

URBAN COVE BODY CORPORATE

SS 5/2007 | SS 6/2007 | SS 375/2007 | SS 792/2007 | SS 8/2008 | SS 40/2008 | SS 58/2010

**MINUTES OF THE SPECIAL GENERAL MEETING HELD ON MONDAY,
29 JUNE 2015 AT 18H00 AT BEACON CORNER (BUILDING ADJACENT
TO THE OFFICES OF DU TOIT SMUTS ATTORNEY), 4TH FLOOR,
CONFERENCE ROOM, C/O ROTHERY AND PARKING STREET, MBOMBELA**

1. **Welcome**

The Chairperson welcomed everybody present.

2. **Present and Proxies**

Members as per attendance register.

Apologies

Members as per attendance register.

Quorum

The Chairperson introduced Paul van Marlé from Wiekus du Toit Attorneys, informing the meeting that he will give a brief presentation of why the meeting was called.

He confirmed that a quorum was not present but that the meeting will continue as an informative meeting.

Representatives

L Groenewald – Pro-Property

P van Marlé – Wiekus du Toit Attorney

3. **Cove Apartments**

Noted – That:

- a. P van Marlé thanked the meeting for the opportunity to address the Members.
- b. He referred to a correspondence circulated to all Owners on 26 June 2015 prior to the Special General Meeting and explained as follows:

We herewith confirm that we have been instructed by the Board of Trustees of the Urban Cove Body Corporate (UCBC) to advise the members in general as to the provisions of the Sectional Titles Act, 95 of 1986. The reason for said mandate, is as a result of the legal proceedings that has been pending since April 2015, as we are sure you are all aware of.

At this stage we do not deem it necessary to go into the detail of the whole run-up to the legal proceedings. As a short introductory remark, there has been a dispute between the Board of Trustees and Cove Apartments and Mr Charles Venter regarding the legality of certain delineations of common property (of Urban Cove Residential Complex) that Mr Venter (on behalf of Cove Apartments) effected, as well as further proposed delineations he desired.

Various correspondence had been exchanged and on 29 April 2015 the UCBC lodged an application against Cove Apartments (PTY) Ltd and Mr Charles Venter in terms of which the Mbombela Magistrates' Court granted an *interim order* which included *inter alia* the following terms:

That Cove Apartments and Mr Charles Venter be ordered to:

- a) Forthwith cease any construction and erection of any structure on the common property of Sectional Title Scheme "Urban Cove Residential Complex";

Forthwith cease any conversion of any part or area forming part of the common property of the Sectional Title Scheme "Urban Cove Residential Complex";

Forthwith remove the partitioning erected on the common property in the basement of building No.5 of Sectional Title Scheme "Urban Cove Residential Complex";

Forthwith remove a structure, to wit a wooden structure, which the Respondents erected on the common property of "Urban Cove Residential Complex" which is used as a unit for controlling access to and from the complex ("the wendy house");

To cease operating a business on the common property of "Urban Cove Residential Complex" in the form of a "Tuck Shop";

That the Sheriff is ordered to remove the structures, partitioning and the "Tuck Shop" in the event that the Respondents do not comply with the Court order immediately upon service thereof on them;

The above order shall be effective immediately and the Respondents will have an opportunity on 9 July 2015 to oppose the matter and show good cause why the order should not be made final;

As part of our mandate, we held a meeting at our firm on 26 May 2015 with the Board of Trustees. After said meeting, writer and our Mr Doyer has discussed the matter in detail, especially with regards to the way forward and the general interpretation of the Laws of the Republic regulating Sectional Title Schemes.

To this regard, certain issues came to light during the meeting, especially Mr Charles Venter's request to delineate certain areas of the common property. As will be apparent from below, delineation of common property must be approved by the members of the Body Corporate at an Annual General Meeting, provided that certain requirements in terms of the Act have been met.

In order to avoid any further confusion by the members of UCBC, we have been requested to attend the Annual General Meeting on Monday 29 June 2015. We have been specifically requested to provide clarity regarding the legal position and to further elaborate on the provisions of the Sectional Titles Act, especially in the light of the current circumstances.

This letter therefore serves as an "information sheet" to assist the members of the UCBC to be prepared at the AGM:

THE SECTIONAL TITLES ACT, 95 of 1986

A: LIABILITY OF THE MEMBERS OF THE BODY CORPORATE:

Before we deal with the specific relevant provisions of the Act, we need to inform you of the following:

The Body Corporate's functions are governed by the provision of the Act.

Section 36(4) of the Act provides that:

"The body Corporate shall, subject to the provisions of this Act, be responsible for the enforcement of the rules...and for the control, administration and management of the common property for the benefit of all owners."

