

CALL FOR AN ADMINISTRATOR May replace body corporate if owners are absent or neglectful

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TENANTS in several inner-city sectional titles scheme buildings (the scheme) in South Africa are growing accustomed to depositing their rentals into the banking accounts of their landlords.

They are also familiar with the nonexistence of bodies corporate in their blocks and frustrated with the owners who provide no other information besides their banking details.

This technique is symptomatic of the total decay in the scheme and the abject state of disrepair of the flats (units) and the buildings.

These include, poor plumbing, water leakages, non-functional lifts, smelling debris, unsafe electrical wirings and plug points and potential fire hazards.

If tenants refuse to pay in an attempt to force their landlords to meet with them, or even to get to know who they are, the mere presence of certain “representatives” of the owners is enough to frighten the tenants to abandon any plan of action.

In some instances, they are locked out, even thrown out or face other forms of severe reprisal.

The scheme begins to disintegrate where the owners become absentee landlords with no respect for the law governing sectional titles.

They disregard the rules and regulations that provide stewardship for harmonious coexistence.

They do not pay levies, which are essential to steer the scheme to safety by ensuring everyone’s protection: owners, trustees, tenants and the neighbourhoods.

The Sectional Titles Act 95 of 1986 (the act) does provide the means to salvage a plunging scheme.

An owner, as an interested party, can approach the High Court to have a person appointed to take over the administration of the scheme.

The court can decide what powers and functions from the Act to confer on the administrator. The administrator can become a substitute body corporate in charge of collecting levies, paying the scheme’s debts, carrying out repairs and maintenance and implementing

rules. The administrator becomes, as it were, the trustees, the chairperson; the body corporate.

Recently, tenants of Arusha in Albert Park approached the Organisation of Civic Rights (the OCR) with an order from the Durban High Court¹ that appointed an administrator.

Tenants who have for many years deposited their rentals into the banking accounts of their landlords - whose details are still unknown to them - were bewildered when served with the High Court order.

To the tenants, the administrator was perhaps another person that would cause further havoc in their lives.

They were confused and suspicious because the court order did not give any details except for the name of the administrator, that he were to assume all the powers and duties of the Body Corporate of Arusha, a payment structure for his fees and only name of the instructing attorney.

The OCR made enquiries and eventually traced the administrator, confirming the need for a meeting with the tenants.

His details were given to the tenants who felt a little relieved that this was not an attempt to crush their rights.

¹ Absa Bank Ltd v The Body Corporate of Arusha, (Case No. 1269/2008; order granted on 16 January 2009) (D).

The tenants have not received full use and enjoyment of their tenancies and are now looking forward to the duties of their landlords and landladies so far neglected to be fulfilled by the administrator who was appointed for an indefinite period subject to section 46(4) of the act².

What would help is to expose the defaulting owners, some of whom are well known citizens.

They contribute to the decay of the environment with no regard at all for the welfare of their tenants and all those who care about their neighbourhood.

Dr Sayed Iqbal Mohamed is the chairperson, Organisation of Civic Rights Website: www.ocr.org.za For tenant's rights' advice, contact Pretty Gumede or Loshni Naidoo at 031 304 6451

² In Body Corporate of Albany Court & 17 others v Nedbank & others [2008] JOL 21739 (W), the court appointed the administrator for a limited period of 24 months.