSTRATE THE FUNDING FACILITY**

The below tables and explanatory notes are aimed to provide an illustrative example of the funding facility and the principles pertaining to the repayment from the collection of the body corporate arrear levies.

It is agreed and understood that the capital portion of the funding facility, as well as the interest, fees and expenses associated with the facility only becomes due and payable once the Community Schemes' arrear levies outstanding have been collected by the Community Scheme and paid to BC Funding Solutions (Pty) Ltd ("BC Funding Solutions").

**Table A: Initial advance under the funding facility**

Description	Amount	Explanation
<b>Initial Advance</b>		
Arrear levy balance (as per latest Debtors Age Analysis)	R 100 000,00	Maximum initial advance based on total debtors
Funding Facility (Advanced)	R 100 000,00	

Table A above illustrates an example of an initial amount advanced to the Community Scheme under the funding facility, by BC Funding Solutions, in an amount equal to R100 000.00, which is the maximum amount in this example that the Community Scheme can access according to the amount of arrear levies on inception of the funding facility.

**Table B: No collection of any arrear levies**

Description	Amount	Explanation
<b>Amount Advanced</b>	R 100 000,00	
Interest on funded facility	R 2 000,00	
Arrear levies collected (Paid to BC Funding Solutions)	R0,00	
<b>Ending funding facility balance</b>	<b>R 102 000,00</b>	
Normal monthly operational levies	R 75 000,00	
Normal monthly operational levies received by the Body Corporate	R 75 000,00	
Normal monthly operational surplus / (deficit)	<b>R0,00</b>	
Arrear Levy balance (as per the latest Debtors Age Analysis)	R 100 000,00	
Interest on arrear levies	R 2 000,00	
Arrear levies collected	R0,00	No arrear levies collected
Arrear levies collected (paid to BC Funding Solutions)	R0,00	
<b>Ending arrear levies balance</b>	<b>R 102 000,00</b>	
<b>Arrear levy surplus / (deficit)</b>	<b>R0,00</b>	

Table B above illustrates an example of the facility in a month in which no arrear levies were recovered and paid to BC Funding Solutions and one in which all operational levies were collected.

- The facility amount of R100 000.00 attracts interest equal to R2 000.00 (by way of example). The ending funding facility balance is R102 000.00;
- Budgeted normal levies of R75 000.00 are collected;
- The arrear levy balance increases by an equal amount of interest as the facility balance (assuming the arrear levies carry the same interest rate as the funding facility);
- The ending arrear levy balance equals the funding facility balance of R102 000.00;
- There is no shortfall or surplus arrear levy amount to be paid to BC Funding Solutions.

**Table C: Collection of arrear levies and payment to BC Funding Solutions**

Table C below illustrates an example of the funding facility in a particular month in which R5 000.00 arrear levies were collected and paid to BC Funding Solutions and in which all monthly operational levies were collected.



# SECTIONAL TITLE SOLUTIONS

Description	Amount	Explanation
<b>Amount Advanced</b>	R 100 000,00	
Interest on funded facility	R 2 000,00	
Arrear levies collected (Paid to BC Funding Solutions)	-R 5 000,00	
<b>Ending funding facility balance</b>	<b>R97 000,00</b>	
Normal monthly operational levies	R 75 000,00	
Normal monthly operational levies received by the Body Corporate	R 75 000,00	
Normal monthly operational surplus / (deficit)	<b>R0,00</b>	
Arrear Levy balance (as per the latest Debtors Age Analysis)	R 100 000,00	
Interest on arrear levies	R 2 000,00	
Arrear levies collected	R5 000,00	
Arrear levies collected (paid to BC Funding Solutions)	-R50 000,00	Arrear levies collected and paid to BC Funding Solutions
<b>Ending arrear levies balance</b>	<b>R 97 000,00</b>	
<b>Arrear levy surplus / (deficit)</b>	<b>R0,00</b>	

- The funding facility amount of R100 000.00 attracts interest equal to R2 000.00 (by way of example);
- R5 000.00 of the arrear levies (according to the Debtors Age Analysis) was collected by the Community Scheme and this amount was paid to BC Funding Solutions.
- The ending funding facility balance is R97 000.00 post the repayment of the collected arrear levy amount;
- Budgeted normal levies of R75 000.00 are collected;
- The arrear levy balance increases by an equal amount of interest as the funding facility balance (assuming the arrear levies carry the same interest rate as the funding facility) and reduces by the amount collected of R5 000.00;
- The ending arrear levy balance equals the funding facility balance of R97 000.00;
- There is no deficit or surplus arrear levy amount to be paid to BC Funding Solutions.

