



D U P L O O Y I n c .

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Bodies Corporate and HOAs: Apply Your Rules With Common Sense, or Else

"Good rules make good neighbours." (Old proverb, updated)

The many benefits of living in a residential complex come, naturally enough, with obligations as well as rights.

With its innate potential for conflict between competing rights, community living requires a fine balancing act between the individual rights of owners and residents, and the rights of the community as a whole.

Good rules make good neighbours

Which is of course where a complex's rules and regulations come into play. Rules provide a structured framework to regulate issues of common concern. Management rules concentrate on administrative and financial issues, while conduct rules (which we'll focus on in this article) address issues such as noise, pets, parking, use of common property and so on. They are essential not only for protecting everyone's individual and communal rights, but also to minimise disputes, ensure long-term sustainability and maintain property values.

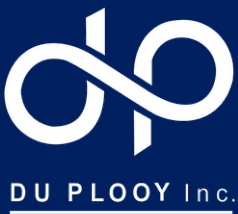
A well-managed complex benefits everyone – residents, investors, landlords etc.

The sight-impaired owner and his washing machine

Of course, conduct rules are meaningless without enforcement, and that exposes everyone concerned to another balancing act: consistent enforcement versus over-rigid and unconstitutional enforcement.

A recent Supreme Court of Appeal (SCA) decision highlighted this in the case of a complex with a communal washing area.

Before buying his unit in a complex in Gauteng, a visually-impaired man was assured by the estate agent – incorrectly as it turned out – that he would be entitled to modify the washing area directly outside his unit. He duly, without body corporate authority, moved his washing machine into the area and installed piping and a tap, with a security gate and plastic roof sheeting to protect it from the elements. All this, he said, was necessary both to ensure his safety (he cited the danger of slipping in water leaks which he wouldn't be able to see) and security for his washing machine and clothes.



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The body corporate was having none of that and removed the gate and plastic sheeting, citing its conduct rules which prohibit any owner from making alterations to the common washing area. It refused his request for an exemption from the rules on account of his visual impairment, a mediation attempt failed, and eventually his appeal against a CSOS (Community Schemes Ombud Service) ruling found its way to the SCA.

What came out in the wash

The end result? The body corporate is ordered to allow the owner exclusive use of a portion of the common washing area for his washing machine, plus he can install a protective cover over it at his own expense. He must maintain both in good repair, cannot damage the common area wall, has to pay a contribution levy, and must make good all changes when he leaves.

The Court's reasoning gives us a clear roadmap to our rights, both as bodies corporate and HOAs trying to enforce rules and regulations, and as owners feeling prejudiced by unjustifiably rigid enforcement of them:

- The duty to reasonably accommodate persons with disabilities: Our Constitution prohibits unfair discrimination and enshrines a right to dignity and equality as per the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) which prohibits any failure to take steps to reasonably accommodate persons with disabilities.
- When rigid enforcement of rules isn't justified: The body corporate's refusal to accommodate the owner in this case didn't take into account that his modifications were necessary for safety reasons, they were proportionate, tailored for his disability, and confined to what he considered essential to prevent harm to himself. They caused no undue inconvenience or hardship to other members of the scheme, nor any expense for the body corporate. Its rigid attitude in enforcing its conduct rules was not justified, and its failure to give him its conduct rules electronically or in Braille was unjust.
- What does "reasonable accommodation" entail? Perhaps the most critical of the Court's findings is this: "To achieve the objective of equality, I find that reasonable accommodation in a case like this may include allowing structural modifications, granting exclusive rights or exempting disabled residents from burdensome rules."



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Thin end of the wedge or just a balancing act?

There may be some concern amongst bodies corporate and HOAs that this is the “thin end of the wedge” when it comes to effective enforcement of rules and regulations. When faced with individual requests which go against the rules and regulations, where should bodies corporate and HOAs draw the line?

Ultimately, the safest course is probably to keep on performing that delicate balancing act we mentioned above, plotting a careful course between individual and communal rights fairly, impartially and reasonably. Common sense isn't as common as it should be.

Whether you're an owner, body corporate or HOA, we're here to help you plot that course!