Section 36(6) provides:

"The body corporate shall have perpetual succession and shall be capable of suing and of being sued in its corporate name in respect of-

- (a) any contract made by it;*
- (b) any damage to the common property;*
- (c) any matter in connection with the land or building for which the body corporate is liable or for which the owners are jointly liable;*
- (d) any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties under this Act or any rule."*

It is therefore trite in law that the function of a Body Corporate is to control and manage the common property in such a manner as would be to the benefit of all the owners concerned. The Body Corporate therefore has a **fiduciary duty** towards all the owners and must therefore ensure that no one individual's conduct adversely affects or prejudices any of their individual or collective rights.

Further to the fiduciary duty, it is clear that, by virtue of the provisions of Section 36(6), the members of the UCBC run the risk of being held **personally liable** if there is any damage to the common property, or more applicable if they do not perform their duties under the Act. These duties include specifically to ensure that the common property is managed and controlled to the benefit of all the owners.

This duty is also evident from the provisions of **Section 37(1)(r)** of the Act which provides:

[A body corporate's functions include] "in general, to control, manage and administer the common property for the benefit of all owners."

Section 37(1)(n) of the Act provides that a Body Corporate's function include:

"to ensure compliance with any law relating to the common property or to any improvement of land comprised in the common property"

B: UNANIMOUS RESOLUTION & SPECIAL RESOLUTION:

From inception of the matter, there has been uncertainty regarding the interpretation of "unanimous resolution". It is important to note the difference between a unanimous resolution and a special resolution, as they are applicable to different scenarios.

Section 1 of the Act defines these terms as follows:

"unanimous resolution" means a resolution-

- a) *passed unanimously by **all the members of a body corporate who are present** or represented by proxy or by a representative recognized by law at a general meeting of the body corporate of which at least 30 days' written notice, specifying the proposed unanimous resolution, has been given, and at which meeting **at least 80% of all the members of a body corporate (reckoned in number) and at least 80% of all the members (reckoned in value) are present or so represented**: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the members of the body corporate; or*
- b) *agreed to in writing by all the members of the body personally or by proxy or by a representative of any such member recognized by law"*

- **Therefore**, in short it provides that for matters which a unanimous resolution is needed, at least 80% of the owners/members should be present at the meeting **and** everybody at the meeting should agree.
- Do note however, that there is a further qualification to a unanimous resolution which provides that a member present or represented by proxy who abstains from voting on the resolution, shall be regarded as having voted **in favour of the resolution**.

"special resolution" means a resolution:

- a) *passed by a majority of not less than **three-fourths of the votes** (reckoned in value) and not less than three-fourths of the votes (reckoned in number) of members of a body corporate **who are present** or represented by proxy or by a representative recognized by law at a general meeting of which at least 30 days' written notice, specifying the proposed resolution, has been given, or a resolution agreed to in writing by at least 75% of all the members of a body corporate (reckoned in number) and at least 75% of all such members (reckoned in value) personally or by proxy or by a representative of any such member recognized by law: Provided that in circumstances determined in the rules, a meeting of the body corporate may be convened for a date 30 days or less after notice of the proposed resolution has been given to all the members of the body corporate"*

- **Therefore**, in short it provides that in general matters where a special resolution is needed, the vote of 75% of the owners/members who are present at the meeting is sufficient. There is no specific quorum requirements, unless a specific section provides otherwise.

C: DELINEATION OF COMMON PROPERTY & EXCLUSIVE USE AREAS:

During our previous consultations with the Trustees, meetings and general discussions the various parties debated whether if Mr Venter's actual and proposed delineation should be approved by way of unanimous resolution of the members of UCBC, and further whether he is at all allowed to even apply for delineation.

Sections 5(1), 5(3) (f), 13, 15B(3) of the Act, it is clear that any right to extension of a sectional title scheme by addition of exclusive use areas should comply with the provisions of Section 25.

Section 25(1) provides:

"Extension of schemes by addition of sections and exclusive use areas or by addition of exclusive use areas only

- 1) A developer may, subject to the provisions of section 4(2), in his or her application for the registration of a sectional plan, **reserve**, in a condition imposed in terms of section 11 (2), the right to erect, complete or include from time to time, but within a period stipulated in such condition or such extended period as may be agreed upon **(by unanimous resolution of the body corporate and with the consent of the bondholders** existing on the date of the taking of the unanimous resolution, which resolution and consent must be obtained by the notary and filed in his or her protocol) prior to the expiry of the stipulated period, by way of a bilateral notarial deed, for his or her personal account-
 - a) a building or buildings;
 - b) a horizontal extension of an existing building;
 - c) a vertical extension of an existing building,

on a specified part of the common property, and to divide such building or buildings into a section or sections and common property and to confer the right of exclusive use over parts of such common property upon the owner or owners of one or more sections, or to delineate exclusive use areas on or in specified parts of the land and buildings in terms of section 5 (3) (f) and to confer the right of exclusive use over such areas upon the owner or owners of one or more sections.

