



# Levy Collections Proposal

## Legislation Applicable

Van Deventer & Van Deventer Incorporated can assist you in the recovery of overdue levies and other relevant dues on behalf of Body Corporates. This saves you time and minimizes unnecessary high legal costs.

We strive to work with HOA's in firstly recovering long overdue levies, and then to maintain a low outstanding rate. After the initial efforts to get the bulk, if not all of the arrears into your bank account, our perceived continuous presence leads to a renewed awareness with your owners to keep their payments coming and up to date, in order to avoid possible action from us, and incurring further costs.

We realise too well the essential role levies play in the day-to-day running of your estate. Levies are calculated with all owners in mind, and having some of them not contributing on time can be detrimental to your operation!

Currently in South Africa we have the below legislation applicable to sectional titles:

1. Sectional Titles Act 95 of 1986 (STA);
2. Sectional Titles Schemes Management Act 8 of 2011 (STSMA); and
3. Community Schemes Ombud Service Act 9 of 2011 (CSOS)

### Liability for Contributions and Legislation Regulating Contributions.

The liability for levies as well as the levy collection process has always been regulated by the Sectional Titles Act, Act 95 of 1986 ("STA"), but has since been mostly repealed by the Sectional Titles Schemes Management Act, Act 8 of 2011 ("STSMA").

The STA is still applicable to the conveyancing aspects of sectional title ownership, however, the aspects such as liability to contribute towards levies in a sectional titles scheme as well as the legal process in collection arrear levies are now regulated by the Sectional Titles Schemes Management Act.

In terms of the STSMA more specifically Section 3(1)(c), an owner/member of a Body Corporate is liable to contribute, in proportion towards the levies, as approved by the Trustees of the Body Corporate, as well as any additional contributions as approved by the Trustees. If and when a member falls into arrears or refuses to make payment of their monthly levies, that is where the legal process is initiated.

### Legal Process Involved in Collection Arrear Levies

The legal process involved in collection arrear levies to some may seem like a complicated process, however, it is not as complicated as one may think when you have an experienced attorney in the employ of the Body Corporate.

The legal process involved is summarily as follows:

The (registered) Letter of Demand:

The letter of demand is sent in terms of Section 56 of the Magistrates' Court Act, 32 of 1944 (hereinafter referred to as "the Act"), to the debtor(s). Although this is not a compulsory requirement, it is always advised as it is in the Plaintiff's best interests, as it initiates the legal process informally but also allows the Plaintiff (the Body Corporate) to claim interest on the outstanding debt at a rate of 10.5% per annum from date of the demand as well as all incurred legal fees.

The Letter of Demand must briefly inform the debtor who the letter is from and what the nature of the claim is as well as the exact amount claimed. The Debtor is then allowed, as per the STSMA a period of 14 days in which he or she can respond to either make full payment of the claimed amount, alternatively the debtor is usually given the opportunity to enter into a payment arrangement.

The Letter of Demand may be sent either by registered mail, served by the Sheriff of the Court or delivered by hand, alternatively also sent via email. It is of utmost importance that an acceptance of receipt of the Letter of Demand is received.

## Summons

Should the debtor not respond in the time period afforded, as per the letter of demand, the legal process is formally instituted by means of issuing a summons on behalf of the Body Corporate against the debtor(s) (the owner(s) of the unit in the scheme)). The summons is issued out of the Magistrate's Court in the area of jurisdiction in which the unit or sectional scheme is situated.

Once the summons is issued it is delivered to the sheriff of the court who serves the summons on the specific unit in the scheme, which unit also serves as the domicilium citandi et executandi (the place of summons and execution) in terms of Rule 4(a) to the STSMA. Once the sheriff has served the summons, either personally on the debtor(s) or by means of affixing it to the domicilium, the debtor(s) have a period of 10 business days to defend the action. Should the debtor(s) not defend the summons within the 10 day period, default judgment is normally applied for any time from the 11th day on confirmation of instructions from the Body Corporate.

## Application for Default Judgment

In the event that the debtor(s) does not defend the summons within the stipulated time period, may the Plaintiff proceed to apply to the relevant court for a Default Judgment. Once the Clerk or Registrar of the court is in receipt of such an application, the court file is sent to the Magistrate to consider the request for Default Judgment.

