# The Landlord

For Landlords and Sectional Title Owners

[Volume 7, Jan 2014

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## Welcome Back to 2014

**I trust that you and your family had a wonderful break over the end of the year and are back safe and sound. Jill and I seldom take our holiday at this time of year, preferring to go away at quieter times and for short breaks instead. We did however travel up to Johannesburg just for the day to see our children and grandchildren and especially to take my 90 year old mother to see our new granddaughter who was born three weeks ago. I am delighted to say that the traffic on the road was exceedingly light and more importantly very well behaved. Only the rare car was travelling much above the speed limit. What I cannot understand is that if you are caught speeding at the type of speeds that our singers and politicians seem to like to travel at, that when you are caught there is no possibility that you are not guilty! In my mind there should be no bail allowed – as it says on the Monopoly Board – Go Directly to Jail – Do Not Collect R200. Speedsters and Drunks should simply be found guilty by the Magistrate, be handed down the appropriate sentence and be allowed to spend Xmas and New Year and a whole lot longer in Jail! On top of that their licenses should be taken away for at least two years – irrespective of what their job is and only handed back after they had passed a new driving test. We are simply too gentle with what are potential murderers on the road. Traffic cops in general do a good job but are just not supported by the justice system. Let's have full time traffic courts over all the holiday periods – it might save your family's life!**

## TRUSTEES – It Is Not So Easy To Enforce The Rules – But You Have To Keep Trying!

**We were recently appointed to manage a new Body Corporate for a building that is having major problems. The main problem is an owner of two units who quite bluntly does not give a shit! He has tenants in the building that are illegal immigrants, who are running a brothel and selling drugs! They interfere and disturb other owners and tenants and make it impossible to run this as a normal family building. Over the four months or so since we took over we have managed to get the other problems of unpaid accounts and the state of the building under control and actually have paid off all the debts and now have a small financial surplus.**

**We are working on the owner and tenants and making life for them as difficult as possible, but one failing of the current sectional title act is the lack of teeth when it comes to this type of problem. You cannot force the owner to get rid of his tenants when he does not want to do so, especially where the tenant is a relative of the owner that they are looking after. But even when you "know" what it is happening it is very difficult and time consuming to make an uncaring owner do something about it. Remember the body corporate actually has nothing to do with the tenant and can only really act against the owner. And when the owner does not care it is a long drawn out process – yes you can go to arbitration. Have you ever tried it?**

**There is no doubt that you need to keep up the pressure on the Tenants and Owner by every means. If the levy is in arrears – hand the owner over for collection. Write to the Owner and tell him that the tenants are breaching the rules and that he is responsible. Take strong steps if the tenants don't pay for water, electricity or other services – why should the body corporate carry on supplying these services if the tenant or owner is not paying for them. In our case we have had the police raid the property for drugs and prostitution on a regular almost bi weekly basis – but the tenants are simply not taking the hint. The Police can only take real action if somebody is prepared to stand up and make a proper case against the residents. Yes – disruptive tenants are a real pain in the arse if the Owner does not care.**

## Change the Rules Properly

In the building which is referred to in the above article they were working with a set of "House Rules" that were totally unenforceable. When the rules were so called changed this was done at an ordinary annual general meeting but one at which insufficient notice had been given when one of the items on the agenda was to change the Annexure 9 (House Rules). House Rules changes can only be done by way of a Special Resolution which requires 30 days' notice to be given. Also the Agenda must specify what the intended changes are. In my opinion a simple agenda item that the Rules will be changes is insufficient and that the full wording of the changes is required. At the very least a clear indication of what changes are intended should be included in the Agenda.

When writing additions or amendments or replacements of all rules it is important to be very precise as to what is intended. "Changing Rules" does not mean that existing rules are cancelled. The amendment must be very clear. This sentence is deleted and replace by this sentence. Only those items mentioned are effected and everything else is left as is.

It is also very important that the proposed rules are fair and applicable to everyone even-handedly. They must also be written in such a way that they are logical, understandable and not open to vague interpretation. For example of a common change pets! No dogs over 30 cm or which will grow to over that size will be allowed. A maximum of two dogs are allowed. No cats are allowed. No pets may be brought onto the premises without first having received written permission from the Body Corporate (via the Managing Agents) to do so. Any pet that causes an unreasonable disturbance to other residents will have the permission to be kept on the property revoked and must be removed from the premises within 72 hours. Any complaint about a pet must be in writing to the Body Corporate via the Managing Agents.

Proposed Rules should be thought through very carefully and discussed at the special general meeting.

Remember only a normal quorum is required of which 75% both by unit number and PQ must agree to the changes. Ie 75% of those present and able to vote not of the total of the building. If proper notice is not given then the changes cannot be approved. Nobody who has not kept their levy up to date may vote at the meeting.

## You Don't Have to Suffer the Noise

A big bone of contention in any group housing scheme is noise. Particularly as people have such different ideas of what noise is. In reality while ideally no noise from a neighbour should be heard inside your unit some allowance has to be made for the fact that people are living close together.

Our attitude to noise is that if only one person complains that it is likely that they are over sensitive. If it were a real problem we would have a number of people complaining. We also believe that if the noise happens very occasionally one should perhaps overlook it unless it was really bad. Having to close your doors and windows to listen to your own TV would be totally unacceptable.

The noise should be for a limited time and stop at a reasonable hour. A party where the noise stops at 12 on a Friday evening during the Xmas holidays is far more acceptable than one that happens on a Tuesday night in the middle of the year.

