

Sectional Title Ownership: The Pleasure and the Pain



HouseCheck
Property Inspections - Building Bridges of Trust

Why should I read this book?

Sectional title life in South Africa has definite cost and security advantages, but also major “pain points” as regards financial risk and personal frustration - if you and your fellow sectional title owners (and trustees) don’t follow the rules.



This book has been compiled by HouseCheck to help you, the sectional title owner or trustee to: Understand your rights and so “Increase the pleasure and reduce the pain” of sectional title life.

This is an important book because many sectional title owners, trustees, and managing agents ignore aspects of the South African law which has been put in place to protect sectional title owners. The topics we cover in this book are:

- 1. How to protect, and enhance the value of your sectional title property investment by:**
 - a. Knowing your rights as an owner**
 - b. By attending AGMs and by insisting that the trustees of the body corporate do not cut corners, but rather comply with the sectional title regulations in a fair and open-handed way. These laws have been put in place for the protection of everyone. Sadly compliance is often an area of ignorance and neglect for many owners and trustees (and indeed managing agents).**
- 2. By following, the rules fairly and openly, trustees can reduce their fiduciary risk and also ensure that their governing role does not open them to personal attack and unpopularity within their sectional title community.**
- 3. By following the rules, the triple frustrations of sectional title life: “People, pets and parking” can be reduced to a minimum.**

Why did HouseCheck produce this book? Simple really. HouseCheck’s vision is to “build bridges of trust” within the property industry - by promoting knowledge and transparency.

Many body corporates are financially stressed because trustees don’t follow the rules and don’t systematically and fairly fund maintenance of the common property. When sectional title properties become run-down everyone suffers. Property values decline and frustrations grow as defects on the common property multiply. The new Sectional Title regulations now requires all body corporates to prepare and fund a realistic 10-year Maintenance Action Plan for the common property. HouseCheck stands ready to assist.

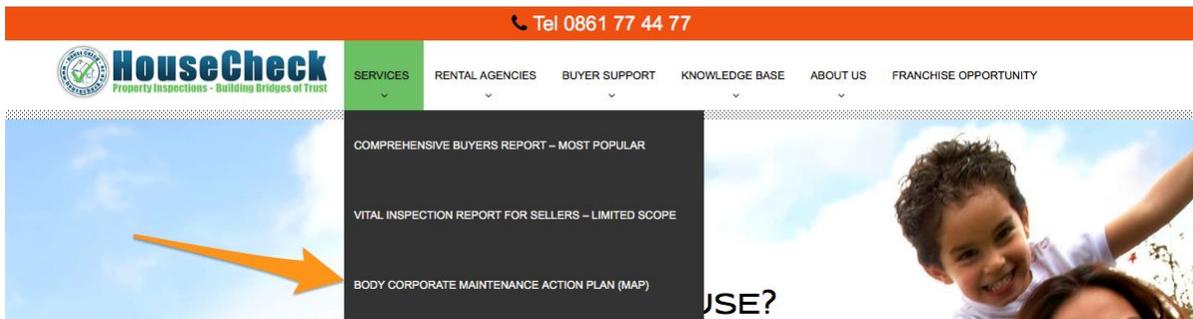
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You can get a “no-obligation” quote for HouseCheck to inspect your sectional title scheme and prepare a realistic 10-year budget.

This is the best way to preserve and enhance the value of your sectional title property investment.

Get a quote for a “Maintenance Action Plan” inspection from:

<http://www.housecheck.co.za/go/body-corporate-maintenance-inspections/>



Executive summary:

This book deals with a complex subject – the impact (personal, legal and financial) of buying a sectional title property. All of these factors impact on each other. To get a full and accurate picture of all the implications of sectional title ownership and life, you should become familiar with the information contained in this HouseCheck publication.

This **Executive Summary** is intended for busy people who only want an initial brief overview of the contents – together with the opportunity to delve more deeply into the various topics as and when the need may arise.

Sectional title and freehold ownership compared – Page 3

There are pros and cons regarding each of sectional title and freehold property ownership.

Maintenance of sectional title property – Page 5

Trustees of sectional title schemes now have a legal duty to commission a 10-year fully funded plan to preserve the condition of sectional title property, and so protect owners.

Managing risk through HouseCheck’s MAP solution – Page 7

HouseCheck, SA’s leading property inspector, has cost-effective inspection-based tools to assist trustees to manage risk and comply with the law, as regards maintenance.

Governance of sectional title schemes – Page 9

Sectional title governance requirements: Legal issues

Benefits of sectional title ownership – Page 12

An outline of some of the practical benefits of deciding to buy into a sectional title scheme.

Restrictive factors of sectional title ownership – Page 13

There is also a negative impact on your personal freedoms when you opt for sectional title property ownership.

What about alterations to your unit? – Page 28

Under which circumstances can you make alterations to your sectional title property?

Developer’s “Section 25” rights – Page 29

If the developer has “future development rights” this may impact your investment.

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Legal aspects of Sectional Title & Freehold:

Freehold ownership

Freehold provides full ownership rights when you own a property. Subject only to national and local bylaws, and also to any servitudes recorded in the property title deeds, your freehold ownership rights include the right to do as you choose with the building and the land it is built on. Freehold properties include free-standing houses, cluster houses, business premises, farms and smallholdings.

Sectional title ownership

Sectional title describes separate ownership of units or sections within a complex or development. When you buy into a sectional title complex, you purchase two things:

- A section of the property (which you own)
- And an undivided share of the common property.

These sections are known as **Units**. Sectional title units may be semi-detached houses, townhouses, and flats or apartments – or offices, shops, or factories/warehousing in a business property.

The law requires that sectional title developments are governed by a **Body Corporate**. This is the name given to all the owners of units within any particular sectional title scheme. The body corporate is responsible for managing the scheme. Management embraces: Finances and also the upkeep of the exteriors of the units and of all of the common property.

A **Managing Agent** is often appointed to take care of some of the management duties of a body corporate.

- Collecting monthly levies
- Paying the scheme's costs and insurance premiums
- Arranging meetings and secretarial functions for meetings
- Ensuring compliance with the law
- Ensuring that the owners and tenants comply with the body corporate rules.

What the law says:

Various laws and accompanying regulations govern sectional title ownership. These laws prescribe the roles and responsibilities of individual unit owners, the body corporate, the trustees and the managing agent. These laws and regulations include:

- Sectional Titles Act of 1986
- Sectional Title Schemes Management Act of 2011 (STSMA)
- Sectional Title Regulations from 2016 (in terms of the STSMA)
- Community Schemes Ombud Service Act of 2011

Maintenance of sectional title property

A properly funded long-term maintenance programme is among the most important legal provisions of the STSMA.

- Trustees (or their delegated managing agent) are responsible for managing the finances of the scheme and for maintaining and improving the common property (which includes the exteriors of the sections/units).
- The Sectional Title Regulations now specifically require trustees to compile and fund a budget for a 10-year Maintenance Action Plan.
- Sectional title scheme financial statements must be audited and auditors may not sign off on the financials without satisfying themselves that an adequately funded 10-year maintenance plan is in place.
- Trustees have a fiduciary duty to manage the scheme in the best interests of the unit owners. This means that a trustee may be personally liable for financial losses if the trustee has not acted honestly and in good faith and has caused the scheme to suffer financial loss. Obviously poor or neglected maintenance of the sectional title property will result in financial harm to all section owners.

In terms of Rule 22 of the Regulations of the Sectional Title Schemes Management Act the trustees of any sectional title property have a legal obligation to maintain the common property and exteriors of the sections in order to preserve the asset value of the property.

Maintain, Repair or Replace

Rule 22 of the STSMA states:

1. A body corporate or trustees must prepare a written maintenance, repair and replacement plan for the common property, setting out:
 - a. The major capital items expected to require maintenance, repair and replacement within the next 10 years;
 - b. The present condition or state of repair of those items;
 - c. The time when those items or components of those items will need to be maintained, repaired or replaced;
 - d. The estimated cost of the maintenance, repair and replacement of those items or components;
 - e. The expected life of those items or components once maintained, repaired or replaced; and
 - f. Any other information the body corporate considers relevant.
2. The annual contribution to the reserve fund for the maintenance, repair or replacement of each of the major capital items must be determined according to the following formula: [(estimated cost minus past contribution) divided by expected life].
3. This maintenance, repair and replacement plan must be approved by the members at a general meeting.
4. Members may lay down conditions for the disbursement of money from the reserve fund.

