



THE COLLECTION OF ARREAR LEVIES WITHIN SECTIONAL TITLE SCHEMES

1. Introduction

A levy is a monthly payment that must be made by all owners in a sectional title scheme, to the body corporate or managing agent of the said scheme.¹ A body corporate collects levies to cover the general expenses of running a sectional title scheme, which includes the maintenance of the common property; administration fees; payment of building insurance levies and so forth.²

2. The Sectional Titles Schemes Management Act

The *Sectional Titles Schemes Management Act* "STSMA" is the governing legislation on levy contributions.

Section 3(1)(c) of the *Sectional Titles Schemes Management Act* states:

to require the owners, whenever necessary, to make contributions to such funds:
Provided that the body corporate must require the owners of sections entitled to the right to the exclusive use of a part or parts of the common property, whether or not

¹ Wits University – A Guide to Sectional Titles 7 <https://www.wits.ac.za/media/wits-university/faculties-and-schools/-engineering-and-the-built-environment/research-entities/cubes/documents/A%20Guide%20to%20Sectional%20Title%20in%20South%20Africa.pdf>.

² Fitzanne Estates – Advice for Body Corporates <https://www.fitzanne.co.za/advice-for-bodies-corporate-when-owners-do-not-pay-their-levies/>.

such right is registered or conferred by rules, to make such additional contribution to the funds as is estimated necessary to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts, including the provision of electricity and water, unless in terms of the rules the owners concerned are responsible for such costs.³

3. Consequences of defaulting levy payments

A scheme will not be able to maintain its necessary upkeep if its members fail to make their levy contributions. When levy payments are not being made, a scheme that does not have a large reserve levy fund may have to postpone paying employees and creditors. This can lead to the following problems: marketability of a scheme can be affected; services, such as water and electricity delivery, may be disconnected; service providers of the body corporate may terminate their service agreements; and so forth.⁴

Owners have a legal obligation to pay their levies in terms of section 3 of the *Sectional Titles Schemes Management Act*. Failing to pay levies can have a serious financial impact on the body corporate and other owners. Thus, when owners fail, neglect or refuse to pay levies to a body corporate, the body corporate has to take measures to collect the arrear levies and ensure that owners will comply to pay future levies. A body corporate can make use of attorneys to collect arrear levies.

4. The legal process of recovering arrear levies

The levy recovery process is too comprehensive to be explained in great detail for the purpose of this article. The fundamental aspects of this process will therefore be explained below:

4.1 Letter of demand

Generally, attorneys will send a letter of demand to a debtor as a first step in the debt collection process, informing the debtor of his or her breach and giving the

³ The Sectional Title Schemes Management Act 8 of 2011.

⁴ Fitzanne Estates – Advice for Body Corporates <https://www.fitzanne.co.za/advice-for-bodies-corporate-when-owners-do-not-pay-their-levies/>.

debtor an opportunity to pay the arrear levies in full or alternatively make a payment arrangement with the attorneys to pay the arrear levies in monthly instalments. A letter of demand gives a debtor the chance to avoid a formal legal process and subsequently additional legal costs.⁵

4.2 Summons

If the debtor does not pay the outstanding amount or fails to make a payment arrangement within the prescribed timeframe, provided in the letter of demand, the attorneys of the body corporate will proceed to issue a summons at a Magistrate's Court who has jurisdiction over the specific area.

After the Sheriff of the court serves the summons on the debtor, the debtor has 10 days to file a notice of intention to defend the action, if the debtor fails to do so the attorneys of the plaintiff will proceed to request the court to grant a default judgment.⁶

4.3 Default Judgment

If judgment is obtained against the debtor, it allows the debtor to be blacklisted. This applies even more pressure on the debtor to pay his arrear levies in full. If the debtor fails to abide by the court order after the default judgment has been granted, the attorneys of the body corporate can proceed to obtain a warrant of execution against the debtor's movable property.⁷

4.4 Warrant of execution against movable property

An execution warrant may be issued against all the movable property of the debtor. In the event where the debtor does not make a payment arrangement or pay his/her debt in full after receiving the warrant, the Sheriff of the court will be

⁵ Schindlers – Levy Collection Process <https://www.schindlers.co.za/news/levy-collection-process-in-sectional-title-schemes/>.

⁶ Van Deventer & Van Deventer – Levy Recovery for a Body Corporate <https://www.vandeventers.law/Services/Civil-Litigation-Debt-Collection/Levy-Recoveries>.

⁷ Van Deventer & Van Deventer – Levy Recovery for a Body Corporate <https://www.vandeventers.law/Services/Civil-Litigation-Debt-Collection/Levy-Recoveries>.

instructed to remove the movable assets of the debtor and sell it at a sale of execution.⁸

4.5 Warrant of execution against immovable property

If the debtor's movable property is insufficient to cover his or her debt, an application can be brought before the court to render the immovable property executable. If the application is successful, the property of the debtor will be sold at auction in order to settle the debt that the debtor owes to the body corporate.

5. Conclusion

It is of utmost importance for homeowners in sectional title schemes to pay their levies regularly and on time. Failure to pay levies can result in legal action being instituted against them.

Contact Malan Lourens Viljoen Inc. for any debt collection matter. We are more than happy to assist you.

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⁸ Van Deventer & Van Deventer – Levy Recovery for a Body Corporate
<https://www.vandeventers.law/Services/Civil-Litigation-Debt-Collection/Levy-Recoveries>.