The STSMA is seriously flawed

Mike Spencer

The Sectional Titles Schemes Management Act (STSMA) replaced the original Sectional Title Act some time ago. It essentially splits the registration of schemes from the management of sectional title schemes.

In itself, this was not a bad idea, but the new Act is far from being practical. It is complicated for owners and managers alike as it has some major shortfalls with regard to the management of sectional title schemes.

The Act expects trustees to run their schemes with or without the assistance of managing agents. Even when managing agents are appointed, the Act really makes these professional managers subservient to usually unqualified, unprofessional trustees, who often run schemes "their way or no way" to the detriment of owners. I would suggest, for example, that probably half of the registered sectional title schemes have never made any contact with the Community Schemes Ombud Service (CSOS). In some instances, the solution would be the appointment of professional managers rather than trustees who must look after the interests of all owners, not some.

The Act is overwhelming one-sided and biased against the managers, trustees and compliant owners. For instance, trustees who default on their levies or do not abide by the rules, can still be elected as trustees, and if they get into serious arrears they can still stick around as trustees. Do we really think these defaulting trustees are going to chase themselves for levies in arrears or abide by the rules? The Act should revert to the prior situation that nobody who owed levies or who was in breach of the rules, could be a trustee. The Act should stipulate that a trustee who is one month or more in arrears will automatically be disqualified from being a trustee.

Lethargic CSOS

Levies in arrears and breaches of the rules can be reported to the CSOS for enforcement, but unfortunately the CSOS is going the way of almost every government arm. Things just don't happen. Personally, my son reported that in his apartment building the trustees decided that nobody in the building could install an air-conditioning unit because the trustees felt they were too noisy. Fourteen months later the situation has not been resolved by the CSOS and he has had to endure a summer of near 40^{o}C at times.

Owners with delinquent tenants cannot be forced to find new tenants despite frequent complaints about noise and disturbance. You can go the CSOS route, but don't expect a speedy solution.

Unpaid services

Owners and tenants who fail to pay water and electricity accounts are a real challenge. The body corporate is not allowed to disconnect these services even though these people are stealing the service without any

intention of paying. Going to court for such small sums, when the cost of the case must be borne by the body corporate, is neither practical nor fair. The same applies to levies in arrears. Why is it so hard for the CSOS or the courts to look at the accounts and make an immediate decision? Either the owner or tenant owes the money or not – there are no grey areas. The body corporate should be allowed to disconnect electricity and restrict water to any owner who fails to pay within 7 days of the account being sent out and a notice giving 7 days to pay or explain why the account is not correct. What is happening now is that the *other* owners are having to pay the building's account or risk having the services disconnected by the local authority or Eskom. If Metro and Eskom can disconnect, why can the body corporate not? Can the body corporate lay a charge of theft for unpaid water and electricity, as this is what it is?

There needs to an effective, efficient, quick and inexpensive method of getting an enforceable decision on the above points, and clearly the CSOS is not up to the task.

The reality is that these cases should not be clogging up the CSOS or the courts and could be handled far more efficiently by a panel of local attorneys who are set the task. One of the cases we currently have at the High Court is of an owner/developer who has never paid any levy in the 13 years since the scheme opened and has used every trick in the book to avoid paying. To short-cut the High Court case, we approached the court to confirm that no owner could withdraw from being a member (of any body corporate), but they refused to make a declaratory order. This owner now owes in excess of R4,5 million in levies in arrears.

Quorum and proxies

Most people understand the KISS (Keep it Simple Stupid) principle. STSMA has changed both the quorum and the way of voting. Previously larger buildings had smaller quorums than bigger ones. The system worked well. While it is usually fairly easy to get a 33,3% attendance in a scheme of 10 units, it is a near impossibility when you start talking of schemes of hundreds or thousands of units. Imagine trying to get 33,3% of a scheme of 15 000 units together in one venue! It is simply not realistic. Many schemes have well in excess of 200 owners. Simply finding a venue is near impossible and while having Zoom meetings is possible, I would suggest that it is not realistic for schemes of this size. Most larger schemes now rarely reach the required quorum, but it is curious that while the Act contemplates a bigger representation of owners at the general meetings, it allows for meetings that fail to reach a quorum to be held over to the same time and place the following week. At these meetings, *anyone* who turns up forms the quorum for the meeting. This is simply crazy and would mean that the 15 000-unit scheme needs to have 4 995 people, or by proxy, at a meeting but could be represented at the delayed meeting by *one* person. It just does not make sense. They should revert to the old ratios for the different-sized units. While 15 000 units are the largest scheme I have come across, there are quite a number of schemes with 1 000 plus units each and hundreds with 500 or more, and the same problem would apply to any of these large schemes.

Punish the good guys

What makes it worse is that any one person cannot hold more than two proxies. How on

earth is an owner of a unit in a large scheme going to know, firstly, who is going to attend, and, secondly, how many proxies they already hold? The Act is also very specific that the person to whom the proxy is given must also sign the proxy – also very difficult to do. The situation needs to revert to the earlier one where any owner can hold any number of proxies. Why should I not be able to choose to whom I give my proxy? I can certainly vote a particular way using my proxy, or if I don't like what happened, then I won't give him another proxy next time. At least the situation will then be that we will be able to hold meetings more often. Now, with held-over meetings, this does not happen, and you are punishing the good guys by making them come to two meetings, while those who did not bother to attend certainly won't come to the delayed meeting.

While I understand the intention behind the voting by participation quota (PQ) value, it is causing major disruptions at meetings. Just signing everyone in is now a major exercise. A computer program has to employed to calculate who is there and what percentage of the PQ he or she owns. This can take hours for a large building as it is human nature to arrive just in time or even late. Quite honestly, in the nearly 50 years I have been in property and from when I started in sectional title in 1980, I have only *once* been asked for a vote by PQ. It may well be that there is a need for voting by PQ in selected buildings, but it has always been allowed that any owner could call for a vote by PQ when required. In reality, in my experience, 99,9% of the time voting (if called for at all), is by mutual agreement after discussion on the subject. My strong suggestion is that things revert back to the previous way of voting by one vote per unit, unless any owner insists on a PQ-based vote.

Keep it simple

Simplifying how scheme meetings are run would increase the chance that a quorum will be present and that the meetings can be held on schedule. Not only that, it would ensure that the maximum number of owners participate in the decision making. The current system simply means that a very high percentage of general meeting are in reality eventually held with far below the required numbers. Thus, decisions are made for the body corporate by a small number of owners and not the intended quorum. I personally have driven from Bloemfontein to Sandton two weeks in a row to attend a body corporate meeting as a proxy because there had not been the required quorum, only to find that half the number of owners were represented at the second meeting. I was punished by the system in time and cost, while those owners who did not attend the meeting faced no penalty whatsoever.

It is now time to change to a more economical and practical system of sectional title meetings that favours those who do bother to participate. Δ

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