Implications of proposed Sectional Title Schemes Management Act

The drafted Sectional Title Schemes Management Act aims to replace certain sections of the existing Sectional Titles Act.

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However, there are some concerns around the way these changes could affect the industry, particularly those managing the financial aspects of running a scheme.

"Of the changes that are proposed, mandatory reserve funds, maintenance plans, fidelity insurance and a proposed cap on penalty interest, it is the latter that is of most concern," says Mandi Hanekom, operations manager of the sectional title finance company, Propell.

Willem le Roux, CEO of Propell, says that prescribing a maximum rate of interest charged on overdue levy amounts could have significant negative consequences. A high interest rate generally acts as a deterrent to those who default on their levies, and those who are cash strapped would in all likelihood pay an account with the higher interest rate first, effectively causing the body corporate to 'bankroll' them.

Delinquent owners

"It often takes years to compel delinquent owners to pay their levy accounts, and while waiting for their funds to be paid, the shortfall ends up being financed by someone else - the other owners in the scheme who do pay.

"Many bodies corporate use levy finance and insurance options to minimise the impact on paying members, but if there is a 9% cap on the interest rate on overdue amounts, the service providers will not be able to offer the same assistance, which in turn would mean any shortfall would fall squarely on the shoulders of the paying owners in the scheme," says Le Roux.

As a result, if the arrears amounts escalate and there is limited access to credit, it is harder to maintain the common property, which could lead to owners having to pay special levies if there are large maintenance or improvement projects due. Again, the defaulting owners would probably not pay this, and the full responsibility would become that of the paying members of the scheme.

Saving costs

All bodies corporate would prioritise payments of accounts, paying current expenditure over future maintenance. To save time and costs, and reduce inconvenience to owners, bodies corporate rely on being able to get finance to carry out major work all at once over breaking projects up into smaller phases.

"We feel that, instead of the default interest rate being capped at 9%, it should be at the discretion of those charging the interest or it should be the maximum rate allowable for unsecured credit transactions as the NCA stipulates, plus a margin of 5%," says Le Roux.

"At present comments on the draft regulations are being accepted, and all those who will be directly affected by these should take the time to read through the draft and submit their comments as soon as possible as the deadline is 1 November," Hanekom concludes.