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Levy Clearance Certificates

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Introduction

This article examines the law in relation to Levy Clearance Certificates, which must ordinarily be obtained before transfer can be passed of a unit in a Sectional Title Scheme.

What is a Levy Clearance Certificate?

This is a document which is issued by the Body Corporate of a Sectional Title Scheme (or the managing agent on behalf of the Trustees), and which confirms that all amounts owing by the owner of the unit that is to be transferred have been paid in full (up to the end of the month of registration) to the Body Corporate.

How do you get One?

As part of the conveyancing process of transferring a Sectional Title Unit to a purchaser thereof, the conveyancer will apply to the Body Corporate or managing agent concerned for Levy Clearance Figures. The Body Corporate will supply the conveyancer with a document known colloquially as “Levy Clearance Figures”, which essentially advises the conveyancer as to how much the owner of the Sectional Title Unit needs to pay in order to clear any outstanding debts that the owner has with the Body Corporate, and to make sure that the owner’s levies will be in credit up to the end of the month in which registration occurs, so that the Body Corporate can issue the Levy Clearance Certificate.

The law provides that the conveyancer who is transferring the Sectional Title Unit to the purchaser thereof, must submit a document known colloquially as a “Section 15B(3) Certificate” to the Deeds office when lodging the documents for transfer. This is a document signed by the conveyancer, which

certifies that either all amounts owed to the Body Corporate have been paid, or provision has been made to the satisfaction of the Body Corporate for the payment of all the amounts to the Body Corporate. If the Section 15B(3) Certificate is not submitted by the conveyancer, transfer cannot pass. As such, the Levy Clearance Certificate must be obtained (or provision must have been made for payment to the satisfaction of the Body Corporate) before the conveyancer will sign and submit a Section 15B(3) certificate to the Deeds Office to facilitate transfer.

What if the Money to Pay is not Available at the Time of Transfer?

In the event that the seller of the unit is unable to pay all amounts owed to the Body Corporate before transfer, it is possible to make an arrangement with the Body Corporate that whatever is owed to it be paid after transfer in some or other manner. This kind of arrangement normally includes the conveyancer who is attending to the transfer providing the Body Corporate with an undertaking or bank guarantee for payment of the amount owed to the Body Corporate on registration of transfer (because at this time the proceeds of the sale should be available in the conveyancer's trust account and a portion of those proceeds can be used to settle the amount owed to the Body Corporate). There are other types of arrangement that could also be made, such as an agreement between the owner and the Body Corporate that the amount owing will be paid off monthly in instalments for a certain period. This type of arrangement however is not very popular because Body Corporates have very little security for the debts owed after transfer, and thus there is not much keeping the seller to the agreement and there is thus a high risk of default.

What happens if no Arrangement can be Made?

In the event that there is absolutely no way that the Body Corporate will agree to issue a Levy Clearance Certificate, the conveyancer will (normally) refuse to sign the Section 15B(3) Certificate and the transfer cannot be lodged at the Deeds Office. The whole point of this legislation is that the Body Corporate essentially has a "veto" right which enables it to stop transfer passing, until such time as it has been paid everything that it is owed or arrangements to its satisfaction for the payment of all amounts owed to it has been made.

Can a Purchaser of a Unit Be Held Liable for any of the Seller's Debts that were Unpaid at the Time of Transfer?

In short, the answer is no. This is because our law treats the relationship between a Body Corporate and the owners in a Sectional Title Scheme as a quasi – contractual relationship. This means that when an owner buys a unit in a scheme they are bound by the law relating to Sectional Title Schemes as well as the unique Body Corporate rules of that scheme (which are essentially contractual in nature). This means that a Body Corporate can only hold the person who incurred the charges liable for those charges in terms of the contract between the parties that created the liability for those charges in the first place. The only

exception to this is where a purchaser becomes liable for any outstanding special levies that were raised while the seller was the owner. This is specifically provided for in Section 3 of the Sectional Titles Management Act.

Levy Clearance Must Be Obtained in EVERY Sale

A Levy Clearance Certificate and Section 15B(3) Certificate must be obtained in every sale – whether the seller is deceased, insolvent or it is a sale by the sheriff in execution. This applies even where the sale of the property wouldn't fetch enough to pay the outstanding levies. A Body Corporate has the legal power to refuse to issue the Levy Clearance Certificate if all amounts owing to it are not paid regardless of the state of the seller's finances or the legal capacity in which the unit is sold (for example by the liquidator of an insolvent state, or by the executor of a deceased estate)^[1]. Although this seems counter-intuitive at first glance, remember that it is always open for the Body Corporate to write off levies owing that are not recoverable even by a sale in execution because it is impossible to “bleed a stone”. In the situation where the Body Corporate could never possibly recover all amounts owing, it would be practical for it to write off some debt and at least recover what it could, with a view to starting a “fresh slate” with the new owner and moving forward. The Body Corporate could thus choose to accept a lower amount, and issue the certificate voluntarily if it so chose.^[2]

Conclusion

If you are thinking about selling your Sectional Title Unit, it's a good idea to ensure that you are up to date with all levies owed, and that you have finalized any disputes that you might have with the Body Corporate in relation to levies charged, failing which you may have difficulty obtaining your Levy Clearance Certificate and this may delay or even worse, prevent transfer to your purchaser, in which event you may be held liable by the purchaser of your unit for a breach of your sale contract and compelled to pay damages.

^[1] *Nel NO v Body Corporate of the Seaways Building* 1996 (1) SA 131 (A) and *Barnard NO v Regspersoon van Aminie* 2001 (3) SA 973 (SCA).

^[2] *City of Johannesburg v Evan Grand* 6 CC (9/08) [2008] ZASCA 146 (27 November 2008).