Rule 22 Definitions:

- **“Estimated cost**, means the estimated cost to maintain, repair or replace a major capital item;
- **“Expected life”**, means the estimated number of years before it is expected that the cost of maintenance, repair or replacement of a major capital item will be incurred;
- **“Major capital item”**, means wiring, lighting and electrical systems, plumbing, drainage and stormwater systems, heating and cooling systems, any lifts, any carpeting and furnishings, roofing, interior and exterior painting and waterproofing, communication and service supply systems, parking facilities, roadways and paved areas, security systems and facilities and any other community and recreational facilities.

HouseCheck's MAP solution:

Rule 22 of the Sectional Title Schemes Management Act Regulations requires the trustees to devise a 10-year plan to fund the maintenance, repair or replacement of all major capital items (as defined above).

Such a 10-year maintenance action plan obviously requires a baseline inspection in order to determine the current condition of all major capital items.

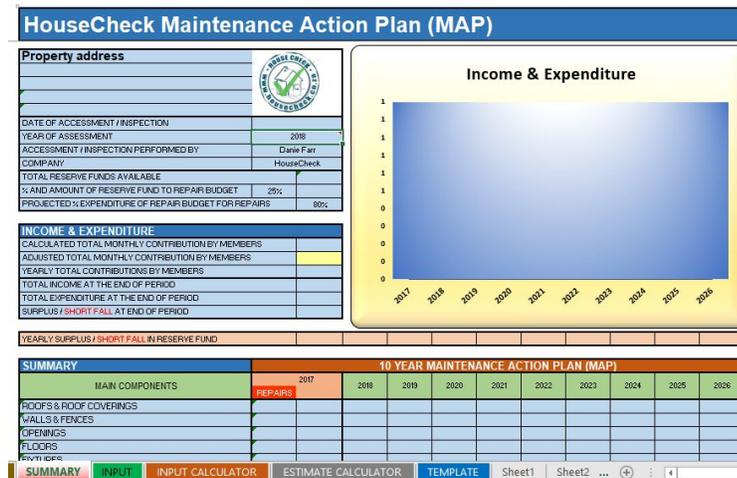
HouseCheck has developed industry-leading inspection and budgeting software to assess the current condition of the property and then compile a 10-year budget showing how levies must be adjusted in order to fund this 10-year budget.

Using HouseCheck's MAP service gives trustees and managing agents these benefits:

- HouseCheck only employs experienced and trained (SAHITA-certified) inspectors to do site inspections and gather data.
- HouseCheck uses specialised technology including drones, hoists, moisture meters, cameras and custom-built inspection software to thoroughly inspect the condition of each sectional title property.
- HouseCheck is now able to harness the "on-the-ground" intelligence of sectional title owners and tenants. People living on the property are now able to easily and efficiently report property defects as they are noticed. HouseCheck's App-driven service, called NotifyUs, firstly assists HouseCheck inspectors to insure that its MAP inspection report is as complete as possible; secondly NotifyUs also enables managing agents to efficiently attend to property defects as they are reported.
- An experienced HouseCheck team, including a quantity surveyor, quality-checks the MAP report data gathered on site and then compiles the 10-year MAP budget for presentation to the trustees and members.
- A HouseCheck account executive personally manages each MAP account and is available to attend trustee and member meetings in order to negotiate and adjust budgeted maintenance on the basis of affordability.
- The HouseCheck account executive will finalise the budget and supply a calculation which will determine how section levies must be adjusted in order to fund this anticipated maintenance, repair, replacement programme. The Regulations state that this funding must be preserved in a reserve fund account.

- Rule 22.4 requires the trustees to “report the extent to which the approved maintenance, repair and replacement plan has been implemented to each annual general meeting”. This requirement is best achieved by commissioning HouseCheck to inspect the property annually and to then adjust the MAP budget to reflect the current condition of all components. HouseCheck fees for recurring inspections are usually built into the initial MAP budget.

HouseCheck’s Maintenance Action Plan (MAP) report, is a dynamic document:



- HouseCheck MAP fulfills all of the requirements of the STSMA Regulations
- The MAP budget can be easily and accurately adjusted each year on the basis of the current condition of the property, determined by an annual inspection
- MAP annually adjusts required levy contributions to the reserve fund necessary to fund the MAP for the next ten years.

HouseCheck MAP quotations for any sectional title or community scheme are available on application, and without obligation.

HouseCheck MAP reports take the guesswork out of maintenance; complies with the law; helps preserve and enhance the property values of section owners and limits personal risk liability for trustees.

All HouseCheck MAP inspectors are SAHITA-certified (www.sahita.co.za) and are also members of the National Association of Building Inspectors of Southern Africa (www.nabisa.org.za)

Governance of sectional title schemes

The Sectional Titles Act (STA) of 1986 and the Sectional Title Schemes Management Act of 2011 define the statutory rights and obligations of sectional title stakeholders.

These rights and obligations are also set out in the Prescribed Management Rules (PMRs) and the Prescribed Conduct Rules, which were issued under the Act. These rules govern the roles and responsibilities of all sectional title stakeholders – unit owners, unit occupiers, the body corporate, the trustees and the agents of the body corporate (the managing agent).

See the final chapter of this HouseCheck eBook for the complete Prescribed Management Rules (PMRs) and the Prescribed Conduct Rules, which were issued under the Act

When you buy a sectional title unit, you automatically become a member of the body corporate. The body corporate consists of all the owners of units in the scheme – whether natural or legal persons (companies and trusts).

Body corporate meetings



The body corporate is required by law to meet at least once a year – this is the annual general meeting (AGM). At the AGM members of the body corporate must transact mandatory business, including adopting a budget for the new financial year and electing trustees.

Apart from the AGM, the body corporate may meet at other times for a “special general meeting”.

Resolutions:

Some body corporate decisions only need a simple majority vote to be adopted, others require a much higher level of consensus. Legally prescribed levels of agreement for adoption of a resolution are:

- **Ordinary resolutions:** Only a simple majority is needed for: Approving the budget, electing or removing trustees, and imposing specific restrictions or directions on the trustees.
- **Special resolutions.** A special resolution needs the consent of 75 percent of the owners present at the meeting. Some of the decisions that must be made by special resolution are: Amending the conduct rules, suing the developer of the scheme, authorising “non-luxurious” improvements to the common property and revoking the appointment of a managing agent.
- **Unanimous resolutions.** Most of the Prescribed Management Rules (PMRs) can be amended if the body corporate passes a unanimous resolution. This requires a quorum of 80 percent of the owners and no votes against the resolution (abstentions are counted as votes in favour). Other decisions that require a unanimous resolution include alienating or leasing part or all of the common property and making “luxurious” improvements to the common property.

Written consent of members:

Apart from resolutions made in a general meeting, some decisions require the written consent of each owner. Such decisions include: Acquiring land to extend the common property and authorising a section or exclusive-use area to be used for a purpose other than that shown on the sectional plan.

Scheme rules:

- **Prescribed management rules** describe the rights and responsibilities of owners and the powers and functions of trustees
- **The conduct rules** establish norms and standards to govern how the residents will live together on the property.

When creating the management and conduct rules for a sectional title scheme, due consideration should be paid to the Sectional Titles Act 95 of 1986, the Sectional Titles Schemes Management Act 8 of 2011 and the Community Schemes Ombud Act 9 of 2011. All rules and regulations should comply with the terms of these Acts.

Further to this, the rules drawn up must provide for Regulation, Management, Administration, and Use and Enjoyment as far as each sectional title is concerned. This may include aspects regarding pets, the creation of an exclusive use area such as a parking bay, or renovations and alterations.

While body corporate rules may vary and can be specific to a particular sectional title scheme, in terms of Section 35 (3) of the Sectional Titles Act, **rules must be reasonable, fair and apply equally to all owners for the same purpose.**

Once formalized, all owners within the sectional title scheme must receive a copy of the body corporate rules to ensure all scheme members are clear on what their rights, responsibilities and duties are.

