REAL ESTATE LAW
ALERT

2 AUGUST 2022

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INCORPORATING
KIETI LAW LLP, KENYA

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How are levies calculated? A breakdown of your body corporate, owners' association, mixed use developments and stabilisation fund levies

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The two most common types of levies are levies due to the body corporate of a sectional title scheme and levies imposed by an owners' association on its members.

LEVIES DUE TO A BODY CORPORATE

The Sectional Title Scheme Management Act 8 of 2011, (STSMA) provides that the levies of owners of residential units must be determined with reference to the participation quota of a unit. The floor area ratio of a unit expressed as a percentage of the floor area of all the units is used as a basis to determine a residential owners' contribution towards the levies.

The developer of non-residential schemes has a discretion to use a different formula for the determination of the liability of non-residential units to make contributions. The value of a unit is often used as a basis to determine the levies on non-residential units. The developer is not obliged to disclose the formula for determining the liability of owners of non-residential units to make contributions.

The allocation of levies is more complex in a mixed-use scheme, where different criteria may apply to different uses. A mixed-use scheme comprises a mix of any of commercial, office, retail, or residential units. Rules are often introduced to safeguard the respective interest of owners of the various categories based on use to ensure that the owners of one category of units do not subsidise expenses relating solely to a different category. If a lift is dedicated for the use of residential owners only, then any expense relating to the maintenance and replacement of the lift should be allocated to and covered by the owners of residential units only. Although the cost relating to a specific category can be allocated to be paid by the owners of that category of units, the cost, once allocated, will be borne in accordance with the participation quota of the owners which must in the case of residential units be calculated expressing the size of the unit as a percentage of the aggregate of the size of all the (residential) units. The management structure must be carefully considered to ensure that the rules give clear guidelines on the allocation of expenses.

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OWNERS' ASSOCIATIONS

Where the land on which a sectional scheme is developed is situated in an estate or forms part of a precinct which is subject to a master owners' association, sectional owners should familiarise themselves with the constitutional documents of the master owners' association. The master owners' association could be a non-profit company registered under section 21 of the Companies Act 71 of 2008, a voluntary association formed under the common law, or an association created by planning laws. The latter will normally be the case if the property is situated in the Western Cape, where the creation of an owners' association, imposed as an obligation in terms of the relevant town planning approvals, is governed by the relevant planning laws. While the common property in the context of the sectional title scheme is defined in the STSMA, the communal facilities as defined in the constitution of the master owners' association (Constitution) will be used by all members of the owners' association and usually includes parks, golf courses, dams, roads, gatehouses and access control. The Constitution will determine whether the individual sectional owner or the body corporate is a member of the owners' association and will determine the method of allocation of levies. Whereas the STSMA prescribes the method of allocation of levies by residential sectional owners for contributions to sectional title common expenses, there is no legislation prescribing the method to be followed when the levies imposed on sectional owners or a body corporate, as a member of the owners' association, are determined. The levies will cover the expenses relating to the common facilities owned or managed by the owners' association and these would similarly be incorporated in a budget to be approved by the directors or the members. The Constitution will govern the method of allocation of expenses between the various categories of use.

LEVIES FOR DEVELOPERS

A further factor that should be considered is the provisions relating to the contribution of developers. Constitutions of owners' associations often contain a provision that the developer will not pay levies in respect of unsold or undeveloped stands for the duration of a specified development. It might seem to be unreasonable for the contributing members, but the developer normally bears the greater part of expenses relating to the installation of services, roads, gatehouses and other infrastructure. Developers are often forced to fund expenses in the initial stages of a development. It is important to establish how long the initial period is. The levy will reduce

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when more owners are contributing towards the expenses. There should be a balance between the levy paid and the amenities enjoyed.

Certain retirement schemes and other lifestyle estates have introduced a separate levy stabilisation fund aimed at keeping the payment of levies below the inflation rate. A member of a scheme with a stabilisation fund is normally required to make a once of payment to the body corporate or owners' association on the sale of the member's unit or property. The once-off payment is normally a percentage of the difference between the selling price of the unit or property at the time the member disposes of the unit or property and the purchase price when the unit or property was acquired. While the member resides in the scheme, the member will enjoy the benefit of a lower and stable levy. The problem occurs where there has been substantial growth in the value before the unit or property is sold, and the member feels disgruntled about contributing to the levy.

A lack of capacity in municipalities to provide or maintain services and increasing crime rates have made larger development schemes a very attractive alternative for various uses. All these benefits come with an associated cost in the form of a levy. Experienced developers and property managers can prepare a reasonably accurate budget for consideration by potential purchasers. Purchasers should enquire and make sure that they understand the levy structure pertaining to the relevant unit or property they intend purchasing.

LUCIA ERASMUS

The LEGAL 500 EMEA

2022 RESULTS

The Legal 500 EMEA 2022 recommended our **Real Estate Law practice** in **Tier 1** for real estate.

The Legal 500 EMEA 2022 recommended **William Midgley, Lucia Erasmus** and **John Webber** as leading individuals for real estate.

The Legal 500 EMEA 2022 recommended **Simóne Franks, Muhammad Gattoo** and **Samantha Kelly** for real estate.

OUR TEAM

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

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