CSOS TRAINING

GALLAGHER CONVENTION CENTRE

JOHANNESBURG, 13 MARCH 2020



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Community Schemes Ombud Service

Affordable Reliable Justice

***A WARNING**: not everyone who lives in a gated community is legit!!!!!!!*













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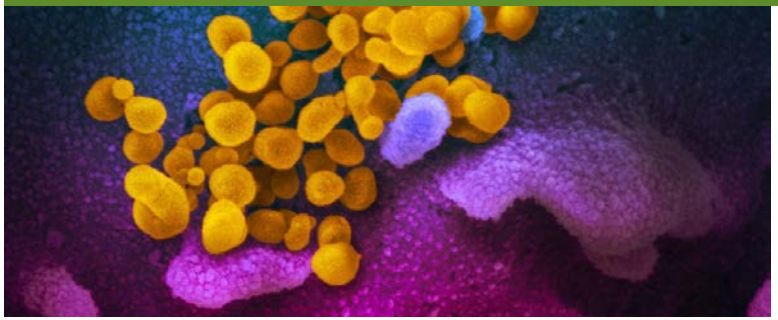
COVID-19 HOW DO WE PROTECT OUR BUILDINGS?



This is apparently what it looks like under an Electron Microscope according to the website ScienceAlert!!!

VERY IMPORTANT: ***THIS IS THE INDIVIDUAL RESIDENT'S RESPONSIBILITY!!!!!***

1. ***Based on evidence, the virus is transmitted primarily through respiratory droplets and touching*** — the large, sometimes visible droplets expelled when someone coughs or sneezes. The recommendation is to cover your coughs and sneezes, wash your hands, clean surfaces and maintain social distancing.

2. The New York City health commissioner described the risk in building common areas as "casual, at best," adding that evidence suggests that the virus is **not transmitted through ventilation systems.** (New York Times)

3. **What should be done**:

- Clean & disinfect high-traffic surfaces like front-door handles to the building, biometric surfaces, bannisters, lift buttons, common areas, laundry rooms and the like;
- Station hand-sanitizers around the building, **especially at lifts**;
- Post signs encouraging residents to be vigilant about keeping their homes disinfected and to cough or sneeze into the crook of their elbows;
- Post signs encouraging owners to wash their hands frequently for their sakes, as well as their fellow residents' sake.

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IS THE BODY CORPORATE ALLOWED TO DISCONNECT OR RESTRICT WATER OR ELECTRICITY TO A SECTION

OR

IN AN HOA,

OR

PREVENT ACCESS TO THE SCHEME ?







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WHAT DOES THE LAW SAY ?



Niehaus v High Meadow Grove Body Corporate (40667/2018) [2018] ZAGPJHC 712 (13 November 2018)

Facts . . .

What the Judge said:

"In any number of cases it has been held that to deprive a person of electricity supply, is an example of the deprivation of quasi-possession, which is remediable by the ***mandament van spolie****. A full bench decision in this Division, in* **Queensgate Body Corporate v Claesen (A3076/98) [1998] ZAGPHC 1(26 November 1999)** *is one such case. There Blieden, J with whom Serobe, AJ agreed, dismissed with costs an appeal from a Magistrates' Court which granted a spoliation order against a body corporate."*

The Court further stated that "*where the incorporeal right, such as a right to the supply of electricity, is as a matter of fact, an incident of the possession of immovable property, then the mandament van spolie will protect interference with such possession, as if it were interference with possession of the immovable property itself.*

It is necessary finally to say something about the argument that ***not all of the electricity supply was cut but only a portion of it.*** That argument seems to me to be without merit; in ***Burger v Van Rooyen*** **1961 (1) SA 159 (O)** a full court held that the spoliation relief avails even where the applicant has not been entirely deprived of possession of the whole of his property.

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Fisher v Body Corporate Misty Bay (2012 (4) SA 215 (GNP)) [2011] ZAGPPHC 234, 56 (12 April 2011)

Brief facts: . . .

Judge Legodi directed the body corporate to restore to Mr Fisher's possession of and access to the premises, on an urgent application based on the *mandament van spolie*. That case was not concerned with electricity supply but the body corporate had interfered with Mr Fisher's access by disabling his vehicular access disc. The body corporate argued that in terms of the rules of conduct of the rules of the body corporate, the body corporate was entitled to suspend the access discs of those owners who failed to make payment of their levies.

The Judge said:
"***The respondent would not have been entitled to spoliation without due process of the law. In other words, it could not have taken the law into its own hands as it is the case in the present case."***

MORAL OF THE STORY: *IF YOU WANT TO DISCONNECT, GET A COURT ORDER FIRST!*

CATHKIN PEAK SOUTH V JOHNSON AND ANOTHER

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Some Spoliation Adjudication Awards

- **Always heard on an URGENT basis:**

MCHUNU V VILLA LUSO - **ELECTRICITY**

Scheme in the south of JHB, R 45 000 owing by the Applicant.

