

8 MAY 2017

REAL ESTATE ALERT

IN THIS
ISSUE

BODIES CORPORATE TO ESTABLISH SEPARATE BANK ACCOUNTS FOR RESERVE AND ADMINISTRATION FUNDS

In terms of the Sectional Titles Schemes Management Act, No 8 of 2011 (STSM Act), a body corporate must establish and maintain administrative and a reserve funds, respectively.

BODIES CORPORATE TO ESTABLISH SEPARATE BANK ACCOUNTS FOR RESERVE AND ADMINISTRATION FUNDS

The administrative fund must be utilised by the body corporate to fund its operating expenses.

The reserve fund must be utilised for the implementation of the maintenance, repair and replacement plan as referred to in the Rules, which provide for costs of any future maintenance, repair and replacement of common property.

In terms of the Sectional Titles Schemes Management Act, No 8 of 2011 (STSMA), a body corporate must establish and maintain administrative and a reserve funds, respectively.

The purpose of each of these funds is found in Rule 24 of the Rules as contained in Annexure 1 to the Regulations of the STSMA (Rules).

In terms of this Rule, the administrative fund must be utilised by the body corporate to fund its operating expenses. Such operating expenses include, *inter alia*:

- any payments of rates and taxes and any other charges for the supply of electricity, gas, water, fuel, sanitary or other services to the building or land;
- any payments of any insurance premiums relating to the building or land;
- any costs for the repair, maintenance, management and administration of the common property; and
- any costs for the discharge of a duty of fulfilment or any other obligation of the body corporate.

The reserve fund, on the other hand, must be utilised for the implementation of the maintenance, repair and replacement plan as referred to in the Rules, which provide for costs of any future maintenance, repair and replacement of common property.

The question that now arises is whether the body corporate is obliged to establish and maintain these funds in two separate bank accounts.

Rule 26(1)(b) clearly states that the body corporate must keep separate books of account and bank accounts for its administrative and reserve funds.

Notwithstanding the clear and unambiguous wording of Rule 26(1)(b), the obligation of the body corporate to keep these funds in separate accounts is supported when due regard is given to the purpose of these funds, the minimum amounts required to be contributed to these funds, the requirements for any payments to be made out of these funds and the financial records to be provided in respect of each fund.

As stated above, the purpose of the administrative fund refers to the day-to-day management of a scheme and the operating costs associated therewith. The purpose of the reserve fund is, to ensure that there are sufficient funds for any future or unexpected costs in respect of the maintenance, repair or replacement of common property, with the focus being on major capital items such as lifts, electrical systems, heating and cooling systems etc.

At every annual general meeting, the budgets for each of the funds for the next financial year are to be approved in accordance with the provisions of the Regulations.

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Bodies corporate must ensure that they have established an administrative and reserve fund, each in a separate bank account and that the requirements relating to each fund are adhered to.

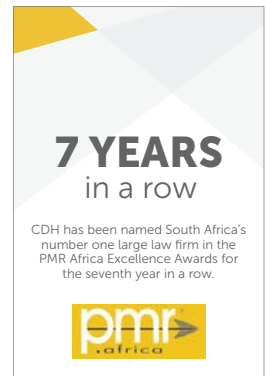
Payments out of the administrative fund may only be made if such payments are in accordance with trustee resolutions and the approved budget. However, payments out of the reserve fund may be made at any time in accordance with trustee resolutions and the approved maintenance, repair and replacement plan or if the trustees resolve such payment to be for the purpose of an urgent maintenance, repair or replacement expense.

In terms of Rule 26(1)(c), the body corporate must prepare annual financial statements for presentation at the annual general meeting, which statements

must include an analysis of, *inter alia*, the amounts due to the body corporate in respect of contributions as well as the amounts available in the reserve fund. Furthermore, these financial statements must be audited by an independent auditor.

In light of the above, bodies corporate must ensure that they have established an administrative and reserve fund, each in a separate bank account and that the requirements relating to each fund are adhered to.

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Joloudi Badenhorst



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