



SECTIONAL TITLE SOLUTIONS (PTY) LTD (“STS”) CREDIT CONTROL POLICY IMPLEMENTATION

1. INTRODUCTION

A vast number of Bodies Corporate and Homeowners Associations (“Community Schemes”)¹ in South Africa 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 essential services and maintenance to the common property.

In some cases, the consequences of non-payment of levies are even more severe. This occurs where even necessity-expenditure, such as basic utilities, cannot be paid. In these cases, the impact on paying unit owners’ property values, daily living conditions and financial obligations to their Community Schemes, are immediate and dire.

It is therefore vital that the Body Corporate, Managing Agent and Trustees / Executive Committee of the Community Scheme consider adopting adequate and stringent levy credit control policies to ensure the effective and efficient recovery of arrear levies. Ultimately, it is the Trustees’ / Executive Committee’s obligation to ensure the financial stability and sustainability of their Community Scheme, which not only protects the paying unit owners’ rights, but also the value of the entire Community Scheme.

On the 7th of October 2016, a third generation of Community Scheme legislation was promulgated, after much anticipation, and the landscape of the Community Schemes industry changed. These changes ushered in a renewed emphasis on the financial management and stability of Community Schemes, in particular.

The new Community Scheme legislation places additional emphasis on the fiduciary obligations of Trustees / Executive Committee of these Community Schemes to manage the financial affairs of the Community Scheme. Failure to adhere to their fiduciary obligations could result in the Trustees / Executive Committee being held personally liable.

The Trustees / Executive Committees of Community Schemes play a vital role in respect of scheme governance. This document seeks to assist the Managing Agent and Trustees / Executive Committee to unlock and adopt an adequate Community Scheme levy credit control policy so as to assist them in managing the financial aspects of their Community Schemes.

2. ADOPTING CREDIT CONTROL POLICY

The Trustees / Executive Committee are responsible for the financial management and legislative affairs of the Community Scheme and therefore they must ensure that every member pays their lawfully, or contractually, levied contributions in terms of the Sectional Title Schemes Management Act (“the STSMA”) for Bodies Corporate or in terms of the Constitution, or other founding documentation, for Homeowners Associations.

This is a legislative, or contractual, charge once effected by the Community Scheme and therefore if it is not paid the Community Scheme shall be forced to take legal action against the defaulting Unit Owner, in terms of court action, or via an application to the Community Schemes Ombud Service (CSOS).

With the promulgation of the STSMA and the Community Schemes Ombud Service Act 9 of 2011 (“the CSOSA”) which became effective on 7 October 2016 the Community Scheme management and control environments have changed and therefore they must adopt, adapt and improve in response to the new legislation.

In terms of the Community Schemes legislation and depending on the rules set out in the Homeowner Association Constitution or other founding documentation, a Credit Control Policy need not be adopted at the

¹ As defined in Section 1 of the Community Schemes Ombud Service Act 9 of 2011.



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AGM / SGM. Trustees / Executive Committees can resolve to adopt new Credit Control Policy terms, if and when required.

The Community Scheme, Trustees / Executive Committee can establish the relevant terms, such as the period of default before being handed over to the levy collection attorneys (or the Community Schemes Ombud Service (CSOS)), as well as the default interest rate which shall be applicable to its members who fall into arrears.

Alternatively, the proposed Credit Control Policy (see below) can be provided to the members at the time of, or before its implementation, to educate and train the members on the policy, and explain the purpose of the implementation thereof.

Notwithstanding the above the Community Scheme, Trustees / Executive Committee, could utilise an AGM or SGM to implement the Credit Control Policy in one of two ways:

1. If the Trustees / Executive Committee merely wish to inform the members, without the option to vote thereon, then there are no additional formal requirements.
2. If the Trustees / Executive Committee require the members to vote on the Credit Control Policy then the formalities noted below will apply.

AGM / SGM OPTION:

The Agenda for the general meeting should include the proposal for the adoption of the Credit Control Policy. Both the Agenda, as well as the proposed Credit Control Policy, must accompany the Notice of the meeting that is sent to the members.