Most bodies corporates do not make any amendments to the PMRs, but most schemes have substantially added to or changed the Prescribed Conduct Rules – depending on the needs and wishes of the unit owners.

When buying into a sectional title scheme it is important to first scrutinize the management and conduct rules because these rules define the constraints that you will have to live with as an owner.

Before buying into a sectional title scheme, purchasers should find out their rights and obligations under the applicable legislation as well as under the Prescribed Management Rules and Conduct Rules. Having a clear understanding of these may affect one's decision about the suitability of the investment.

Previously management and conduct rules were lodged with the Deeds Office. Now, in terms of the Sectional Title Schemes Management Act the rules, and any amendment to the rules, must be lodged with the Chief Ombud (Department of Human Settlements)

Role of the trustees:

The trustees are the "directors" of the body corporate, responsible for the day-to-day management of the scheme. Although the trustees are accountable to the body corporate, trustees do have the authority to make a number of decisions without reference to the owners (unless a resolution restricting their powers has been passed).

Trustee decisions which do not require prior approval of the body corporate include: To impose a special levy, appoint a managing agent, approve the consolidation or subdivision of sections, impose fines for contraventions of the conduct rules (if the rules provide for fines), and to convene a special general meeting.

Most trustees are members of the body corporate who volunteer their time and services and are usually not property professionals.

The responsibilities of trustees can be onerous and time-consuming, which is why trustees are often retired or semi-retired unit owners. The levels of competence and knowledge among trustees varies widely.

Succession of trustees and the "institutional knowledge" and experience of the trustees are also important factors to consider when buying into a sectional title scheme. Sometimes unit owners are forced into the role as a trustee in order to safeguard their investment and lifestyle.

Managing agent

Although most sectional title schemes decide to appoint a managing agent to take frontline responsibility for managing the collection of levies, property maintenance and body corporate governance matters, the ultimate responsibility rests with the trustees.

Benefits of sectional title ownership



Security & personal safety:

Living in close proximity to your neighbours and in a community environment is usually more secure than living alone on a freehold property. Also, most sectional title developments have security measures installed around the perimeter of the property and at the entrance of the development. The costs of this security is usually lower than equivalent security on a freehold property – because the cost is shared among the unit owners and is included in the monthly levies.

Freehold property owners, on the other hand, are responsible for their own security – they must pay to secure their own perimeter, and usually also for an armed response security company.

A fixed monthly cost:

Unlike freehold property owners, who have to pay for their own home insurance, security and for the upkeep of the exterior of their homes, owners of sectional title units instead pay a fixed monthly levy.

A sectional title levy usually includes: Insurance premiums, maintenance of the common property and exteriors of the sections, salaries and wages of cleaners, security and other staff involved in maintaining the common property and utilities (water and electricity) consumed on the common property. The levy will also include the shared cost of maintaining pools, tennis courts and other communal areas – such as a clubhouse.

Individual sectional title owners only need to pay for their own rates (based on the municipal valuation of their section), the home owners insurance of their unit, insurance cover for the contents of their home, maintenance costs of their private gardens and for their personal monthly electricity and water consumption.

Affordability and communal living:

Generally speaking, a sectional title unit within a complex is more affordable than an equivalent freehold house.

Another advantage is that many communities living in sectional title schemes (especially retirement schemes) enjoy close-knit communities and far greater interaction with their neighbours when compared to freehold neighbourhoods.

Restrictive factors of sectional title life

Will the scheme suit your lifestyle?

When buying into a sectional title scheme it is very important to take a view on the other occupants of the complex – considering their cultural norms and behaviour. An examination of the existing Conduct Rules of the scheme will usually provide the prospective buyer with a good idea of what is acceptable behaviour and what is not.

Remember that creating, amending or deleting a conduct rule requires the consent of two-thirds of the owners, so you can be sure that the rules express the norms and standards of the overwhelming majority of owners. This is an important factor to consider in multi-cultural South Africa.

Pets, parking and people

It is said there are only three sources of conflict in sectional title living: Parking, pets and people.

- **Parking:** Very often a sectional title scheme does not have sufficient parking bays to accommodate all the vehicles of every resident **and** their visitors and guests.

Trustees are not under an obligation to find or create parking if there is a shortage. You buy into a scheme "as it is", and the onus rests on the prospective buyer to determine whether there will be sufficient parking for your family's vehicles.

Sometimes new owners assume that if a scheme has visitors' parking, these "spare" bays can be allocated to residents. However, visitors' parking is usually a town planning requirement, and each municipality has a formula that determines the number of bays a scheme must set aside for visitors' cars.

It would be illegal for the trustees to allocate these bays to residents - although it is not unusual for trustees to allow residents to park there during "off-peak" times if the bays are not occupied by visitors' vehicles.

If you don't have enough permanent parking, find out if such a concession is available and then decide if it will suit you.

- **Pets:** A body corporate's policy on keeping pets will be set out in its conduct rules. Often the trustees' written permission is needed before a pet can be kept on the property. Sometimes there are also restrictions on the size of dog that can be brought onto the property. When granting permission to keep an animal, the trustees may also set certain conditions with regard to cleanliness and control.

Even if you see animals on the property, don't assume that the scheme is pet-friendly.

A body corporate may have created a "no dogs" rule, but the rule could include a "grandfather clause" to enable residents who owned dogs before the rule was registered to keep their pet until it dies.

- **People.** All sectional title schemes are governed by rules of conduct, but the living environment of each scheme largely depends on the type of people who live in the scheme.

Tenants, particularly short-term renters, are less likely to play by the rules than owners who intend to remain in a scheme for a long time.

The higher the ratio of owner-occupied units to rented units, the greater the probability that the scheme will be well run and conflict kept to a minimum. This is because owner-residents have a financial and personal stake in the scheme, whereas buy-to-let owners' only concern may be that their rental is paid on time.

The profile of the residents in a scheme is also often determined by its location and its facilities. For instance, a building near a university campus is likely to attract students; an upmarket scheme out in the suburbs will probably have an older age profile. If a scheme has a swimming pool or recreational facilities, you will probably be the odd one out if you insist on peace and quiet on Saturday and Sunday afternoons.

Common property:

The defining principle of sectional title is the distinction between a section (owned by a unit owner) and the common property (owned by the community).

It is very important for sectional title buyers to understand the limitations and costs of the sectional title scheme. The prospective buyer must understand:

- What the section owner will be able to do with your property without seeking the consent of the trustees or the body corporate
- The extent of your potential financial liability for what has to be maintained, repaired or replaced, or upgraded on the common property. This liability will be, is determined by the extent of your ownership within the scheme – your **participation quota**.

Sections and Participation Quotas:

A **section** within a sectional title scheme is a part of the property which has been measured by a land surveyor and demarcated as such on a sectional plan. All such sections can be individually owned.

The sectional title plan, compiled by a professional land surveyor, is lodged at the Surveyor General's office and is a legal document describing real and enforceable property rights of ownership.

Each section is defined by an imaginary line – called the **median line** – which runs through the middle of the walls, doors, windows, floors and ceilings which form the physical boundaries of that section. What is outside of the median line is either another section or it is common property.

Sometimes balconies are included within the median line – but sometimes these are **exclusive use areas**, rather than part of the section.

A section can be a residential flat, a garage, a storeroom, or an office, shop, factory or warehouse. A section may include a garden or a balcony.

If you, for example, buy a flat, a separate garage and a separate storeroom, you will be the owner of three sections.

When you buy into sectional title, however, what you actually own is not a section, but a unit, which always consists of a section and its **undivided share** in the **common property**.

“**Undivided share**” means that no owner can claim ownership of a certain part, or parts, of the **common property**. Your share of the common property is not, for example, the outside of the exterior wall enclosing your section.

Your **undivided share of the common property** is determined by the size of the section, or sections, that you own.

This share, which is known as your **participation quota**, is calculated by dividing the floor area of the section (rounded off to the nearest square metre) by the total floor area of all the sections.

The result is expressed as a decimal fraction correct to four places and is recorded on the sectional plan.

