SECURITY ESTATES: CAN YOU FINE SPEEDSTERS?

“When the [property owners] chose to purchase property within the estate and become members of the Association, they agreed to be bound by its rules” (extract from judgment below)

There are many advantages to buying in a security estate or other community scheme, including quality of life and increased potential for growth in your property’s value.

As a buyer just be aware that you will almost certainly be binding yourself to a set of rules and regulations imposed by the Homeowners Association (HOA) or Sectional Title Body Corporate. Check that you are happy with them before you sign anything! Our courts have regularly confirmed the general principle that you are bound by what you agree to, and a recent high-profile Supreme Court of Appeal (SCA) decision provides an interesting example.

HOAs and Bodies Corporate on the other hand will be particularly pleased with the outcome, the High Court having originally held that the speed limit rules imposed by the estate in question were an unlawful attempt to usurp State powers over public roads and therefore invalid.

Speeding fines in a golf estate

A large golf estate (comprising some 890 freehold and sectional title properties with extensive common areas and facilities) is serviced by a network of roads and pathways. It has imposed a speed limit of 40km/h on its roads, with penalties for speeding.

A property owner was fined R3,000 for his daughter’s repeated speeding contraventions, but he refused to pay, and the dispute has since then been grinding its way through the courts.

The High Court originally held the speed limit rule to be invalid on the grounds that the estate’s roads were “public roads”.

But the SCA overturned this ruling, holding that the estate is a “private township” and its roads are (and were from inception) “private roads”. The “general public” has no right to access the estate’s roads, admission being restricted by electrified perimeter fencing and strict control at gated access points to owners, tenants, employees, guests, invitees and other “duly authorised persons”.

Even if the roads had been “public”, said the Court, owners had voluntarily agreed to bind themselves contractually to use the estate’s roads subject to the conduct rules. And because invitees are only allowed into the estate with the owner’s prior consent, the rule making the owner responsible for any breach by them of the rules is valid.

Moreover, the estate’s imposition of a speed limit is not unreasonable, especially given the presence of children, pedestrians and animals (wild and domestic) in the estate.

The end result – the estate’s speed limit is valid, it is entitled to impose penalties for breaches, and the owner must pay his daughter’s speeding fines together with some (no doubt substantial) legal costs.