
BODY CORPORATES AND THE VALUE AND IMPACT IN SEQUESTERING AN OWNER

Insolvency in South African law refers to a status of reduced legal capacity imposed by the courts on persons who are unable to pay their debts. The Insolvent's lessened legal capacity is in the interests of protecting other persons, primarily the general body of existing creditors, but also future creditors. Insolvency is also of benefit to the Insolvent, in that it grants him release in certain respects.

When one considers Body Corporates their main cause of action is always in respect of arrear levies. Body Corporates attempt to recover levies through the litigation process, however proceedings can take long and legal fees incurred by the Body Corporate can be high.

Sequestration Applications seem to be a quicker way for the Body Corporate to recover these amounts. The Body Corporate will have to show that the owner has committed an act of Insolvency¹ and thus is unable to pay his debt.

In broad and everyday terms, a person is Insolvent when he is unable to pay his debts. In legal terms, however, the test for Insolvency is whether or not the debtor's liabilities, justly assessed, surpass his assets, fairly appreciated. Incapability to pay debts is, at most, simply evidence, not decisive in itself, of Insolvency. A Sequestration order is a formal statement that a debtor is Insolvent. The order is granted either at the occurrence of the debtor himself (voluntary surrender) or at the instance of one or more of the debtor's creditors (compulsory sequestration).

The effect of a Sequestration order is to deprive the Insolvent of his estate. The Insolvent's estate is disassociated from him by the Sequestration order and the Master of the High Court winds up the Estate through an appointed Trustee. The Trustees obligation is to take control of the Insolvents movable and immovable property, to sell them, and to distribute the proceeds to the creditors.

In respect of claims for arrear levies, there are various advantages in a Body Corporate proceeding with the Sequestration of an owner rather than proceeding through litigation proceedings.

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¹ Acts of Insolvency set out in *Section 8(a)-(h) of the Insolvency Act No 24 of 1936*. (the "Act")

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