

# Restraints apply to body corporate

## House Rules in conflict with legal rights are unenforceable under Sectional Title law

Daily News Tuesday February 24 2009

---

THERE are rules that govern the relationship of all the residents in a sectional title scheme and for the control, administration and management of the common areas.

A tenant would be under legal obligation to observe the relevant rules.

The body corporate can enforce a rule with a penalty if the majority of the owners have voted in favour of it.

The penalty or fine is then part of the rules, but the enforcement and such fines relate to the control, administration and management of the common areas.

### **Can a body corporate or trustees interview a prospective tenant?**

No! There are House rules that prevent owners from letting out their units or allowing other than the owner or her / his family to occupy the unit.

This is a violation of the owner's constitutional rights.

There are many bodies corporate who interview prospective tenants to "screen" them. In other words, to decide whether a person should be permitted to occupy a (unit) dwelling as a tenant.

House rules do not have the power of *enforcement*. It is the standard Conduct and Management rules that are amended and have enforcement powers. The amendments are then lodged with the

Deeds office as required by the Sectional Title Act (STA).

Ask the trustees under what authority they claim to have the right to interview your visitors / co-residents?

You may have to bring a High court application if the trustees still persists or deny access or confiscate the access disks.

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 by trustees. Should the registrar accept such a rule, this may result in a legal challenge.

### **Can a body corporate or trustees restrict the number of occupants?**

There is a view that house rules can stipulate such a restriction or the standard conduct rules be amended to include a provision to restrict the number of occupants and may be enforced with a penalty.

The house rules may stipulate restrictions but it can be challenged. The chief registrar of the deeds office has indicated that he will not accept an amended rule that restricts the number of occupants per unit.

However, overcrowding in terms of the Rental Housing Act 50 of 1999 (RHA) is not allowed and is determined by city's health byelaws.

Besides, overcrowding can lead to serious consequences for all the stakeholders (landlord / landlady, other unit owners and the body corporate.

Maintenance costs may increase; additional consumption on a communal meter means an increase in service charges – all these may be passed onto the owners by an increase in levy and an increase in rentals.

Social or communal cohesion between owners and occupants may be affected leading to hostile relationships.

**Can a body corporate or trustees disconnect electricity or water supply or lock a tenant out?**

No! Unless the electricity was disconnected by the municipality, it would be illegal. You can get an urgent order to have it reconnected.

Even if the house rules state the body corporate can do this, it is illegal.

The conduct and management rules which are annexures to the regulations to the Sectional titles Act (SHA), are powerful sets of documents (unlike the house rules), but even in this instance, an unlawful authority inserted as a rule will not make it legally enforceable.

A legal challenge will lead to costs that will have to be paid by the owners, which is usually done by adding this to the levy.

**Can a body corporate collect rental from a tenant because of levies owed by the landlord / landlady?**

No! There is no contractual relationship between the tenant of an owner and the body corporate.

However, if a body corporate has obtained a judgment against the sectional title owner and an order attaching his / her rental income, then it may collect rentals.

The body corporate is obliged to provide proof to the tenant that it has obtained the right to do so.

**Is a tenant living in a Sectional Title scheme obliged to follow the House Rules?**

Yes, but as long as the House Rules do not go against any law, especially the Constitution of the Republic of South Africa, the RHA and the Sectional Titles Act (STA).

The tenant's relationship is with the owner / landlord / landlady of the unit (dwelling) in terms of a lease agreement (oral or written) and not with the body corporate of the Sectional Title or Share Block scheme.

**When must the house rules be given?**

A tenant signed a lease contract and was subsequently asked to present herself for an interview by the supervisor of the body corporate.

When she discovered that certain rules violated her rights, she informed the landlord that she was cancelling her lease contract and was entitled to a full refund of all payments made.

It is very important to discuss the House Rules with a prospective tenant and have it attached to the lease contract.

Section 5(8) of the RHA states, "a copy of any House Rules applicable to a dwelling must be attached as an annexure to the lease."

In the case of an oral lease, a copy of the house rules should be given to the tenant, preferably with an acknowledgement of receipt from the tenant.

Dr. Sayed Iqbal Mohamed, chairperson,  
Organisation of Civic Rights [www.ocr.org.za](http://www.ocr.org.za) For  
advice, contact Pretty Gumede or Loshni Naidoo  
on 031 3046451