YOUR BODY CORPORATE AND ARREAR LEVIES: TO SEQUESTRATE OR NOT TO SEQUESTRATE?

“…aye, there’s the rub” (Shakespeare)

Levies are the lifeblood of a sectional title scheme, and the Body Corporate has a duty to recover arrears from defaulting owners. It has the power, in addition to following standard debt collection procedures and perhaps approaching the Community Schemes Ombud for assistance, to apply for the sequestration of the owner’s estate. Indeed just the threat of a sequestration application is sometimes enough to frighten a recalcitrant debtor into paying up.

But, as Shakespeare might have put it, there’s an alarming “rub” here that body corporate trustees ignore at their peril. It arises from ‘the danger of contribution’ in insolvent estates. In a nutshell, where the ‘costs of sequestration’ exceed the funds in the estate available to pay them, proved creditors may well have to contribute towards those costs in addition to losing their claims. Talk about adding insult to injury!

A R46k shortfall – must the body corporate contribute?

A body corporate successfully applied for the sequestration of the personal estate of a defaulting section owner.

The property was bonded to two banks who duly proved their claims against the insolvent estate. Wisely, no other creditors proved claims and the trustee of the insolvent estate drew an account providing for the two banks alone to pay pro-rata contributions to cover the R46,663-16 shortfall in the costs of sequestration.

The banks objected to the account on the basis that the body corporate should also contribute as ‘petitioning creditor’, although it hadn’t formally proved a claim. The Master of the High Court ruled that the body corporate was protected from contributing as its claim related to arrear levies (and the costs of recovering the arrears) – claims which didn’t need to be formally proved and would by law be paid out of the proceeds of the property anyway.

The banks asked the High Court to set aside the Master’s ruling, and the Court duly held that as “petitioning creditor” the body corporate must indeed contribute to the shortfall pro-rata with the bondholders.

The bottom line - trustees of bodies corporate should, before applying for a defaulting owner’s sequestration, make certain that there is no danger of contribution.