**Governance Portfolio Report 26 July 2016**

ResCom’s Governance has had a particularly turbulent year, two issues of which have been extremely stressful, unpleasant and very time consuming. After negotiation and considering all the ramifications of various options, rational decisions have been made in what ResCom considered to be in the interest of the residents, which includes the ResCom members themselves.

**ResCom’s Authority**

An anonymous communication precipitated by a decision taken by ResCom on the CoJ rates rebate was addressed to all residents claiming that ResCom’s decisions were not binding on them, meaning that ResCom does not have the authority to make decisions on behalf of the residents. As this challenge was tantamount to a vote of no confidence in ResCom, which could not go unchallenged, resulting in the Residents Meeting of 07/06/2016 being held to establish if the residents were satisfied with the decisions they make, if not the whole ResCom would resign.

Every Life Right Holder who bought a life right automatically becomes a member of the Management Association. The Management Association is constituted in terms of the Retired Persons Act, and is a juristic person that has rights and obligations.

The Act states:

* *Regulation 7(a): “With effect from the date on which a developer first alienates a housing interest to a purchaser, there shall be deemed to be established for the housing development scheme a Management Association of which the developer and such purchaser are members, and every person to whom thereafter a housing interest is alienated shall be a member to that Management Association”*

As it is not be feasible for the owner to negotiate with Management Association as whole, the Act allows for the appointment of a committee (ResCom) to represent their interests and make decisions on their behalf. The Act States:

* *Regulation 9(1)(p): “Subject to the restrictions imposed or direction given at a general meeting of members, the management association shall have the power - to appoint a committee of the management association, which, subject to the directions of the management association, shall exercise all the powers and perform all the functions conferred upon it by the management association and which committee shall meet and conduct its affairs as the committee may from time to time decide;”*

This regulation gives the ResCom, once legally elected at the AGM, the powers to act on behalf of the Management Association. No restrictions have ever been imposed on ResCom at any general meeting. In fact the last Residents Meeting of 07/06/2106, referred to above, received overwhelming support (one dissenting vote) for the way ResCom conducts its business.

ResCom therefore has the authority to make binding decisions on behalf of the residents.

**Voting**

A question was raised about voting, the Regulation are also explicit as follows:

* *Regulation 9(6) “At all meetings of the Management Association matters shall be determined by a simple majority vote of those present in person or by proxy and a member shall, on the show of hands one vote or on a poll. One vote for each housing interest alienated to such member”.*

Voting is therefore one vote per unit.

**City of Johannesburg (CoJ) - Rates Rebate Policy**

Evergreen as the owner of the units receives the CoJ rates invoices and pays them. The rates form part of the monthly operating expenses of the Evergreen Village and are reflected in the monthly accounts as an expense.

A CoJ Rates Policy allows for 50% rates rebate to all Life Right Retirement village on the proviso that the Owner passes the rebate onto the Life Right Holders (LRH).

* *“If the owner fails to pass rates rebate benefit to registered holders, the City may apply full rating with retrospective effect to the date of the Council applying the rebate”.*

Evergreen made application to CoJ and was granted the 50% rebate. This fact is reflected in the monthly accounts as an operating expense.

A monthly levy is charged to each unit to defray the operating expenses. The operating expenses, which include the CoJ rates, have broken even for the first months of 2016/2017 financial year and are now defrayed by the levies.

The problem of assessing whether the rebate has been passed onto the residents is that there are two different LRA methods of dealing with CoJ rates and they are:

1. Phase 3 - The rates are excluded from Phase 3 levy and are invoiced as a separate item in the monthly invoice. It is obvious that the rebate is passed on.
2. Phase 1&2 - The rates are included in Phase 1&2 monthly levy, consequently they are objectively not visible but never the less form part of all the operating expenses covered by the levy.

The crux of the three-year dispute is whether or not the rebate has been passed onto Phase 1&2 units. The CoJ policy does not state in what form the rebate must be passed on. The question to be decided is, does the current reduction in expenses rather than the proposed reduction of levy constitute the rebate as being passed on?

The rebated rates are reflected as a line item in the monthly accounts. The recovery of Phase 3’s rebated rates are reflected as a credit against this line item in the accounts, and the resulting net rebated rates represent Phase 1&2’s portion of the rates that are recovered in their levies.

ResCom originally supported the view that Phase 1&2 levies should be reduced by the value of the rebate. However as a result that the levies would fully defray the operating expenses, ResCom changed its position and accepted Evergreen’s view that rebate is subjectively passed onto Phase 1&2 as a reduction of their expenses.

ResCom also took into account the non-contractual developmental investments being made by Evergreen in our Village to improve our lifestyle and decided to accept Amdec/Evergreen’s proposal and avoid a protracted legal battle that would be totally counter productive to ResCom’s stated aim to create a happy living environment and a good working partnership with Amdec/Evergreen.

As ResCom believes its decision has resolved the CoJ rates rebate dispute in the best interest of the Village ensuring the on going development of our village without jeopardising or exposing the rates rebate to the danger of being withdrawn. ResCom will oppose any attempts to draw the residents into a legal action with Evergreen and therefore rejects any further meetings with the Ombudsman or arbitration.