**Table D: Collection of arrear levies NOT paid to BC Funding Solutions**

Description	Amount	Explanation
<b>Amount Advanced</b>	R 100 000,00	
Interest on funded facility	R 2 000,00	
Arrear levies collected (Paid to BC Funding Solutions)	R0,00	
<b>Ending funding facility balance</b>	<b>R 102 000,00</b>	
Normal monthly operational levies	R 75 000,00	
Normal monthly operational levies received by the Body Corporate	R 75 000,00	
Normal monthly operational surplus / (deficit)	<b>R0,00</b>	
Arrear Levy balance (as per the latest Debtors Age Analysis)	R 100 000,00	
Interest on arrear levies	R 2 000,00	
Arrear levies collected	R5 000,00	
Arrear levies collected (paid to BC Funding Solutions)	R0,00	Arrear levies collected and NOT paid to BC Funding Solutions
<b>Ending arrear levies balance</b>	<b>R 97 000,00</b>	
<b>Arrear levy surplus / (deficit)</b>	<b>-R5 000,00</b>	

Table D above illustrates an example of the funding facility in a particular month in which R5 000.00 arrear levies were collected and NOT paid to BC Funding Solutions and in which all operational levies were collected.

- The funding facility amount of R100 000.00 attracts interest equal to R2 000.00 (by way of example);
- R5 000.00 of the arrear levies was collected by the Community Scheme and this amount was **NOT** paid to BC Funding Solutions.
- The ending funding facility balance is calculated to be R102 000.00;
- Budgeted normal levies of R75 000.00 are collected;
- The arrear levy balance increases by an equal amount of interest as the facility balance (assuming the arrear levies carry the interest rate as the funding facility) and reduces by the amount collected of R5 000.00;



## SECTIONAL TITLE SOLUTIONS

- The ending arrear levy balance equals R97 000.00 whereas the ending funding facility balance equals R102 000.00, resulting in a shortfall amount of R5 000.00 (the amount collected in that month). This amount will have to be paid to BC Funding Solutions.

**Table E: Shortfall in collection of normal operational levies**

Description	Amount	Explanation
<b>Amount Advanced</b>	R 100 000,00	
Interest on funded facility	R 2 000,00	
Arrear levies collected (Paid to BC Funding Solutions)	R0,00	
<b>Ending funding facility balance</b>	<b>R 102 000,00</b>	
Normal monthly operational levies	R 75 000,00	
Normal monthly operational levies received by the Body Corporate	R 65 000,00	
Normal monthly operational surplus / (deficit)	<b>-R 10 000,00</b>	Operational levy collection (deficit)
Arrear Levy balance (as per the latest Debtors Age Analysis)	R 100 000,00	
Interest on arrear levies	R 2 000,00	
Unpaid operational levies	R 10 000,00	
Arrear levies collected	R0,00	
Arrear levies collected (paid to BC Funding Solutions)	R0,00	
<b>Ending arrear levies balance</b>	<b>R 112 000,00</b>	
<b>Arrear levy surplus – available funding</b>	<b>R 10 000,00</b>	

Table E above illustrates an example of the funding facility in a particular month in which no arrear levies were collected, **AND** a shortfall in monthly operational levies occurs (i.e. there were further arrear levies by non-paying unit owners).