Secondly, the powers and functions of the Community Scheme should be explained to the membership, specifically in relation to the effect of the Credit Control Policy on the Community Scheme, if adopted. The information contained in 1 above can be utilised as a basis for the motivation of an adequate Credit Control Policy.

There is also the potential of incorporating the Credit Control Policy into the Management or Conduct Rules of the Body Corporate, or into the Rules of the Homeowners Association. This process will however require compliance with various other provisions of the STSMA for Bodies Corporate or the Constitution, or other founding document for Homeowners Associations.

Please contact us should you require further detail in this regard, as this will be of significant benefit to the Body Corporate or Homeowners Association.

PROPOSED CREDIT CONTROL POLICY

The Trustees / Executive Committee would like to propose the adoption and implementation of the following Credit Control Policy by the members of the Body Corporate / Homeowners Association.

Payment of Levies / Contributions:

- Levy contributions are to be paid in full on or before the 1st of every month, without deduction or set off, and must be paid in the amount stipulated in the Notice received by the Unit Owner from the Trustees / Executive Committee / Managing Agent of the Body Corporate / Homeowners Association. The same applies for the manner in which any special levy contributions are to be paid by the Unit Owner.
- Should the Unit Owner fall into arrears with their levy contributions, the Managing Agent and / or any registered debt collector appointed by the Community Scheme shall notify the Unit Owner to this effect.

Non-payment of Levies / Contributions:

- Should the member remain in default, the Body Corporate / Homeowners Association shall hand the levy account over to the levy collection attorneys who shall approach the courts and / or the CSOS for judgement.
- If a member is in dispute regarding their levy account, the member must lodge this dispute internally with the Body Corporate / Homeowners Association:



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- The member must first approach the Managing Agent with details of the dispute;
- Then the Trustees / Executive Committee will investigate the cause of the dispute, resolve on appropriate actions (if any) and notify the owner of the outcome;
- If the approach to the Managing Agent / Trustees / Executive Committee is not successful within 30 days of lodging the dispute, then the CSOS may be approached for dispute resolution.
- The member shall be liable for all the reasonable legal costs incurred by the Body corporate / Homeowners Association in the collection of the arrears on an attorney and client scale (if the unit owners have agreed to same, or the legal costs have been taxed) and those reasonable legal costs shall be added to the member's levy statement (if agreed by that member).

Interest Rate:

- Interest at the default rate of 2% per month shall be raised on the arrear levy amount owed by the member in default, until final payment of all arrear amounts. Unpaid interest shall be compounded monthly in arrears.

3. ALLOWABLE INTEREST RATE CHARGES ON ARREARS

There has been some confusion since the new Community Scheme legislation was promulgated in October 2016 as to the maximum interest rates chargeable by Community Schemes against their arrear levy contributions due and payable by unit owners.

Below is an extract of the portion of the new Regulation that relates to this topic:

- (3) The Body Corporate may, on the authority of a written trustee resolution –
- (c) charge interest on any overdue amount payable by a member to the body corporate; provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005), compounded monthly in arrear;

The Community Schemes industry is still awaiting final clarification from Government as to what this provision means, as none of the categories of credit agreement listed in the National Credit Act are applicable to arrear levies. CSOS have however formally confirmed at their public seminars that the industry standard of 2% per month, compounded monthly in arrears, is appropriate for Community Schemes arrear levy contributions.

4. CONCLUSION

The requirement for a robust and efficient Credit Control Policy (such as that proposed above), in managing the financial affairs of the Community Scheme, cannot be stressed enough.

By adopting, adapting and improving the manner in which the Community Scheme manages its credit control policies, whilst being cognisant of the roles and responsibilities that have been legislatively and contractually imposed upon them, the Trustees / Executive Committees, and the Managing Agent of the Community Scheme, can ensure the financial stability and sustainability of the Community Scheme.

By introducing a Credit Control Policy for a Community Scheme, the Managing Agent and the Community Scheme shall achieve the objectives set forth in this document and be satisfying their legislative obligations. This will also place them in a position which is a cut above the rest of the industry.

Together with STS, all Community Schemes can embark on a formidable approach to financial integrity and sustainability for their Community Scheme and especially for the paying unit owners.