

Trustees, developers compelled to reverse ruling prohibiting short-term letting at The Blyde

A recent adjudication award by the Community Schemes Ombud Service (CSOS) illustrates the importance of having a clear, well-considered policy and rules on short-term rentals when a complex or an estate is first developed, says specialist sectional title attorney and BBM Law director Marina Constas. This award also delivers an important lesson on following the correct procedures to change the rules in a residential community scheme, she asserts.



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“This new CSOS award is a very interesting one,” Constas notes. She explains that 86 owners at The Blyde Riverwalk Estate in Pretoria took on the trustees of the homeowners association and the developers, Landsdowne Property Group and Balwin Properties. “The issue was that the trustees and developers withdrew the owners’ right to rent out their units on Airbnb by changing the rules of the scheme.”

According to the CSOS statement, the applicants explained that they invested in The Blyde development specifically because it was promoted as one where owners could place their flats on short-term letting platforms like Airbnb, for occupation by weekend and holiday guests. They noted that if it were not for this benefit, they would not have bought the properties, and wanted the reversal of this benefit set aside because they believed it was grossly unfair.



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Impact on homeowners association

In response to the dispute brought by the owners, the trustees and developers stated that the homeowners association had been forced to incur exorbitant expenses for security, lifeguards and for the maintenance and upkeep of the lagoon and

other common areas in the estate due to ongoing complaints about short-term residents contravening the rules. They alleged that the short-term visitors showed no respect for full-time residents, security staff and estate management, and that they were drinking alcohol on common property, making excessive noise and dressing scantily in a “family-friendly estate”. The respondents argued that the short-term visitors had “caused havoc within the estate”.

After considering both sides, the CSOS adjudicator found in favour of the applicants, and the trustees and developers were compelled to reverse their ruling prohibiting short-term letting at The Blyde.



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Meeting not validly convened

One of the reasons for the adjudicator’s finding was that the meeting at which a resolution to amend the rules was passed was not validly convened. Conostas elaborates: “At this general meeting, only 53% of the owners voted in favour of the new rule whereas the Rules of the Scheme required 75% of owners voting in favour of such a resolution. Consequently, the resolution could not stand.”

The CSOS adjudicator Khosi Mabaso also concluded that the respondents – the developer and trustees - could not provide evidence that all the nuisance caused in the scheme could be blamed only on short-term guests as there were indications that even permanent residents were, in certain instances, responsible for such unwanted behaviour.

The importance of community scheme rules being fair and reasonable was illustrated in Mabaso’s concerns about The Blyde’s Rule 21.4.2, which effectively gives the developers and trustees the power to run the development by imposing rules on owners. This rule states that “short-term letting of a unit will be subject to such terms and conditions and/or regulations as imposed by the Developer and/or Trustees from time to time should the Developer and/or Trustees elect to allow short-term letting”.

“The point to be made, which distinguishes this case from others, is that the developers, without the requisite buy-in from the owners, sought to amend a rule which was the very rule that initially lured people to purchase units in the scheme. This type of action appeared to be unreasonable,” Conostas notes.



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Section 25 of the Constitution

Mabaso also referred to Section 25 of the Constitution in her Order and confirmed that each owner has a right to property which cannot be interfered with arbitrarily. Such property rights come with the ability to generate income and wealth.

Commenting on this aspect of the case, Constatas says: “This may well be, but it must be remembered that it does not mean that short-term letting can never be prohibited. The High Court in Gauteng, in the case of the body corporate of the Paddock sectional title scheme and Sally Nicholl, held that the members of a body corporate could prohibit short-term letting in their rules as long as the rules had been legally amended with the correct special resolution passed, being 75% in number and value at a quorate meeting.

“The moral of this story is that trustees and developers should seek legal advice prior to taking decisions which could affect owners detrimentally,” Constatas concludes.

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