Participation quota: Votes, levies & scheme debt

Your participation quota will usually determine:

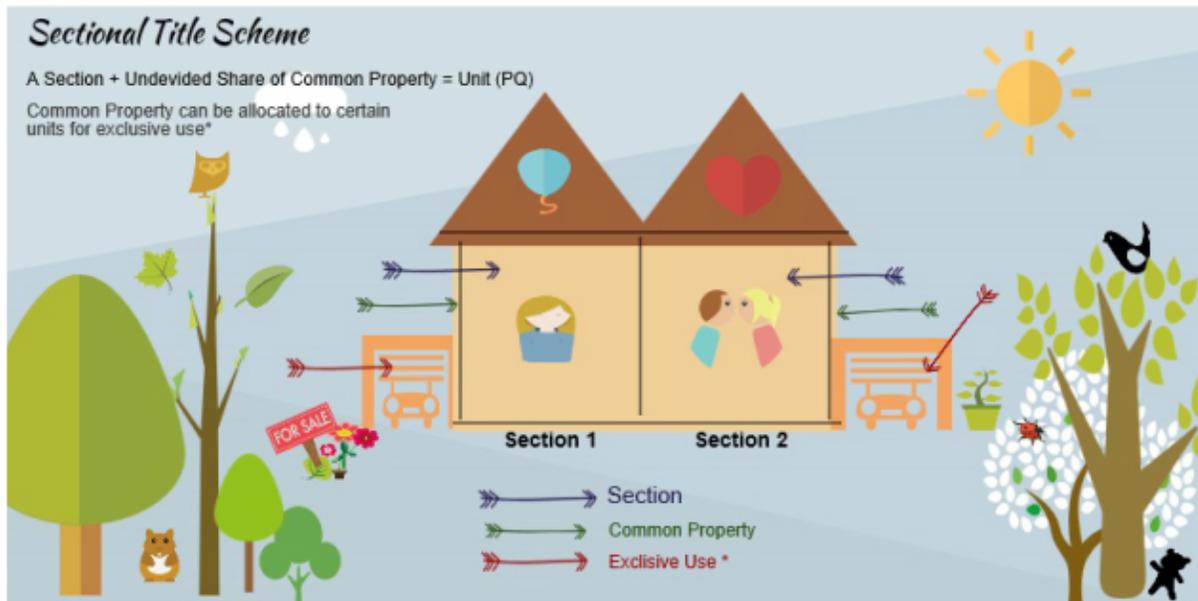
- The value of your vote at general meetings of the body corporate. Votes at general meetings are usually taken by a show of hands, in which case an owner has one vote for each section registered in his or her name. However, the chairman has the discretion to change the voting method to a poll, in which case the value of each owner’s vote is reckoned by his or her total participation quota. An owner can ask the chairman of the meeting for votes to be counted in value instead of number, which request may be agreed to. Special resolutions of the body corporate must always be counted in both number and value.
- Your liability for levies (including special levies). Any contribution you are required to make to the body corporate should be based on your participation quota. The exception is contributions for exclusive-use areas.
- Your liability for body corporate debts.

But the participation quota does not always determine the value of votes or liability. Either the developer (when the scheme’s register is opened) or the body corporate (by taking a special

resolution) can make rules that *alter* the effects of the participation quotas.

These rules could create an entirely new basis on which the value of votes or liability is determined – such as the market value of the sections – or they could state that the participation quotas will determine the “basic” liability of all the owners, while setting a formula that will determine their liability for “additional” contributions for certain types of expenses. The scheme’s management rules will state if the effect of the participation quota has been changed.

Extent of sections



In sectional title, it is unwise to assume that “use” of an area automatically equates with “ownership”. The fact that a townhouse comes with a landscaped garden and braai area, or that an enclosed balcony can be accessed only via the living room in a flat, does not automatically mean that this area forms part of its adjoining section.

The only way to be certain where a section starts and ends is by inspecting the sectional plan.

Sections are demarcated by solid lines. If the section includes an unenclosed area, such as a balcony or veranda, the division between the enclosed section and the open area will be demarcated with dashed lines.

The sectional plan will always be accompanied by a schedule, which must state the floor area and the participation quota of each section.

Each section is allotted a number, which may be the same as its door or unit number.

The sectional plan will also show if there are any registered exclusive-use areas of the common property which are linked to the section.

Leased rights

Leased rights to the use of a particular portion of the common property often cause confusion. The body corporate is entitled to rent out parts of the common property to individual owners.

If the seller of a unit has been renting an area, which you as the new buyer also want to be able to use - such as a parking bay - don't assume that you will be able to automatically take over the lease from the seller.

The prospective buyer should be cautious and ask for a copy of the lease agreement. The buyer should find out from the trustees what will happen to this area on transfer, whether the trustees are willing to transfer the lease, as well as any obligations which will then fall on you, as the lessee.

Exclusive-use rights

Exclusive-use rights often cause confusion. Many people incorrectly believe that an exclusive-use right is a type of individual ownership, similar to owning a section.

This is not always so (see next section). An exclusive use right grants the right of use and enjoyment – not ownership. Exclusive-use areas (EUAs) remain part of the common property, which means that the body corporate has the final say on what can and cannot be done on and with these areas.



Exclusive-use rights do two things:

- They give an owner, or a group of owners, the right to use a part of the common property to the exclusion of other owners and residents; and
- They entitle the body corporate to recover from the holder of the exclusive-use right the costs associated with the upkeep of the exclusive-use right.

Different types of exclusive use rights:

If a sectional title purchase includes an exclusive use area, it is important to establish what type of exclusive-use right you will have. Some exclusive-use rights are more secure (and valuable) than others.

The two different types of exclusive use rights are often known by the section of the Sectional Title Act under which they were created.

Section 27 rights:

This is a registered exclusive-use right to an area of the common property that has been surveyed and is shown on the sectional plan. Registered exclusive-use rights can be bonded, leased or made subject to servitude rights, as with any real right in immovable property. If you hold a registered exclusive-use right, you have an absolute right that can be enforced against another person by instituting legal proceedings.

Registered exclusive-use rights can be transferred or ceded by notarial deed. If an exclusive-use right is shared by a number of owners, an owner wanting to transfer his or her right must obtain the written consent of the other owners.

Registered exclusive-use rights are usually created by the developer of the scheme. However, a body corporate can create registered exclusive-use rights by taking a unanimous resolution. These areas must be surveyed and shown on the sectional plan.

Section 27A right:

A **Section 27A exclusive-use right** is created in terms of the scheme's rules, either the Prescribed Management Rules (PMRs) or the Conduct Rules and is not registered on the sectional plan. It is not a real right which can be bonded, leased or made subject to servitudes.

However, a Section 27A right still offers a large measure of security.

A Section 27A right established in terms of the Prescribed Management Rules is more secure than the same right established by the Conduct Rules. This is because, by law the PMRs may only be amended by way of a unanimous resolution, whereas the Conduct Rules can be amended by a special resolution.

Section 27A rights created by the rules are not real rights in immovable property.

This type of exclusive use area will not appear on the sectional plan, although it should be shown on a scale plan which is included with the rules that created the exclusive use area. However, a rule-created exclusive-use right is automatically transferred when the owner of the unit on which the right has been conferred sells his or her unit.

Exclusive-use levies:

Buyers of sectional title units should also check the monthly contribution (levy) on the exclusive use area.

Whether you hold a Section 27 or a Section 27A right, you will be required to pay a contribution to the body corporate to offset the body corporate expenses associated with maintaining the exclusive use area, including the provision of utilities and the cost of insurance.

If the monthly contributions are insufficient to cover the cost of a repair in the exclusive use area, then the body corporate is entitled to call on the holder of the exclusive use right to make an additional contribution. This often causes misunderstandings and ill-feelings.

In theory, the exclusive-use contributions collected from exclusive use holders should be ring-fenced and used only to repair and maintain their exclusive use area. In most cases, however, exclusive-use contributions are treated like normal levies and end up in the "pot" of funds that pay for the expenses associated with all of the common property.

This may not be a problem if the exclusive use areas consist of a number of similar, relatively low-maintenance areas, such as open parking bays. But an exclusive use area may include a swimming pool, an electrified fence or a garage with an automatic door mechanism, in which case the costs will mount when repairs or refurbishment is required.