Should the Magistrate then be satisfied with the content of the Summons and Particulars of Claim and that proper service of the documents were made on the Defendant, and in the obvious absence of the Defendant's Notice of Intention to Defend, the Magistrate will proceed to grant the Default Judgment.

### Judgment

Once the judgment has been granted judgment may not come under the attention of the debtor immediately, as quite often the debtor does not reside in the unit which is in arrears, but as the judgment is valid for 30 years it allows the Plaintiff to explore different methods of collection and further vastly impacts the creditworthiness of the debtor. The methods of collection once the Plaintiff is in possession of a granted judgment is such as:

## Warrant of Execution

Once judgment is obtained the Plaintiff will proceed to issue a warrant of execution against the movable property of the debtor(s). The sheriff, after receiving the warrant, is instructed execute the warrant at the Defendant's residential address. Should the Defendant not reside at the said address (unit in the scheme) the Sheriff is not able to attach the property of a tenant. It is at this point where a tracing agent is employed to establish the current residential address of the debtor, should they reside at an address other than their unit in the sectional scheme.

With the Sheriff's first visit, the Sheriff will demand payment of the judgment amount and if the debtor is unable to make payment, the sheriff will request that the debtor point out all the possible movable assets which may satisfy the judgment amount. The Debtor will normally contact the Plaintiff's attorney after the Sheriff has written up all movable assets and then make a repayment arrangement. Should the attorney not receive such a call the sheriff is then instructed to remove all the attached movable assets which will then be sold at a Sale in Execution.

In the event that the movable assets of the Debtor is not enough to satisfy the judgment debt, one can approach the court to have any immovable property deemed exceptionable.

## Section 66 Application

After the sheriff has sold the debtor(s) movable property which was insufficient to cover the outstanding amount due, an application in terms of Section 66 of the Act is brought against the debtor(s) movable property, whereby the court is requested to declare the debtor(s) unit in the scheme as executable after which it may be sold at auction to cover the arrear levies owing. This is normally a last resort measure as the debtor(s) usually make arrangements to settle the arrear levies owing.

## Conclusion

As mentioned above an owner of a unit, otherwise referred to as a member in a scheme, is liable to make monthly payment of levies in proportion to their unit's participation quota (PQ) in the sectional title scheme as determined by the Trustees for the financial year going forward. It is a reality that owners/members often do not make payment of their levies for numerous reasons and it may often become an intensive exercise in recovering same. However, when the Body Corporate employs the services of a skilled attorneys firm such as Van Deventer & Van Deventer Attorneys, the experienced attorneys make the legal levy collection process as simple as possible and attempt to recover the arrear levies as quickly as possible.

## Levy Collections Explained

All owners of sectional units are obliged to pay validly raised general and special levies to their bodies corporate. Monthly levies are paid monthly in advance and are collected by the appointed Managing Agent or body corporate. These levies are utilised to meet the costs of running the sectional title scheme which would include payment of insurances, electricity and water, security and maintenance of the common property.

In the event of owners defaulting in paying their levies, the owners who have duly paid effectively have to subsidise the defaulting owners and the body corporate as a whole is prejudiced.

If the defaulters persist, the body corporate will experience a shortfall in their expected income and it may not have enough funds to cover its running expenses.

It is essential that a scheme's trustees and Managing Agent are committed to ensuring that arrear levies are collected.

The trustees must ensure that they have resolved to charge an appropriate rate of interest on overdue amounts in terms of the prescribed Management Rules.

According to legislation, a body corporate has a discretion to either

1. Refer the dispute to the Ombud; or
2. Proceed to Court with the defaulting owner in the appropriate jurisdiction.

Community Schemes Ombud Service Act however states that "disputes" between the owner and the body corporate can be referred to CSOS. An example would be the incorrect calculation of levies.

Mere arrear levies would normally proceed to Court and below we would set out the proposed process and service provided by Van Deventer & Van Deventer.

# Levy Collections Process



# Courts Correspondents & Sheriffs

	<p><b>Courts</b></p> <ul style="list-style-type: none"> <li>•All nine provinces</li> <li>•Roughly 392</li> </ul>
	<p><b>Correspondent Attorneys</b></p> <ul style="list-style-type: none"> <li>•All nine provinces</li> <li>•Roughly 167</li> </ul>
	<p><b>Sheriffs</b></p> <ul style="list-style-type: none"> <li>•All nine provinces</li> <li>•Roughly 763</li> </ul>