The CoJ rebate matter is closed and any further individual action must be directly with the CEO of Evergreen, Arthur Case.

**Electricity Supplied by Eskom**

Evergreen buys electricity directly from Eskom and the concern was that the cost of the prepaid electricity from the Meterman was too high compared with what Jo’burg City Power charge their clients.

The first problem was that there was only one meter on the pavement read by Eskom and we had no means of comparison and ensuring that the price we pay is correct.

We are fortunate that we have a resident that is an ex-Eskom executive, Jac Messerschmidt, who understands the detail workings of the system and a 10 point plan was drawn up to resolve the problem.

Evergreen agreed to install two of our own meters to monitor common usage and house usage separately, which gave us measure as to where the problems lay. Evergreen also provided all the Eskom invoices and Meterman credits for use by Jac.

Eskom’s transformer is oversized to cater for the future development of the village and a cost was included for the use of this facility. The developer agreed to absorb a large portion of this cost and we were able to arrived at a solution.

Jac’s calculations showed what the resident’s prepaid cost should be, and Evergreen accepted his assessment. The electricity prepaid unit cost was then reduced from R1.80/Kwh to R1.30/Kwh and this new cost also took into account Eskom’s July increase consequently no increase was implemented.

The matter outstanding is the prepaid overpayment, which ResCom still has to finalise with Evergreen.

**Consumer Price Index - CPI**

Each month the prices of a basket of selected consumer goods are measured by the StatsSA, a statistical organization of Government, and they publish a range of CPI figures in various tables.

ResCom and Evergreen agreed to use StatsSA Table B2 headline year-on-year rates.

The LRA states that the September levy increase will be based on the CPI **average** as **published** by StatsSA for the preceding 12 months. The different interpretations and opinions were:

1) Evergreen’s position is that they compare the CPI for a particular month with the same month a year ago as it is a StatsSA **published** number, but it is a “Spot” number that is not an average, while

2) ResCom position is that the preceding 12 months should be added up and divided by 12 to get the **average** CPI, which is a calculated number that is not a published number.

The two interpretations of the LRA had remained under dispute for two years and no definitive solution to either argument was found. The irony of this dispute is that from a financial point of view both methods produce similar results over both short and long periods and in the end the financial difference between the two methods is negligible.

The only difference between the Spot CPI and an Average CPI is that the Spot CPI is volatile being up one year and down the next, while the calculated Average CPI creates a smooth a middle path between the ups and downs. The small differences over time between the Spot CPI and Average CPI are due to the CPI percentages being rounded up to one decimal point.

Evergreen uses their method 1) above in all of their villages and wants uniformity. As the differences are negligible and in order to break the impasse, ResCom finally agreed to accept method 1) above, with the written proviso that should there ever be a material difference due to hyper inflation ResCom will renegotiate it with Evergreen.

This decision finalises the matter on which CPI method is to be used and is no longer open to debate with ResCom. Any further debate on the matter must be directly with the CEO of Evergreen, Arthur Case.

**House Rules**

The Act requires that House Rules must be provided to ensure orderly behaviour and harmonious living and a standard set of House Rules drawn up by Evergreen are implemented in all their villages.

While we work with these rules, the problem of one size fits all principle does not fit all the needs of our Village. ResCom had a task team modify and amend the existing House Rules to suit our needs and circumstances, but they have not yet been implemented by Evergreen on our behalf.

This issue has been low priority as ResCom had more pressing and time consuming problems to deal with. As there are House Rules in place, though inadequate, the amended rules have been left outstanding and will probably dealt with by the incoming ResCom.

**Insurance**

One of the legal obligations of the Management Association is to ensure adequate insurance cover. However this obligation together with the right to manage and administer the village has been delegated to the Managing Agent in terms of their LRA.

ResCom does not have a copy of Evergreen’s insurance policy but we do have a statement from the Managing Director ELV, Derek Drew, which states:

* *We have always insured the geysers and the actual solar panel for any damage. The Cost resulting from damage is covered by our insurance and we pay the excess, except in the case of negligence.*

*The working parts of the heating unit are not insurable.*

*In general the structure, built-in items, flooring and ceiling are covered by our insurance and all personal and household items are for the residents to insure.*

A more detailed statement is required as the insurance policy, which covers Amdec’s wider business will not be made available to ResCom.

**Constitution**

The Management Association constituted in terms of the Retired Persons Act has to have a constitution as a necessary tool to guide its activities, but there is not one in place.

The Management Association’s responsibilities and obligations listed in the Act to manage and administer the Village should be included in the Management Association’s Constitution. As these have been delegated to Evergreen as the Managing Agent, ResCom no longer has the responsibility of managing and administering the Village but still has a major role in negotiating and partnering with Evergreen in the joint decisions to be made for the village.

The Management Association’s Constitution, when finalised, will therefore be the joint document and guiding tool for both ResCom and Evergreen as the Managing Agent. We understand that Evergreen’s lawyers are currently drawing up a Constitution, which will be provided to ResCom to peruse, modify and agree.