The prospective buyer should establish upfront how the body corporate determines the contribution for an exclusive use area.

It is important to understand whether all holders of exclusive-use rights pay the same amount - even if their exclusive use areas include substantially different amenities. It is also important to find out whether

the contribution covers every expense associated with that exclusive use area.

Costs of maintaining the common property

Many prospective buyers will visit the sectional title they are interested in purchasing, but never closely examine the rest of the sectional title property.

Remember that the body corporate must foot the bill for all expenses associated with the common property, except for those areas of the common property where owners have been granted exclusive-use rights.



The fact that you never use a facility is irrelevant; if it's on the common property, you – along with all the other owners – are liable for its maintenance and repair, in proportion to your participation quota (or other formula).

Some developments were built when domestic labour, water and electricity were relatively cheap, and before the use of multiple kitchen appliances, satellite dishes, and access-control and security systems became commonplace.

The impact on levies of hefty increases in the price of electricity and the cost of maintaining high-tech equipment was not a consideration. When live-in domestic workers were the norm, many developments were built with staff accommodation and bathrooms on the common property.

A prospective buyer should inspect the entire property. Use this opportunity to take note of the facilities and the overall condition of the common property.

If you have already obtained a copy of the sectional plan, you will be able to ask informed questions about the ownership status of garages, storerooms and "private" gardens.

Even one lift will add substantially to a body corporate's electricity bill, while you may be shocked to find out how much it costs to maintain that "lovely" landscaped garden. It can cost more than R500 000 to replace a lift in a low-rise block – money which must be paid by the section owners.

Utility costs:

Many sectional title schemes have been able to limit section owners' liability for utility costs, because the body corporate has installed pre-paid electricity meters and, in some cases, pre-paid water meters.

If pre-paid meters are not in evidence, do not simply assume that the property will have meters to measure the electricity or water consumed in each section. In the absence of meters, or a formula set out in the rules, your share of the costs of utilities will be determined by your participation quota, not by your consumption.

Deteriorating structures:

A common problem in sectional title schemes, particularly blocks of flats, is water-related damage, often a result of leaking windows or damaged waterproofing on the roof.

Look for blistered and flaking paint on the walls next to windows or on the ceilings of a top-floor apartment; mould on blinds, or stains on the back of curtains are also tell-tale signs of water ingress.

An area of a wall or ceiling that has been newly painted may mean that an owner is trying to hide water damage. If it is apparent that the original window-frames have been replaced, you should ask the seller or estate agent if the building has had problems with damp and water ingress. Many cash-strapped bodies corporate tend to delay maintenance and then accept the lowest quote from contractors, regardless of quality.

The liability for doors and windows that straddle the median line between a section and the common property must be apportioned 50-50 between the owner of the section and the body corporate. Not all trustees have grasped this principle, and the liability (as well as responsibility) for repairing or replacing windows may have been apportioned in an inconsistent, *ad hoc* manner.

The prospective buyer should ask the seller or estate agent how the body corporate of the scheme deals with median line maintenance issues.

Trustees' annual report is a clue to maintenance problems

One way to find out if a scheme has persistent maintenance and repair problems is to obtain a copy of the trustees' annual report. This report is one of the documents that must be sent to all members of the body corporate before the AGM.

While the law does not specify the level of disclosure required in these reports, a careful study of the annual report, together with a professional assessment of the current condition of the common property will reveal a lot about persistent maintenance issues and also the trustees' approach to maintenance of the common property. This should indicate whether it is likely that a significant amount of money will have to be spent on maintenance in the near future.

A lot can change in a sectional title scheme during a year, so you should also ask for copies of the minutes of at least the two most recent trustees' meetings.

Hot water geysers:

Many people wrongly assume that, because the pipes and hot-water cylinders form part of the original permanent fixtures, the body corporate is automatically responsible for their repair and upkeep.

However, unless the scheme's management rules have been amended to the contrary, the prescribed management rules state that owners must repair or replace the hot-water cylinder that serves their section, even if the cylinder is located on the common property.

An owner is also responsible and liable for the pipes, ducts and cables that are within his or her section, unless those installations also serve other sections and/or the common property, in which case it is a body corporate problem and expense.

Leaks & damp:

If damp appears, the standard procedure is for the trustees to call in a leak-detection company.

The source of the leak – whether in a section or on the common property (roof for instance) – will determine who is responsible and liable for the repairs, and whether a claim can be made against the body corporate's insurance policy for resultant damage.

If the leak is found to originate from another section, then this is a matter for the owners of the affected sections; the trustees are not obliged to get involved.

Pro-rata & liability for special levies:

When a unit changes hands, the new owner becomes liable for a pro-rata payment of the ordinary levy from the date on which the unit is transferred.

In the case of an outstanding special levy, liability depends on who the registered owner was on the date the trustees passed the resolution to impose the special levy.

If the seller was the registered owner when the special levy resolution was passed, then the seller will be liable to settle the entire special levy, even though it might have been payable in instalments over a number of months. The seller and the buyer could agree that the buyer will take over the remaining special levy instalments, but the body corporate will have to be party to this agreement.

If the buyer is the registered owner on the date on which the resolution is passed, then the new buyer will be liable for the special levy. It has been the case that new owners have found themselves hit with a special levy days or weeks after taking transfer – in addition to the huge costs associated with buying property. It is therefore in your interests to find out what it will “really” cost to live in a scheme.

Reserve fund to pay for future maintenance:

A body corporate’s income from levies is supposed to be sufficient, not just for its operating expenses during the financial year, but also to enable it to build up a reserve fund for contingencies – including the legally required 10-year maintenance fund.

However, the reality is that few bodies corporate budget adequately for major future expenses; in fact, the monthly levy (which may seem very reasonable) may cover only the predictable day-to-day operating expenses.

Special levies are supposed to be imposed only for unforeseen expenses that require immediate attention, but many trustees resort to raising a special levy to pay for all major repairs and maintenance, because the ordinary levies are kept artificially low and budgets do not provide for a reserve fund.

Trustees are now required by law to contribute sufficient funds to a reserve fund to cover all anticipated maintenance, repair and replacement costs for the next 10 years. This is required in terms of Rule 22 of the Sectional Title Regulations which came into force in October 2016.

If trustees, or managing agents, fail to observe the law and create an adequately funded 10-year maintenance, repair and replacement plan, it is not inconceivable that section owners may be able to successfully sue trustees for neglecting their fiduciary role and thereby causing harm to the individual members of the scheme.

HouseCheck's MAP product – which provides an inspection-based budget to cover anticipated maintenance, repairs and replacement over the next ten years – is the most sensible way for trustees, managing agents and section owners to reduce their personal risk and at the same time *preserve* the value of the sectional title property.

Financial statements:

In addition to the trustees' report and the minutes of the latest trustees' meetings, the body corporate's most recent annual financial statements will enlighten you about your likely future liability.

The budget for the current financial year will probably be included with the financial statements. The 10-year budget for maintenance (now legally required in terms of Rule 22 of the Sectional Title Regulations) should also be included in the financial statements.

The financial statements and the budget will disclose what provision the body corporate has made and is making for future expenses. The financial statements will reveal whether the reserve funds (if there are any) are adequate will depend on the size and condition of the property, the nature of the facilities and amenities, and the age of the property.

After a number of years wear and tear will start to take its toll on the original components of the structures on the property.

The annual financial statements will also inform the prospective buyer regarding:

- Did the body corporate collect all its income from levies, special levies and any areas of the common property that it rented out? An under-recovery of levy income is a warning sign that the scheme may have a problem with arrear levies.
- Has the body corporate taken out any loans? This may be a sign that, because of poor budgeting or unrealistically low levies over many years, the body corporate has had to borrow money to pay for essential expenses.
- Does the body corporate owe money to its creditors, such as service providers and the municipality?

What about alterations?

A section owner may extensively remodel the interior of the section without seeking the approval of the body corporate.

Structural walls:

However, it is a violation of the prescribed management rules to carry out any alterations that will impair the structural integrity of the building,

The Section Titles Act also creates implied servitudes of support between each section. You need to check that the interior walls of your section are not load-bearing if you are buying with the intention of knocking them down.

