

Housing scheme fines - how to keep them from becoming a hot potato

While some home owners believe the imposition of fines in community housing schemes (CHS), like sectional title complexes and estates, helps to ensure that all residents follow the rules, others argue that their body corporate or home owners' association (HOA) is overstepping its authority when it does this.



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“Some will even say that imposing a fine is an infringement of their rights as owners to enjoy the use of their properties as they please,” says Andrew Schaefer, MD of national property management company Trafalgar.

“And the [recent judgment of the Appeal Court](#) that gated estates need the permission of the Minister of Transport or a regional transport MEC to erect traffic signs or set speed limits on their internal roads has unfortunately only served to increase the confusion.”

This judgment also made it clear that HOAs may not impose any speeding fines, even if these are written into their conduct rules, because the enforcement of speed restrictions may only be carried out by a traffic officer authorised to do so in terms of the National Road Traffic Act, he notes.

Are HOAs allowed to fine residents?

“So the question is now arising again as to whether estates or sectional title complexes are ever actually allowed to fine residents for infringements of their rules, and if so, in what circumstances and under what conditions?”

Trafalgar's guidelines, as managing agents for a large number of CHSs, are the following:

- Make sure that the conduct rules which are filed at the Deeds Office or approved by the Community Schemes Ombud Service (CSOS) include a provision for fines to be raised – and that the fines are reasonable;
- Make sure that none of the conduct rules or proposed fines are in conflict with any national or provincial legislation or local authority bylaws;
- Send the homeowner an official warning letter that he/she (or his/her tenant) is in breach of the rules and that a fine could be implemented;
- Make sure that the offending owner has the opportunity to state his case to the body corporate trustees or the HOA directors before the fine is added to his next levy account – and that this meeting is minuted. If the owner refuses this offer, that should also be minuted and signed by the chairman;
- Send the homeowner official advance notice of the fine being imposed; and
- Impose a fine that is in strict accordance with what is set out in the conduct rules. For example, the trustees cannot impose a R1000 fine for littering the common property when its own conduct rules state that the fine for this infringement is R60.

Schaefer says that schemes which stick to these guidelines seldom have problems, but that if they do encounter resistance to the payment of any fines, they should not react by limiting access to the property or cutting off services to the resident's home.

"They should rather declare a dispute and seek mediation or adjudication through the CSOS."

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