

## Absentee owners and tenants Their impact on bodies corporate

By Sayed Iqbal Mohamed



Certain types of absentee owners are the reason some bodies corporate are failing. More specifically, they bring into the scheme a category of tenants who contribute to the rapid deterioration of the entire delicate fabric of the sectional titles scheme.

To understand the relationship between sectional title owners or landlords and tenants, one must first establish the “type” of owners. **We may divide sectional titles owners into several categories:**

1. An owner who invests for personal use and occupation. Strict adherence to the rules and maintaining “good governance” rank very highly.
2. An absentee owner who respects the rights of other owners, is a diligent levy payer and rents out to generate income. The tenant is carefully selected, directly or through an agent. As a landlord, he or she would take immediate action, even evicting the tenant for breaching the lease, by, for example, committing a nuisance or overcrowding.
3. An absentee owner who is motivated by the prospects of rental income. He or she is unaware of the requirements of the Sectional Titles Act 95 of 1986 (STA) and the rules, and primarily pre-occupied by prompt and regular rental income. The “selection criteria” or choice of tenant may be mediocre. Some amount of pressure is needed to get the owner to act against his or her tenant.
4. An absentee owner who is motivated by sheer profiteering:
  - 4.1 An errant levy payer who is indifferent to the rights and investment of other owners.
  - 4.2 He or she leases to any tenant at exorbitant rentals, often permitting overcrowding. No amount of pressure will get the owner to act against his or her tenant, who is a nuisance to other occupiers.
  - 4.3 This category includes owners who default on bond repayment and hold onto their units as long they can to accumulate rentals.
  - 4.4 There is a direct correlation between such owners and poor or absent internal maintenance and repair.
  - 4.5 The greater the number of such owners, the greater the risk of services shutting down and the scheme collapsing.

Absentee owners who rent out their units **may be solely motivated by income and profit**. Their very absence excludes them from the lives of resident owners who may have to endure the “bad behaviour” of certain tenants. While there are owners who know that they are subject to and bound by the rules, some absentee owners are not concerned about the need for “good governance”. Greed is inseparably linked to leasing.

**What is required** is to extend the jurisdiction of the provincial **Rental Housing Tribunal (RHT)** to include the body corporate as a party to an unfair practice. In other words, the definition and the relevant provisions of the **Rental Housing Act 50 of 1999** must be amended. The ruling of the RHT is not only deemed to be an order of a magistrate’s court but is also enforced in terms of the Magistrates’ Courts Act[1]. Since there is no charge for bringing an action through the RHT, this would be a cost-effective means of resolving disputes and protecting the rights of all relevant parties in the scheme. This should not affect owners’ rights and recourse to relief in terms of the provisions of the **Sectional Titles Schemes Management Act** and **Community Schemes Ombud Services Act**. The **RHA should provide for tenant conduct**, allowing a body corporate to lodge a complaint against the tenant and the landlord, or may be a respondent in the event of the body corporate committing an unfair practice.

[1] s13(13) of the Rental Housing Act 50 of 1999

**Article reference:** Paddocks Press: Volume 6, Issue 6, Page 3

**Sayed Iqbal Mohamed** is the chairperson; director of projects: Organisation of Civic Rights.

[Back to Paddocks Press - June 2011 Edition](#)