Water pressure and plumbing issues:

Low water pressure is often a problem in older buildings where the sections on the upper floors are supplied by water tanks on the roof. Insufficient water pressure can rule out installing modern mixers in showers, baths and kitchens, and even affect the operation of washing machines and dishwashers.

Enclosing a patio or balcony:

If you want to enclose your patio or balcony the level of consent required will depend on whether the area forms part of your section or the common property (which includes exclusive use areas).

Section owners are not allowed to make improvements to, or erect a permanent structure on an exclusive use area without the approval of the trustees. Even if it does form part of your section, you will still usually have to obtain the permission of the trustees, because the Prescribed Management Rules states that owners may not do anything to their sections that is likely to prejudice the harmonious appearance of the building.

Usually, if they grant permission, the trustees will set architectural guidelines for the enclosure.

If the area forms part of the common property, enclosing it will amount to increasing the floor area of your section.

The body corporate has to take a special resolution to allow a section to be extended. You will also have to submit a sectional plan of extension to the surveyor-general for approval.

The participation quota of the scheme will have to be adjusted to take account of the extension. If the extension will result in the floor area of the section being increased by more than 10 percent, all bondholders of sections will have to grant their consent.

The “harmonious appearance” rule also means you cannot change the style or colour of exterior doors or windows without the trustees’ permission.

You may not make even minor changes or affix anything to the common property without the consent of the trustees. This will affect whether you are able to install an awning, satellite dish or air-conditioning unit.

Developer’s Section 25 rights:

Many large sectional title developments are built in “phases”. This future development right may have been granted to the developer in terms of Section 25 of the Sectional Title Act. This right that has to be included with the developer’s application to the local Registrar of Deeds for the registration of the sectional title scheme.

It is a legal requirement that you, as a buyer, are informed whether the developer has any future development rights in the scheme. Future” can mean in 10 or 20 years’ time. A developer has to file plans showing the proposed extension at the same time as it takes out the future development right.

Adding to a scheme can substantially change the look and feel of a development – not to mention the value of your investment. For instance, you may lose your view, or traffic and noise around the complex may increase drastically.

Developing a scheme further can also have financial implications that may not necessarily be in your favour. Although extending the scheme may increase the pool of levy-paying owners, the new phase may require more maintenance and repairs. Unless rules have been created to ring-fence the income and expenditure of the various phases, some owners may feel that they are unfairly subsidising the operating costs of other owners.

Theft & fraud:

Very often trustees outsource the management of the scheme to a managing agent, which means that people employed by the managing agent have access to the body corporate’s bank account. The chances of theft and fraud may then increase.

Theft and fraud cannot be prevented, but the risk is minimized if the trustees did a proper due diligence before they contracted with a managing agent.

In terms of the Estate Agency Affairs Board Act, a managing agent who collects and/or receives levies is deemed to be an estate agent, and as such, must be a member of the Estate Agency Affairs Board (EAAB).

It is unlawful for someone who is not an EAAB member to collect a scheme's money. EAAB membership means that the body corporate's funds that are held in a trust account will be protected by the EAAB fidelity fund. The disadvantage of the EAAB fidelity fund is that a claim can proceed only once the people who stole the money have been sequestered – and this can take several years.

Therefore, trustees should ensure that the managing agent has taken out its own fidelity insurance that covers every employee who handles scheme money.

Trustees and employees of the body corporate can also steal scheme money. Most sectional title insurance policies include cover against fraud and theft by trustees. It is the responsibility of the body corporate to decide whether or not to take out indemnity insurance and also the extent of that cover.

Is the property adequately insured?

The Sectional Title Act requires a body corporate to take out an insurance policy that covers the buildings to their full replacement (not market) value. This policy, which will cover the risks commonly associated with a residential property, applies to the entire property, not just the common areas.

Before the AGM, each section owner should be given a schedule setting out the replacement values of each section. In too many cases, the trustees simply increase the level of insurance in line with inflation each year. Over time, this can result in the property being under- or over-insured.

If the scheme consists of more than 10 units, the property should be valued by a professional valuer every two to three years. A professional valuer has access to up-to-date data about the cost of building materials and labour in each province and will be able to provide the trustees with a comprehensive report on what it would cost to rebuild the property.

When assessing a property, the valuer will probably inspect the interior of only a few of the sections. An owner who has carried out extensive remodelling may think that his or her section is under-insured relative to most of the other sections. In this case, the owner can insure his or her section for a higher value, but will have to pay a higher premium – and therefore a higher levy. Insurance premiums are included in the monthly levy.

Unless the body corporate has amended the relevant management rule, owners are liable for the excess on claims for damage to their sections.

The body corporate's insurance policy will not cover household contents.

Community Schemes Ombud Service (CSOS)

Residents of communally owned properties, including sectional title schemes and homeowners' associations, can now complain to a statutory dispute-resolution service if they believe their complexes are being mismanaged or if they have a dispute with another resident.

It is hoped the CSOS will result in a major shake-up of community schemes, particularly sectional title schemes, because many owners, tenants, trustees and bodies corporate thumb their noses at their statutory and common-law obligations

Common areas of dispute:

- Poor management of scheme finances – in particular, not having fidelity cover to protect owners in the event of fraud or theft committed by scheme executives or a managing agent.
- Trustees making or amending the scheme's rules without seeking a resolution from the body corporate;
- Disputes between owners and their body corporate over who is liable for maintenance and repairs;
- Trustees or owners making alterations to the common property without authorisation;
- Owners extending their dwellings and incorporating parts of the common property without permission; and
- Trustees being unable to stop anti-social behaviour, such as residents being disturbed by late-night parties and pets fouling the common property.

Until now, if a dispute could not be settled internally, there were two expensive alternatives: private arbitration or taking the matter to a magistrate's court or the High Court. The cost, time and effort involved deterred many bodies corporate or owners from pressing their case. Aggrieved owners suffered in silence or sold and moved out.

Jurisdiction of the Ombud:

The jurisdiction of the CSOS is not limited to sectional title schemes; it includes share-block companies, homeowners' or property-owners' associations, housing schemes established in terms of the Housing Developments for Retired Persons Act and housing co-operatives established under the South African Co-operatives Act.

Resolution process:

If the CSOS accepts a complaint, it will be settled by conciliation or arbitration. An order issued by a CSOS adjudicator has the same authority as a judgment of a magistrate's court or High Court, depending on the type of relief sought.

The ombud service comes at a price: all community schemes will have to pay a CSOS levy to the service each quarter. A scheme's levy is calculated as two percent of the amount by which the levy of each unit in the scheme exceeds R500 a month. In other words, no levy is due by units that pay a community scheme a monthly levy of R500 or less. The levy is capped at R40 a month (or R480 a year), which kicks in once the monthly levy paid to the scheme is R2 500 or more.

Governance documentation:

The ombud service will not only provide a dispute-resolution service; it will be responsible for storing and monitoring community schemes' governance documentation, such as management and conduct rules, constitutions and memoranda of incorporation.

Until now, the governance documentation of sectional title schemes had to be filed at a Deeds Office. If a body corporate amended its management or conduct rules, the amendments had to be filed at the Deeds Office in order for them to take effect. However, the Registrar of Deeds was not required to ensure that the rules complied with the Sectional Titles Act or the prescribed management rules.

Now, all community schemes will have to file their governance documentation with the CSOS, which will check that they conform to the relevant legislation.

All community schemes must register with the CSOS and, among other things, provide a copy of their governance documentation, their latest audited financial statement, the particulars of the people who serve on their executive committee (for example, a board of trustees) and details of their managing agent.

Schemes must, within four months of the end of their financial year, submit an annual return that identifies the members of their executive committee and is accompanied by their latest audited financial statement.

The CSOS is also tasked with educating and informing all community scheme role-players about their rights and obligations.

There is an application fee of R50. If your dispute is referred to an adjudicator, there is an additional fee of R100. The application and adjudication fees are waived if your net (after-tax) household income is less than R5 500 a month. Schemes and individuals can apply to have their fees discounted or waived by completing a prescribed form that requires them to provide details of their income, assets, expenditure and liabilities.