A recent article by "Paddocks" (the leading authority on Sectional Title and Home Owners Association Law www.paddocks.co.za/paddocks-press-newsletter/the-developers-reserved-right/) published an article (see link reference) which deals with Section 25 of the Act.

For your convenience, we copied the content of the article which read as follows:

"Section 25 of the Act allows a developer to develop a sectional title scheme in phases.

In terms of section 25 (1) of the Act, the developer may, when making application for the registration of a sectional plan, reserve, as a condition imposed in terms of section 11 (2) of the Act, the right to erect, complete or include a building or buildings, a horizontal extension of an existing building, or a vertical extension of an existing building, on a portion of the common property within the scheme. This extension will then be divided into sections and common property, and may also include exclusive use areas.

The developer's reserved right of extension must be exercised within a specific period of time, as stipulated in the condition imposed. However, this period of time may be extended if the members, via unanimous resolution, and all the bondholders consent to the extension of the period of time.

When making such a reservation, the developer will need to submit a plan of the building/s, which indicates the affected portion of common property; the siting, heights, coverage and elevation of the building/s; the entrances and exits; parking areas; and any building restrictions.

The developer will further be required to submit a plan indicating the manner in which the building/s will be divided into sections and exclusive use areas. In terms of section 25 (13) of the Act, the extension must be exercised strictly in accordance with the plans submitted.

As sections will be added to the scheme, the developer will also need to submit a schedule of the participation quotas of the sections following the addition of the sections forming part of the extension. The developer will need to indicate any substantial difference in the materials to be used in the construction of the building/s as compared to the building/s already established.

The developer's right of extension is a real right and may be mortgaged and transferred via a notarial deed of cession. This right can be exercised by the developer or his successors in title, provided that it is exercised within the specified period of time or within the extended period, if approved by the members and bondholders.

Should the developer's right lapse, due to the expiration of the prescribed time period or for any other reason, the right to extend the scheme will vest in the body corporate, who may submit new plans and exercise, alienate or transfer the right with the written consent of all the members of the scheme and that of all the bondholders.

...one of the most important things to remember relating to the developer's reserved right of extension, is set out in section 25 (14) of the Act, namely the fact that this right must be disclosed in the deed of alienation (sale agreement) of every purchaser of a section in the scheme. Failing which, the deed of alienation is voidable at the option of the purchaser."

The abovementioned is a "mouth full", however in essence it provides that, a developer of a sectional-title scheme may reserve the right to carry out extensions. If he has made such reservation, he must then submit a plan and details of such extensions, along with the original registration of the scheme. He should, therefore have at the time of registration of the sectional plan made the reservation.

In terms of our instructions, no such reservation has been made or appears on the Sectional Title Register. Therefore, all the areas that delineation or extension is being applied for, is common property, and therefore each member of the UCBC have an undivided share and interest in it.

As no such reservation has been made, Section 25(6) is applicable:

Section 25(6) provides:

"If no reservation was made by a developer in terms of subsection (1), or if such a reservation was made and for any reason has lapsed, the right to extend a scheme including land contemplated in section 26, **shall vest in the body corporate** which shall be entitled, subject to this section and after compliance, with the necessary changes, with the requirements of paragraphs (a), (b), (c), (d) and (g) of subsection (2), to obtain a certificate of real right in the prescribed form in respect thereof: Provided that the body corporate shall only exercise or alienate or transfer such right with the written consent of all the members of the body corporate as well as with the written consent of the mortgagee of each unit in the scheme: Provided further that a member or mortgagee shall not withhold such approval without good cause in law."

It therefore seems that the only people who can "extend a scheme", therefore approve the delineation of common property is the UCBC. This right to extend however, or the right to alienate/transfer said right to another person shall only be possible if all the members of the UCBC give their written consent as well as the relevant mortgagees.

Be that all as it may, even if the reservation had been made at registration of the Sectional Title Plan (which did not occur), delineation of common property can only occur if the provisions of Section 27 of the Act have been complied with.