NCGOBO V PEBBLE FALLS ESTATE & DE LUCIA PROPERTIES - **PREPAID ELECTRICITY**

Scheme in Kempton Park, Respondents blocked access to prepaid electricity

SHONGWE V SAVANNAH COUNTRY ESTATE HOA - **BIOMETRIC ACCESS**

The Respondent is ordered and compelled to:
Immediately upon publication of this adjudication order, reinstate full and unhindered biometric access to the scheme, by the owner and occupants of unit 596 Savannah Country Estate, Lalibella Village, Sprokiesboom, Silverton, Tshwane.

VOTING AT SECTIONAL TITLE MEETINGS . . .

How do you vote at Trustees' meetings?

ALWAYS by show of hands!!!!!!!



Management Rule 14

Voting

14. (1) A motion at a trustee meeting —

(a) does not have to be seconded; and

(b) must be determined by resolution adopted by **the majority** of the trustees present and voting.

(2) Each trustee is entitled to one vote; provided that if the deliberative votes of the trustees, including that of the chairperson, are tied, the chairperson has a casting vote, unless there are only two trustees.

(3) A trustee is disqualified from voting in respect of —

(a) any proposed or current contract or dispute with the body corporate to which the trustee is a party; and *(b)* any other matter in which the trustee has any direct or indirect personal interest.

(4) Trustees must adopt decisions by resolutions adopted by majority vote: Provided that resolutions may be put to the vote —

(a) at trustee meetings; or

(b) by a notice sent to each trustee which contains the text of any proposed resolutions and instructs the trustees to indicate their agreement to the resolution by their signature, which signatures must be received by the body corporate before expiry of the closing date specified in the notice.

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COLLECTION OF LEVIES – without disconnecting services!

COURT ROUTE – EXPENSIVE, TIME CONSUMING

CSOS – EXPEDITIOUS, EFFECTIVE *BUT ONLY UNTIL WARRANT OF EXECUTION ON MOVABLE PROPERTY (hereafter the matter must be handed over to an attorney to pursue!)*

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Cont. VOTING AT GENERAL MEETINGGS . . .

What does the Act say?

Section 11(1) . . . The quota of a section must determine –

(a) The value of the vote of the owner of section, in any case where the vote is to be reckoned in value

What do the Management Rules say?

Management Rule 20(1)(b) – (Except for a special or unanimous resolution, which must be adopted in number and value) a decision must be adopted by resolution of the majority of the votes, calculated in value, of the members present and voting

What is the "value" of your vote?

It is the participation quota of your unit, which you will find on the very last page of the sectional plans for the scheme, and has 4 decimal places e.g. 1, 2354.

Of course, the participation quota of your unit also determines the amount Of the levy that you pay!!!!!!!!

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Cont. VOTING AT GENERAL MEETINGS . . .



Have quorum requirements been established?

Is the p.q. used to establish if a quorum is present at a Body Corporate meeting ?



and the answer is . . .

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Found in MANAGEMENT RULE 19



19(1) Business must not be transacted at any general meeting unless a quorum is present or Represented.

(2) A quorum for a general meeting is constituted—

(a) for a scheme with less than 4 primary sections or a body corporate with less than four members, by members entitled to vote and holding two thirds of the total votes of members in value;

(b) **for any other scheme**, 1) by members **entitled to vote** and holding one third of the total votes of members in value, 2) provided that at least two persons must be present unless all the sections in the scheme are registered in the name of one person, and 3) provided further that in calculating the value of votes required to constitute a quorum, the value of votes of the developer must not be taken into account.

(3) For the purpose of establishing a quorum and for the purposes of section 6 of the Act, the value of votes of any sections registered in the name of the body corporate must not be taken into account and the body corporate must not be considered to be a member.

VOTING – CALCULATION !!!!!!

SHAKA'S ROCK BODY CORPORATE – P.Q. SCHEDULE

Name	Unit No	Unit square Meterage	PQ
Mrs G. Naidoo	1	148	0,0754
Mrs L. Smith	2	164	0,0836
Mrs. L Smith	3	249	0,1269
Mrs L. Smith	4	249	0,1269
Mr N. van der Bijl	5	170	0,0866
Mr G. Buthelezi	6	172	0,0877
Mr T. and Mrs L. Cross	7	148	0,0754
Mrs O. Dube	8	164	0,0836
Ms L. Ngwenya	9	249	0,1269
Mrs R. Rentsch	10	249	0,1269
	TOTAL	1962	100%

QUORUM CALCULATION:

VOTING CALCULATION:

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CAN A TRUSTEE BE HELD PERSONALLY LIABLE?