An adjudicator can issue orders in respect of a wide range of issues arising in the context of community schemes. These include:

- Financial issues – for example, ordering a body corporate to recalculate or refund a levy, or ordering a body corporate to have its financial statements audited.
- Behavioural issues – for example, ordering that a behaviour, such as playing music loudly, constitutes a nuisance and ordering the relevant person to stop that behaviour, or ordering an animal, such as a pet dog kept in violation of the scheme’s rules, to be removed from the property.
- Meetings – for example, ordering that a resolution adopted at a general meeting of a body corporate or at a meeting of the board of trustees is invalid, or ordering that a resolution passed at a general meeting is void, because it unreasonably interferes with the rights of an owner or occupier.
- Private and common areas of the property – for example, ordering a body corporate to carry out repairs to the common property, or ordering a body corporate to grant an owner or occupier exclusive-use rights over a certain part of the common property.
- Scheme governance – for example, ordering an association to approve or amend a management or conduct rule.
- Management services – for example, ordering a managing agent to comply with the terms of his or her contract of appointment.

- Access to information – for example, ordering an association to make governance documents or records available to a resident.

Legal representation & legal authority:

Parties to a dispute are entitled to legal representation during the adjudication process only under one of two conditions: either that the adjudicator and all the parties agree to it; or that adjudicator decides that, based on the nature of the dispute, it would be unreasonable to expect one of the parties to deal with the adjudication process without legal representation.

An adjudicator is expected to observe the principles of due process of law. However, when considering evidence, the adjudicator is not obliged to apply the “exclusionary rules of evidence” as they are applied in the courts. The CSOS Act states that, when investigating a dispute, an adjudicator “must act quickly, and with as little formality and technicality as is consistent with a proper consideration of the application”. An adjudicator may request the parties to provide information, which may be in the form of an affidavit. The parties may also be required to be interviewed in person by the adjudicator. He may call for other parties to make submissions and inspect common or private property and inspect the records of an association.

An adjudicator can make an order to grant an application, in whole or in part. The adjudicator may add provisions to the relief sought in the application. An adjudicator can make an order that dismisses an application. Such an order will be made if the applicant fails to co-operate with the adjudicator when the matter is being investigation, or if the adjudicator considers the complaint to be frivolous or without substance. If an application is dismissed, the adjudicator can also order the applicant to compensate the affected parties if they suffered financial loss as a result of the application.

There a right of appeal against an order. The appeal must be made to the High Court within 30 days after the order has been delivered to the parties to the dispute. The appeal can be made only on the basis of how the adjudicator applied the law to the matter, not on the facts of the case.

The CSOS is governed by a Board of Service that consists of seven non-executive members, who are appointed by the Minister of Human Settlements, and two executive members, the chief ombud and the chief financial officer, who are appointed by the Board of Service, with the approval of the Minister.

Ombud contact info:

Physical address: 63 Wierda Road East, Wierda Valley, Sandton, 2196

Gauteng, Limpopo & North West: Tel: 010 593 0533 Email: gp-complaints@csos.org.za

KwaZulu-Natal, Free State and Mpumalanga:

Tel: 031 001 4215 Email: kzn-complaints@csos.org.za

Western Cape, Eastern Cape and Northern Cape:

Tel: 021 001 2569 Email: wc-complaints@csos.org.za

Sectional Title Schemes Management Act Regulations



1. Prescribed Management Rules:

Prescribed in terms of section 10(2)(a) of the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011).

2. Interpretation:

(1) In the interpretation of these rules, unless the context indicates otherwise — (a) “adjudicator” means an adjudicator acting in terms of the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011); (b) “administrator” means an administrator appointed in terms of section 16 of the Act; (c) “auditor” means a person accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005); (d) “Community Schemes Ombud Service” means the service established in terms of the Community Scheme Ombud Service Act, 2011 (Act No. 9 of 2011); (e) “estimated cost”, for the purposes of rule 22, means the estimated cost to maintain, repair or replace a major capital item; (f) “expected life”, for the purposes of rule 22, means the estimated number of years before it is expected that the cost of maintenance, repair or replacement of a major capital item will be incurred; (g) “executive managing agent” means a managing agent appointed to carry out all the functions and powers of the trustees in terms of rule 28; (h) “future development

right” means a right to extend the scheme in terms of section 25 of the Sectional Titles Act; (i) “major capital item”, for the purposes of rule 22, means wiring, lighting and electrical systems, plumbing, drainage and storm- water systems, heating and cooling systems, any lifts, any carpeting and furnishings, roofing, interior and exterior painting and waterproofing, communication and service supply systems, parking facilities, roadways and paved areas, security systems and facilities and any other community and recreational facilities; (j) “managing agent” means any person who provides scheme management services to a body corporate for reward, whether monetary or otherwise, including any person who is employed to render such services; (k) “member” means a member of the body corporate; (l) “past contribution”, for the purposes of rule 22, means the funds in the reserve fund of the body corporate in respect of the estimated cost; (m) “primary section” means a section designed to be used for human occupation as a residence, office, shop, factory or for any other type of use allowed in terms of local municipal by-laws, not being a utility section; (n) “registered auditor” means a person as defined in terms of the Auditing Professions Act, 20015((Act No. 26 of 2005); (o) “registered bondholder” means the holder of a mortgage bond of whom the body corporate has been notified in terms of section 13(1)(f) of the Act; (p) “reserve funds” means an amount set aside by the body corporate to meet the unexpected costs that may arise in future, including future cost of maintenance; (q) “Sectional Titles Act” means the Sectional Titles Act, 1986, (Act No. 95 of 1986), as amended; (r) “service address” means the service address of a member or the body corporate in terms of rule 4; and (s) “the Act” means the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011); (t) “utility section” means a section which, in terms of local municipality bylaws, is designed to be used as an accessory to a primary section, such as a bathroom, toilet, storeroom, workshop, shed, servant’s quarters, parking garage, parking bay or other utility area, not being a primary section. (2) In the interpretation of these rules — (a) words and expressions to which a meaning has been assigned in the Act or its regulations, bear those meanings; (b) words importing— (i) the singular must be interpreted to include the plural, and the plural to include the singular; and (ii) any one gender must be interpreted to include all other genders; and (c) the headings of rules must not be taken into account.

3. Amendment and binding nature:

(1) The body corporate may substitute, amend, repeal, or add to the management rules subject to and in accordance with the provisions of section 10 of the Act.

2) A member must take all reasonable steps to ensure compliance with the conduct rules in force in terms of section 10(2)(b) of the Act by any tenant or other occupant of any section or exclusive use area, including the member’s employees, guests, visitors and family members.

4. Service addresses:

(1) The body corporate must, from time to time, determine the address that is its domicilium citandi et executandi in terms of section 3(1)(o) of the Act; provided that such service address must be — (a) the physical address of a section in the scheme; (b) the physical address of a duly appointed managing agent or administrator; or (c) another physical address within the magisterial district in which the scheme is located.

(2) The trustees may designate a fax, email or other address as an alternate body corporate service address.

(3) A change of a body corporate service address is effective when written notice of that address is lodged with the Community Schemes Ombud Service in the prescribed form.

(4) The trustees must, when they give the Community Schemes Ombud Service notice of a change of the body corporate service address in terms of section 3(1) (o) of the Act, simultaneously give such written notice to all members and other occupiers of sections and to all registered bondholders.

(5) The service address for any legal process or delivery of any other document to a member is the address of the primary section registered in that member's name; provided that a member is entitled by written notice to the body corporate to change that address for purposes as contemplated in subsections 6(3)(c) and 6(4) of the Act to another physical address, postal address or fax in the Republic of South Africa or to an email address, and that the change in the service address of the member is effective when the body corporate receives notice of such a change.

(6) The service address for any legal process or delivery of any other document to an occupier of a section, who is not a member, is the physical address of that section.

5. Trustees:

(1) All the members are trustees from the establishment of the body corporate until the end of the first general meeting.

(2) Subject to rules 6(4) and 28(1), if a body corporate consists of less than 4 members who are owners of primary sections, each member or his or her representative recognised by law is considered to be a trustee without election to office. (3) If a body corporate consists of more than 4 members who are owners of primary sections, they must from time to time determine the number of trustees to be elected in terms of these rules.

