

City bylaws superseded by Parliament, courts

Enforcing compliance invalid if this conflicts with national law

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A MUNICIPALITY cannot prevent freedom to contract before, during and after the 2010 World Cup.

Laws made by parliament are superior to all other laws similar to judgments of the highest court, the Constitutional court, which is superior to and binds all courts.

Bylaws are limited in scope and application, formed by local authorities who have delegated powers from the national or provincial government. A municipality cannot make laws that contradict or violate national legislation or the constitution.

The city's "accommodation establishment" bylaw applies to a lodging where more than four persons are catered for, with or without meals.

The bylaw excludes flats, maisonettes, a home for the aged duly registered, a hostel linked to an educational institution and a hotel.

What about leasing a dwelling on a short term basis? Can Tourism KwaZulu Natal compel a landlord or landlady to register with an entity for the 2010 World Cup?

Municipal bylaws and policies cannot supersede the right to enter into a lease contract between a willing owner or lessor and a willing tenant.

Parties can contract by way of a written, verbal or part written and part-verbal lease for a short fixed period (daily or weekly lease).

The right of freedom to contract is 'sacrosanct' so that even a body corporate or a municipality cannot

interfere by making and imposing its own rules and laws.

The Rental Housing Act 50 of 1999 as amended (RHA) is the law that deals with residential tenancies in the entire geographical area of South Africa. The RHA is a law passed by Parliament for tenants and landlords / ladies of residential dwellings.

It is the law of general application aimed to protect and regulate tenant-landlord / lady relationships in all situations of leased dwellings.

Difficult as it may be for some supervisors, trustees and owners in a sectional titles scheme, a house rule or conduct rule cannot include a clause to prevent a unit owner to let out his or her flat.

An owner cannot be compelled either to have a prospective tenant subjected to an interview by the body corporate.

The constitution protects the right of ownership. The chief registrar of the deeds office has indicated that he will not accept an amended rule that gives a body corporate the authority to interview a prospective tenant via trustees or an amendment that restricts the number of occupants per unit.

A hut, shack, garage, a section or unit or an entire high rise building could be leased to even Robert Mugabe before, during and after the 2010 World Cup.

A municipality in some ways like a body corporate that is empowered to make certain rules, cannot become a law unto itself.

A municipality would be acting beyond its powers if it were to interfere with the common law and statutes such as the law of contract, the Sectional Titles Act 95 of 1986, the Rental Housing Act and the country's constitution.

A municipality's policy may contain provisions that are unlawful or invalid and seriously prejudice the rights of its citizen.

Take for example a policy of a municipality that requires its former "illegal" tenant who is "regularised" as a legal tenant to pay the arrears of the previous tenant.

This not only burdens a poor family in need of shelter but also seen as an extortion.

In one case, a tenant does not have electricity for almost a year because of his refusal to pay the rental arrears of the previous tenant. The consolidated billing has linked the so called arrears with the service charges. This is morally cruel.

Another case in point is a policy that (unlawfully) empowers the police or an official to take action against a municipality's tenant who cannot produce a lease agreement to occupy its dwelling or a permit to trade or having duly been served with a termination notice, fails to vacate.

There are legal procedures that must be followed without exception and a municipality must lead by example by upholding the law.

The national and provincial governments, all its departments, and every municipality are equal before the law in South Africa.

There is a duty on our government to prevent rental exploitation not for international reasons but because many South African tenants (approximately 12 million people live in rental accommodation), are exploited, forced to pay exorbitant rentals and unlawfully disposed of occupation.

Many people break municipal bylaws, subjecting their tenants to horrendous living conditions, without intervention or appropriate remedial action from the municipality.

A municipality must treat all tenants with respect, dignity and equality.

Charity begins at home, "after all, housing is vital to our dignity and humanity." Z.M Yacoob, Judge of the Constitutional Court of South Africa.

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