EACH TRUSTEE OF A SCHEME STANDS IN A FIDUCIARY RELATIONSHIP TO THE BODY CORPORATE IN TERMS OF THE ACT AND THE COMMON LAW!

. . . Which means that the Trustee will exercise his/her powers:

- ***HONESTLY . . . IN GOOD FAITH. . .. . .FOR THE BENEFIT OF THE BODY CORPORATE***

Section 8 (2)(a) of the STSMA

must in relation to the body corporate act honestly and in good faith, and in particular—

(i) exercise his or her powers in terms of this Act in the interest and for the benefit of the body corporate; and

(ii) not act without or exceed those powers; and

(b) must avoid any material conflict between his or her own interests

Section 8(3)

A Trustee of a body corporate who acts in breach of his or her fiduciary relationship, is liable to the body corporate for—

(a) any loss suffered as a result thereof by the body corporate; or

(b) any economic benefit received by the trustee by reason thereof.

Section 4

(4) ***Except as regards the duty referred to in subsection (2)(a)(i),*** any particular conduct of a trustee does not constitute a breach of a duty arising from his or her fiduciary relationship to the body corporate if such conduct was preceded or followed by the written approval of all the members of the body corporate where such members were or are cognisant of all the material facts.

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STEPS TO MITIGATE POSSIBLE LOSS!!!

ELECT TRUSTEES JUDICIOUSLY!

and . . .

INDEMNITY

In terms of Management Rule 8(4), the body corporate must indemnify a trustee, who is not the scheme's managing agent, against all costs, losses and expenses arising as a result of any official act by the trustee, which is not in breach of the fiduciary relationship to the body corporate.

The body corporate must further, in terms of Management Rule 23(7), insure against the risk of loss of their funds that may be sustained as a result of any act of fraud or dishonesty committed by a trustee.

The Regulations to the Community Schemes Ombud Service Act 9 of 2011 regulates this requirement for fidelity insurance.



All about a dog . . . a pig, or a python for that matter!



Photo courtesy Van Deventer & Van Deventer Inc Attorneys Website

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Pets in complexes . . .

Pathmasolahani Abraham and Anor v The Mt Edgecombe Country Club Estate



" . . . ***This case is not about a dog. It is about human conduct, the Consequences of voluntary submission to special rules and regulations, and the duties of those who are elected as arbiters when the enforcement of such rules is the issue"***

Mt Edgecombe is described as "one of the finest residential estates in South Africa.

Mt Edgecombe has 890 freehold residences, as well as sectional title schemes, and there are extensive common areas with dams, ponds, rivulets and magnificent garden areas. It is also a registered conservancy area, so the natural fauna and flora is protected.

Being a registered Non Profit Company, the HOA is governed by a Memorandum of Incorporation, which Empowers the directors to make Rules.

The Rules regarding pets say that Applicants **must** first apply to the directors of the HOA and consent will not be unreasonably withheld *SUBJECT TO THE CONDITION THAT*:
The dog must be small and not of a known aggressive breed; in regard to the size, the dog Should be of a breed that will not exceed 20 kg when fully grown.
Mrs Abraham's son bought Theodore as a puppy and brought him onto the Estate

Pets in complexes . . .

When he was a 3-month old puppy permission was requested for Theodore to stay at the Estate.

Shortly thereafter the Applicants were advised that permission to keep Theodore was refused, and a few days later they were asked to remove him off the estate.

Being an attorney himself, Mrs Abrahams' son sent a letter to the directors asking them to review the Rules, with substantiating reasons, but the directors were not prepared to change their mind on the subject. They did however relent and provide Mrs Abrahams and her son a further 3-month period in which to find suitable alternative accommodation for Theodore.

After considering a number of factors with reference to previous case law, the Judge decided that the Rules of the HOA are clear, **and are in the nature of a contract between the HOA and the member,** that based on Theodore's status as a giant breed, the directors could not grant permission for him to remain on the Estate.

After losing the case, Mr Abrahams was interviewed by the Daily News, his comment was: **'This is not a dog to us. This is a family member, a very central part of our family,' 'What we are essentially being told is that we need to get rid of this family member in three months.'**

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What does the Act say?

- ***1. Keeping of animals, reptiles and birds***

- (1) The owner or occupier of a section must not, without the trustees' written consent, **which must not be unreasonably withheld**, keep an animal, reptile or bird in a section or on the common property.
- (2) An owner or occupier suffering from a disability and who reasonably requires a guide, hearing or assistance dog must be considered to have the trustees' consent to keep that animal in a section and to accompany it on the common property.
- (3) The trustees may provide for any reasonable condition in regard to the keeping of an animal, reptile or bird in a section or on the common property.
- (4) The trustees may withdraw any consent if the owner or occupier of a section breaches any condition imposed in terms of sub-rule (3).

➢ ***Easier said than done to withdraw consent – must follow due process – CSOS Order!***

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Thank You

