

Recovering arrear levies from defaulting home owners just got easier

A change of legislation will now make it easier for sectional title trustees and home owners' association directors to recover arrear levies from defaulting home owners.



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This change, made in terms of the Rules Board for Courts of Law Act of 1985, is set out in Rule 46A of the Uniform Rules of Court, and quite simply provides for a court to set a reserve price when a property is to be sold in execution of a debt judgment.

Andrew Schaefer, MD of national property management company Trafalgar, explains that this will prevent the banks from being able to unilaterally veto such sales and leave bodies corporate, HOAs and local authorities with no way to give effect to any judgments they may have obtained for outstanding levies, rates and service charges.

The possibility of this happening, he says, was all too clearly illustrated in the recent Empire Gardens cases in the Gauteng High Court and the Supreme Court (*Body Corporate v Sithole & another (240/2016) [2017] ZASCA 28 (27 March 2017)*) in which the body corporate of Empire Gardens, having tried other ways to recover unpaid levies from an owner in the scheme, eventually had no choice but to seek a judgment for the debt, the attachment of the property and a sale in execution.

Blocked by the bank

The sale was then blocked by Nedbank, because the owner was not in arrears with her bond repayments and the price offered for the property at the Sheriff's auction was much lower than the outstanding home loan balance. When the body corporate then tried to sequestrate the defaulting owner, the bank also successfully opposed that, on the grounds that the body corporate would be the only creditor to benefit from such a move.

“This meant that even after lengthy and costly court actions, the body corporate still had no way to collect the arrear levies – and no way to stop the owner from running up further arrears.

“What is more, this has not been an uncommon occurrence. The banks holding the bonds over properties in community housing schemes such as sectional title complexes and gated estates have often vetoed sales in execution in the past and blocked the recovery of arrear levies.”

Detrimental to owners' interests

Schaefer notes that this has, in many cases, been severely detrimental to the interests of other owners, who have either had to pay higher levies to make up the shortfall created by the defaulting owners, or watch the value of their own investments being undermined because their body corporate or HOA had to cut back on maintenance and repairs to the whole complex.

“Now, however, this should happen much less. The new court rule provides for a reserve or minimum price to be set by the court that grants any debt judgment that will result in the sale in execution of a primary residence, which means that the bank holding the bond on that property will have to accept any sale concluded at that price or more. As is the usual practice in such cases, the buyer will then settle the outstanding levies so that ownership of the property can be transferred, and the body corporate or HOA will have recovered its debt.

“In addition, the defaulting owner will effectively have been replaced by a new owner who hopefully will not default and put the finances of the whole complex at risk or the investments of other owners in jeopardy.”

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