Good news for HOA’s

Body corporates can claim levies from unit owners and prevent the transfer of a sectional title unit if the levies are not covered: Sectional Titles Act, 95 of 1986 and Deeds Registries Act, 47 of 1937. Municipalities can also prevent the transfer of a property if the clearance figures are not covered: Local Government: Municipal Systems Act, 32 of 200.

No such legislation, however, gives a homeowners association either the right to claim contributions from the owners of the erven of the development or to prevent the registration of a transfer of an erf.

Developers and their attorneys therefore have to rely on title deed conditions to put the homeowners association in a similar position in this respect as body corporates of sectional title schemes.

Whether such title deed conditions create personal rights or real rights was considered in the case of Willow Waters Homeowner’s Asscociation v Koka and Others (768/2013) [2014] ZASCA 220 (12 December 2014). Fortunately the Court held that real rights are formed. The title deed conditions are therefore enforceable against third parties including successors in title of the initial owner who took transfer of the property with the title deed condition from the developer.

This case therefore makes it clear that homeowners associations can enforce an embargo on the transfer if the condition is not complied with.

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