

Can a HOA take over the provision of municipal services?

As members of the public become more and more fed up with poor service delivery from municipalities, those with the financial means to do so are already pursuing alternative options to function independently from municipalities. This is evident from the number of water tanks and solar panels in residential and commercial properties, signaling a shift towards greater self-sufficiency, as communities are no longer willing to wait for municipalities to pull up their proverbial 'socks'.

It seems that it is only a matter of time before other services are also taken over by the public, in an effort to become independent from municipalities.

In the case of *Hilandale Homeowners Association t/a Woodland Hills Wildlife Estate Homeowners Association v Mangaung Metropolitan* the Homeowners Association ("HOA") took the Mangaung Metropolitan Municipality ("Municipality") to court, seeking permission to remove their own refuse. Furthermore, the HOA sought an order to prohibit the Municipality from levying a fee for refuse removal if they do not provide the service.

The Bloemfontein High Court found that the HOA should be allowed to remove the refuse of its members, being the residents of the estate. The Court further ordered that the Municipality will not be allowed to levy a fee for refuse removal, as it will not be providing the service.

Although this is a big win for pro-active taxpayers, it does not mean that everyone is now entitled to remove their own refuse and cease payment of their municipal account. In the *Hilandale*-matter, the proclamation for the establishment of the Woodland Hills Township explicitly reserved the responsibility for refuse removal to the township owner. The service level agreement, which the HOA concluded with the Municipality for the provision of basic municipal services, did also not explicitly mention refuse removal.

It's important to note that each case will be decided on its own individual merits. However, the court's decision affirmed that while municipalities have a legal obligation to provide basic services like refuse removal, municipalities do not

have the exclusive authority to do so. It is therefore conceivable that these services may be rendered by other parties.

This judgment establishes a legal precedent for other homeowners associations, body corporates, companies, or private individuals to seek permission from their local municipality, and potentially the courts, to manage their own refuse removal. However, the court in the *Hilandale*-matter left the gate open for municipalities to levy a fee for the use of their landfill site, even if they are not directly involved in refuse removal.

Janus Olivier, Van Velden-Duffey Inc