You are entitled to live in a peaceful atmosphere and noise pollution is covered in a whole raft of legislation including Noise Control Regulations, SANS Measurement and Assessment of Environmental Noise; Occupational Health and Safety Act and other local regulations.

Did you know for example that there is a very efficient Noise Control Officer for the Mangaung Metro who can be contacted at 051 406 6452 (4th floor Chris de Wet Bldg. in Charles St)? They are able to enforce fines and confiscate whatever is making the noise – and do so!

To some extent we would need to look at the type of building in which the noise is occurring, the time and whether or not other people in the building find the noise disturbing or not. We are guided by the Trustees on these aspects and other people living there. A pure student building is likely to have a higher noise acceptance level than one occupied by retired people but at the same time we need to take cognisance of the fact that many of the students could be studying for exams and need a quite atmosphere to do so! The most difficult buildings to control would be mixed use buildings and those where temporary holiday tenants are accommodated in between full time retired residents.

Sorting out noise problems can be a full time problem in itself.

## Creating Exclusive Use Areas

I frequently get comments about the creation of Exclusive Use Areas (EUs) on the common property of sectional title building. This usually involves somebody wanting to create a private garden or make extra parking.

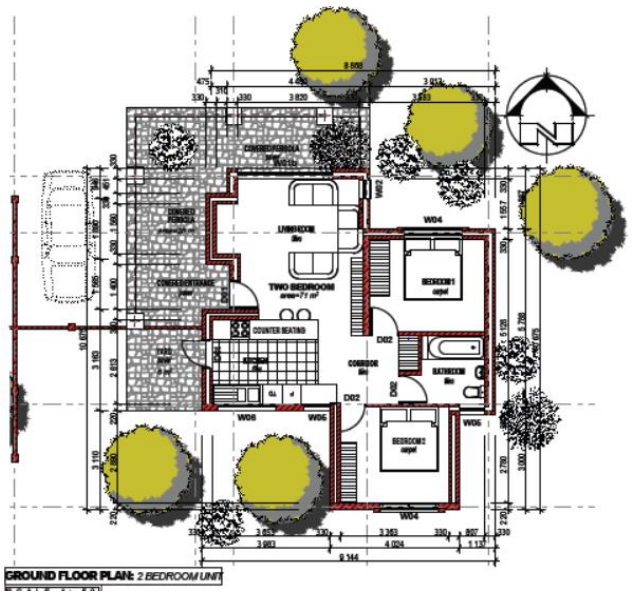
Firstly it must fully understood that Common Property (anything other than parts of the building sub-divided into units/sections) belongs to everyone and cannot be annexed by any one owner in particular.

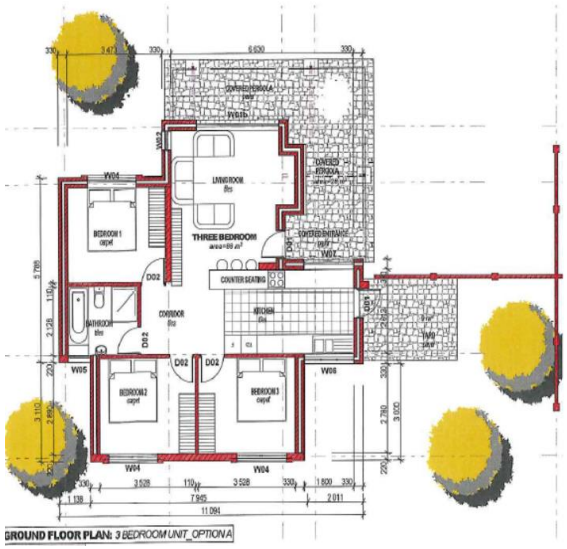
Creation of EUs is not the prerogative of Trustees! It is not something that they may do. Before EUs can be created a Special General Meeting (or at the AGM) must be called. What is being proposed is to take away the right of all the owners (to use that part of the common property) and give it to one owner only. This can only be done if **all** the owners of the common property agree!

Proper notice of the meeting must be given – 30 days instead of the normal 14 days – otherwise the meeting is invalid. The quorum for the special or unanimous resolution (to create a EU) is very different from a normal resolution and could involve nobody voting against the proposal and having up to 80 % of owners both by number of units AND PQ value positively approving the proposed changes. Nobody can be forced to give up their portion of the common property and with a unanimous decision if somebody objects then the whole thing falls flat. In that case the only way is to go to court and convince a magistrate that it is to the whole body corporate's benefit to make the changes.

If you make any changes without following the proper procedure then they are invalid from the beginning. Allowing an owner to building a lock up garage would mean that the garage belongs to the Body Corporate and that it is available for ANYONE to use! It would mean that the Body Corporate would be entitled to instruct the owner to knock the garage down and restore the common property to its original condition. Just because something has been done, even a long time ago, does not make it right! A later owner might discover the error and is entitle to insist that the building be demolished (ie he would vote against a unanimous decision.)

When making these proposals it is also important to understand that the user of EUs must pay a monthly compensation to cover all the costs of maintaining the area. Ie they must maintain the area themselves but cover such costs as insurance, rates, waterproofing etc too. Allowing things to be done without doing it the proper way can be a serious problem in the future – remember a new owner can insist that things are put right when they buy. A Trustee that allows things to be done illegally could also find himself in the hot box and having to cover the costs of rectifying the situation if they were grossly negligent.

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