

Intricacies of Sectional Title easily lead to misunderstanding

Sayed Iqbal Mohamed

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LANDLORDS cannot prevent tenants from organising themselves into a tenants' committee, making representation to and at the provincial Rental Housing Tribunal, or to a municipality, or any other forum.

Freedom to associate is contained in the Bill of Rights. Section 18 states that everyone has the right to freedom of association. In terms of the provisions of the Rental Housing Act, 50 of 1999, tenants' committees are recognised, but it is not mandatory for tenants to have a committee.

Committees or associations provide support and can ensure the rights of tenants. In a high-rise building or a particular precinct, tenant representatives are elected to facilitate the aims and objectives of a committee. Regular meetings can be used to disseminate information, including the responsibilities and duties of a landlord, as well as tenants.

Formed for the right purpose and democratically structured, a tenants' committee can be an important link between tenants and their landlord. There are instances where such structures are "hijacked", causing enormous hardships to bona fide tenants and landlords.

Should such a tenants' committee be located within a sectional title scheme, the conflict of interests can prove disastrous for all concerned.

Take the case of a group of "concerned" tenants who live in a sectional title scheme with a high number of absentee landlords. These are usually owners of individual units who are in continuous default with levy payments.

Tenants get together with good intentions to have their flats laced in a state of repair, among other relevant matters. The tenants' committee may hold the view that they can run the building by taking over the body corporate, or at least have representation on it.

The committed members of the body corporate who, in a way, share part of the tenants' grievances regarding absentee owners, are unable to incorporate tenants into the body corporate. There are examples of tenants "forcing" their way into a body corporate or forming a tenants-owners committee. Tenants cannot be coerced into or prevented from constituting themselves into an association. They have a choice, whereas owners in a sectional title scheme are under a statutory requirement to serve on a body corporate.

A body corporate comes into existence through the Sectional Titles Act, when a person other than a developer becomes an owner. This process is automatic. Thus, every owner, upon registering a unit in his or her name, becomes a member of the body corporate.

Tenants, visitors, relatives and mortgagees, for example, cannot serve on a body corporate. A body corporate is a juristic person and cannot be dissolved except when its affairs are wound up and when the High Court gives an order to that effect.

In other words, members of the body cannot mutually decide to dissolve a body corporate, nor can owners choose to revoke their membership. Consider the confrontation between bodies corporate and a number of tenants' committees emerging in the major cities.

Tenants claim it is their constitutional right to serve on a body corporate. Often, racism is cited as a reason for exclusion of tenants from a body corporate. So there is a need to empower and educate tenants and owners of bodies corporate to prevent misunderstanding and animosity.