- The funding facility amount of R100 000.00 attracts interest equal to R2 000.00 (by way of example). The ending loan balance is R102 000.00;
- Budgeted monthly levies of R65 000.00 are collected from a total amount of R75 000.00;
- The arrear levy balance increases by an equal amount of interest as the funding facility balance (assuming the arrear levies carry the same interest rate as the funding facility) and the monthly budgeted levy amount not collected (R75 000.00 less R65 000.00 collected), or R10 000.00;
- The ending arrear levy balance equals R112 000.00 whereas the ending funding facility balance equals R102 000.00, resulting in a surplus arrear levy amount of R10 000.00.

The Community Scheme now has two options:

- On collection of the first arrear levy amount (assuming this is a collection from the same owners that failed to pay their monthly levies i.e. the additional R10 000.00), the Community Scheme will be entitled to utilise these funds (R10 000.00) for monthly operational expenditure and will not be required to pay this amount collected to BC Funding Solutions; or
- Request an additional drawdown on the funding facility for the monthly operational levies not collected in that month (i.e. draw down a further R10 000.00 from the funding facility).



# SECTIONAL TITLE SOLUTIONS

**Table F: Recovery of unpaid operational levies and collection of arrear levies**

Description	Amount	Explanation
<b>Amount Advanced</b>	R 100 000,00	
Interest on funded facility	R 2 000,00	
Arrear levies collected (Paid to BC Funding Solutions)	-R 5 000,00	
<b>Ending funding facility balance</b>	<b>R 97 000,00</b>	
Normal monthly operational levies	R 75 000,00	
Normal monthly operational levies received by the Body Corporate	R 85 000,00	
Normal monthly operational surplus / (deficit)	<b>R 10 000,00</b>	Operational levy collection (surplus)
Arrear Levy balance (as per the latest Debtors Age Analysis)	R 110 000,00	
Interest on arrear levies	R 2 200,00	
Recovered unpaid operational levies	-R 10 200,00	Retained by Body Corporate – need to be paid to BC Funding Solutions
Arrear levies collected	R 5 000,00	
Arrear levies collected (paid to BC Funding Solutions)	-R5 000,00	Arrear levies collected and paid to BC Funding Solutions
<b>Ending arrear levies balance</b>	<b>R 97 000,00</b>	
<b>Arrear levy surplus / (deficit) – available funding</b>	<b>R0,00</b>	

Table F illustrates an example of the funding facility in a particular month in which unpaid operational levies **AND** arrear levies were collected and the arrears levies were paid to BC Funding Solutions (i.e. there was an arrear levy surplus from previous months as illustrated in Table E).

- The funding facility amount of R100 000.00 attracts interest equal to R2 000.00 (by way of example);
- R5 000.00 of the arrear levies (according to the Debtors Age Analysis) was collected by the Community Scheme and this amount was paid to BC Funding Solutions.
- The ending funding facility balance is R97 000.00 post the repayment of the collected arrear levy amount;
- Budgeted monthly levies of R85 200.00 are collected from a total amount expected of R75 000.00;
- The monthly budgeted levy amount that was recovered (R85 200.00 less R75 000.00 expected), or R10 200.00, is retained by the Body Corporate and is not required to be paid to BC Funding Solutions and can be used for the monthly operational expenditure of the Body Corporate;
- The ending arrear levy balance equals the funding facility balance of R97 000.00;
- There is no deficit or surplus arrear levy amount to be paid to BC Funding Solutions.

Table F above illustrates the core principle underpinning of BC Funding Solutions lending model, which seeks to **protect paying unit owners and the integrity of the Body Corporate's operational levies**.

The figures in the tables above are for illustrative purposes only and have no meaning otherwise.

### Summary:

The intention of the funding facility is to rectify the financial instability caused when unit owners do not pay their levies.

To achieve this, BC Funding Solutions:

- Limits the initial advance amount to the maximum of the quantum of the arrear levies at that date.
- Requires repayment of the funding facility as and when the Community Scheme recovers and pays the arrear levies to BC Funding Solutions.
- Ensures that the Community Scheme has sufficient access to cash flow to implement its monthly obligations by not participating in the receipt of the monthly operational levies raised after the effective date of the funding facility.