Section 27 provides:

*"(2) A body corporate, duly authorized thereto by a **unanimous resolution** of its members, may, subject to the provisions of section 5 (1), request an architect or land surveyor to apply to the Surveyor-General for the delineation on a sectional plan in the manner prescribed of a part or parts of the common property in terms of section 5 (3) (f) for the exclusive use by the owner or owners of one or more*

sections: Provided that no such delineation shall be made on the sectional plan in terms of this subsection if such delineation will encroach upon a prior delineation on the sectional plan of a part of the common property for the exclusive use by one or more of the owners.

(3) The body corporate, duly authorized thereto by a **unanimous resolution** of its members, shall transfer the right to the exclusive use of a part or parts of the common property delineated on the sectional plan in terms of subsection (2) to the owner or owners on whom such right has been conferred by the body corporate, by the registration of a notarial deed entered into by the parties and in which the body corporate shall represent the owners of all the sections as transferor."

It is therefore clear from the above that any delineation of common property, or by implication conversion of common property or the erection of structures of the common property must be approved by a **unanimous resolution** by the members of UCBC.

Therefore, despite the fact that the pre-requisites in terms of Section 25 have not been complied with, the only way any delineation of common property can be approved is if at least 80% of the owners/members of UCBC, are present at the AGM and everybody at the meeting vote in favour thereof.

As an alternative to applying for delineation of the common property, the UCBC members can consider letting the areas of the common property to Mr Venter and Cove Apartments. To this regard Section 17 of the Act is applicable:

Section 17 provides:

Alienation and letting of common property

- 1) The owners and holders of a right of extension contemplated in section 25 may by **unanimous resolution** direct the body corporate on their behalf to alienate common property or any part thereof, or to **let common property** or any part thereof under a lease, and thereupon the body corporate shall, notwithstanding any provision of section 20 of the Deeds Registries Act, but subject to compliance with any law relating to the subdivision of land or to the letting of a part of land, as the case may be, have power to deal with such common property or such part thereof in accordance with the direction, and to execute any deed required for the purpose: Provided that if the whole of the right referred to in section 25 or section 60 (1) (b) is affected by the alienation of common property, such right shall be cancelled by the registrar with the consent of the holder thereof on submission of the title to the right."

A decision to let areas of the common property however also need to be approved by way of a unanimous resolution.

c. F van der Merwe informed the meeting that he requested the following:-

1. For a meeting to take place on site in the student study room, alternatively, the meeting to start with a site visit to view the issues at hand.
2. Items to introduce:
 - 2.1 Discussion on unanimous resolution, before voting.
 - 2.2 Legal action by Body Corporate on the matter at hand.
- d. The meeting was informed by C Venter that A Kriel requested the following:-
 1. For a meeting at the Urban Cove study room, or, to meet beforehand at Urban Cove for a site inspection.
 2. Items to be placed on the Agenda:
 - 2.1 Discussion on proposed resolution.
 - 2.2 Legal action.
- e. The Chairperson confirmed receipt of the above requests and informed the meeting that in order to call a Special General Meeting, there are some requirements to follow prior to the meeting; the application was considered.
- f. The Chairperson granted C Venter the opportunity to address the meeting.
- g. C Venter thanked the meeting for the opportunity to address the Members.
- h. He informed the meeting that it was never the intention of Cove Apartments to go above the Sectional Title Act.
- i. He gave a brief description why the exclusive use parking bays in the basement was not registered by the Transfer Attorney.
- j. He presented an approval letter, dated 2007, received from the previous Chairperson at that time, D Louw, granting approval to Cove Apartments to continue with the necessary work, stating that he is in possession of an affidavit signed by D Louw, concurring the approval.
- k. The meeting was advised that a quorum of 106 is needed to vote on the unanimous resolution. It was clear that it would be impossible to achieve this and a proposal was made that the matter be resolved in an amicable manner.
- l. J Izeboud is of the opinion that the matter could be resolve; the Act provides a guideline.
- m. The meeting was advised that a unanimous resolution can be achieved without a meeting if all Owners (100%) sign their acceptance of a proposed resolution. This is truly a unanimous resolution in that it is a resolution without dissent and every owner in the scheme has agreed to it.
- n. A proposal was made that the Board meets to discuss the way forward.
- o. The meeting was informed that the case could not be discussed as it was already in the process.

- p. C Venter is of the opinion that the meeting does quorate, according to him; it is a Special Annual General Meeting.
- q. J Izeboud stated that it was not an Annual General Meeting, it was a Special General Meeting, 80% of the Members (106 in number and in value) must be present to vote for the proposed resolution.

4. **Closure**

Noted:

That there being no further matters for discussion; J Izeboud thanked the Members for having attended and closed the meeting. The meeting adjourned at 19h45.

Chairman: _____ Date: _____

➤ Distributed to all Owners: Janine/Daleen 15-7-2015