

# Abuses blight community relationships

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SOUTH Africa's Constitution transformed our society for the better and is considered one of the best in the world. It affirms democratic values of human dignity, equality and freedom (s7). Among the relevant sections of the Constitution to landlord, tenant and bodies corporate is equality (s9), the right to freedom of movement and residence (s21), property (s25) and housing (s26).

Section 4(1) of the Rental Housing Act, 50 of 1999 states that in advertising a dwelling for purposes of leasing it, or in negotiating a lease with a prospective tenant, or during the term of the lease, a landlord may not unfairly discriminate against such prospective tenant or tenants, or the members of such tenant's household or the *bona fide* visitors of such tenant, on one or more grounds, including race, gender, sex, pregnancy, marital status, sexual orientation, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, language and birth.

The question that must be answered is whether a body corporate can restrict an owner's right by interviewing a prospective tenant or terminate a lease because of the change in the number of occupants. Can it prevent a prospective tenant on the grounds of age, gender or marital status? Given that certain tenants and owners tend to abuse the sectional titles scheme, any discussion of rules generates impassioned debates.

The argument is that abusive owners and tenants do not appreciate basic rules, be they management or house rules. They are

ignorant, selfish or negligent of the fact that rules direct a kind of "communal" environment to help people to get along in a sectional title or share block scheme.

Management and house rules are one of the most contentious subject- to the point that racism is often brought into the fray by parties. For our fledgling democracy to grow, we must uphold the Constitution and follow the rule of law. A couple that occupies a unit cannot be evicted because of their newborn child. Neither can the owner be required to pay an increased levy because of the tenant's baby.

There are other intriguing rules to ponder over, such as, the prospective tenant's age, limiting it to say 24 years as the baseline to qualify as a tenant. Race discrimination is subtle and the burden of proof is difficult. It is obvious that bodies corporate and share blocks have to overcome challenges posed by certain "criminal" owners and tenants who have no qualms about shutting down a scheme through their (mis)conduct. Such persons need to be dealt with according to the law.

As stated previously, an enforcement mechanism is needed for owners and tenants who do not comply with management and house rules. Rules, that are unlawful, however, cannot be enforced in spite of 99% support from the owners of a scheme. In fact, a body corporate may end up paying legal costs should it be taken to court. Ultimately, the legal cost implication will considerably affect the value of the levy for each owner.