6. Requirements for office and disqualification

(1) A trustee need not be a member or the legally recognised representative of a member who is a juristic person.

(2) A person who is the managing agent or an employee of the managing agent or the body corporate may not be a trustee unless that person is a member.

(3) A trustee who has any direct or indirect personal interest in any matter to be considered by the trustees must not be present at or play any part in the consideration or decision of the matter concerned.

4) A trustee ceases to hold office if that trustee — (a) by written notice to the body corporate, resigns from office; (b) is declared by a court to be of unsound mind; (c) is or becomes insolvent and the insolvency results in the sequestration of that trustee's estate; (d) is convicted, or has been convicted in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty; (e) is sentenced to imprisonment without the option of a fine; (f) is removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money; (g) is removed from office by ordinary resolution of a general meeting; provided the intention to vote on the proposed removal was specified in the notice convening the meeting; (h) is or becomes disqualified to hold office as a director of a company in terms of the Companies Act, 2008 (Act No. 71 of 2008);

or (i) fails or refuses to pay the body corporate any amount due by that trustee after a court or adjudicator has given a judgment or order for payment of that amount.

7. Nomination, election and replacement:

- (1) A member may nominate any person for the office of trustee.
- (2) The nomination of a trustee must be in writing, accompanied by the written consent of the person nominated and delivered to the body corporate service address at least 48 hours before the annual general meeting is due to start.
- (3) If an insufficient number of nominations are received in terms of sub-rule (2), further nominations may be called for at the annual general meeting with the consent of the persons nominated.
- (4) Save for the provisions of rules 5(1) and (2), trustees must be elected at the first general meeting of the body corporate and then at each subsequent annual general meeting.
- (5) If a trustee ceases to hold office — (a) the remaining trustees; or (b) the members in general meeting, may appoint a replacement trustee.
- (6) An elected or replacement trustee holds office until the end of the next annual general meeting and is eligible for re-election, if properly nominated.
- (7) The trustees may appoint, for a specified period, a person qualified to serve as a trustee as a replacement for any trustee who is absent or otherwise unable to perform the duties of that office.

8. Payment and indemnity:

- (1) The body corporate must reimburse trustees for all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- (2) Unless so determined by special resolution, trustees who are members are not entitled to any reward, whether monetary or otherwise, for their services as such.
- (3) Trustees who are not members may be rewarded for their services as such; provided that any reward, whether monetary or otherwise, must be approved by a resolution of the body corporate as part of the budget for the scheme's administrative fund.
- (4) The body corporate must indemnify a trustee who is not a managing agent against all costs, losses and expenses arising as a result of any official act that is not in breach of the trustee's fiduciary obligations to the body corporate.

9. Trustee meetings & decisions – General Powers & Duties:

The trustees must — (a) meet to carry out the body corporate's business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of the Act, these rules and the common law of meetings; (b) exercise the body corporate's powers and functions assigned and delegated to them in terms of section 7(1) of the Act in accordance with resolutions taken at general meetings and at meetings of trustees; (c) apply the body corporate's funds in accordance with budgets approved by members in general meeting; (d) appoint any agent or employee in terms of section 4(a) of the Act in terms of a duly signed written contract; and (e) compile minutes of each trustee and general meeting in accordance with rule 27(2)(a) and distribute these to the persons entitled to notice of the meeting concerned as soon as reasonably possible, but not later than 7 days after the date of the meeting.

10. Validity of actions:

(1) No document signed on behalf of the body corporate is valid and binding unless it is signed on the authority of a trustee resolution by — (a) two trustees or the managing agent, in the case of a clearance certificate issued by the body corporate in terms of section 15B(3)(i) (aa) of the Sectional Titles Act; and (b) two trustees or one trustee and the managing agent, in the case of any other document.

(2) A resolution adopted or other act performed by the trustees remains valid and effective notwithstanding the later discovery of some defect in the appointment of a trustee or the disqualification of a trustee.

11. Calling and attendance at meetings:

(1) A trustee may at any time call a meeting of trustees by giving all other trustees not less than seven days written notice of the time and place of the meeting and by setting out an agenda for the meeting: Provided that — (a) in cases of urgency a trustee may give such shorter notice as is reasonable in the circumstances; and (b) notice need not be given to any trustee who is absent from the Republic unless the meeting is one referred to in sub-rule (5), but notice must be given to any replacement trustee appointed for that trustee.

(2) The trustees may by written resolution set the dates of and a standard agenda for their future meetings and delivery of a copy of this resolution is considered adequate notice of all such future meetings.

(3) Members, registered bondholders, holders of future development rights and the managing agent may attend trustee meetings and may speak on any matter on the agenda, but they are not entitled to propose any motion or to vote; provided that such persons are not entitled to attend those parts of trustee meetings that deal with — (a) discussions of contraventions of the Act or rules; or (b) any other matters in respect of which the trustees resolve that the presence of any such persons would unreasonably interfere with the interests of the body corporate or any person's privacy.

(4) If a member, a registered mortgagee or the holder of a future development right in writing requests notice of trustee meetings, the trustees must deliver to that person a copy of a notice of a meeting referred to in sub-rule (1), a resolution referred to in sub-rule (2) and a notice of any adjournment of such a meeting; provided that the body corporate may recover from the person concerned the costs of delivery of such documents.

(5) The trustees may make arrangements for attendance at a trustee meeting by telephone or any other method, if the method — (a) is accessible to all trustees and other persons entitled to attend the meeting; (b) permits all persons participating in the meeting to communicate with each other during the meeting; and (c) permits the chairperson to confirm, with reasonable certainty, the identity of the participants.

(6) A person who attends a meeting as provided under sub-rule (5) is considered present in person at the meeting.

12. Chairperson:

(1) If a body corporate consists of only two members, the provisions in these rules in regard to the election and functions of a chairperson do not apply.

(2) From the establishment of the body corporate until the end of the first general meeting, the developer or the developer's nominee is the chairperson of the trustees.

(3) At the commencement of the first meeting of trustees after an annual general meeting at which trustees have been elected and whenever else necessary, the trustees must by majority vote elect a chairperson from among their number.

(4) The chairperson of the trustees holds office as such until the end of the next annual general meeting.

(5) The trustees at a trustees' meeting or the members at a general meeting may remove the chairperson from office if notice of the meeting contains a clear statement of the proposed removal; provided that such removal does not automatically remove the chairperson from the office of trustee.

(6) If a chairperson is removed from office as such or ceases to hold office as a trustee, the remaining trustees must elect a replacement chairperson from among their number who holds office as chairperson for the remainder of the period of office of his or her predecessor and has the same voting rights.

(7) If the elected chairperson vacates the chair during the course of a trustee meeting, is not present or is for any other reason unable or unwilling to preside, the trustees present must choose another chairperson from among their number and that replacement chairperson has all the powers and functions of the chairperson while acting as such.

13. Quorum:

(1) At a trustee meeting, 50 per cent of the trustees by number, but not less than two, form a quorum.

(2) If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act, but only to — (a) appoint replacement trustees to make up a quorum; or (b) call a general meeting.

(3) If at any trustee meeting a quorum is not present within 30 minutes of the appointed time for the meeting, the trustees present, but not less than two, must adopt interim resolutions in respect of each item on the agenda.

(4) An interim resolution adopted by trustees in terms of sub-rule (3) does not take effect unless it is confirmed — (a) at the next trustee meeting at which a quorum is present; or (b) by written resolution signed by all the trustees.

14. Motion at a Trustee Meeting:

(1) A motion at a trustee meeting — (a) does not have to be seconded; and (b) must be determined by resolution adopted by the majority of the trustees present and voting.

(2) Each trustee is entitled to one vote; provided that if the deliberative votes of the trustees, including that of the chairperson, are tied, the chairperson has a casting vote, unless there are only two trustees.

(3) A trustee is disqualified from voting in respect of — (a) any proposed or current contract or dispute with the body corporate to which the trustee is a party; and (b) any other matter in which the trustee has any direct or indirect personal interest.

(4) Trustees must adopt decisions by resolutions adopted by majority vote: Provided that resolutions may be put to the vote — (a) at trustee meetings; or (b) by a notice sent to each trustee which contains the text of any proposed resolutions and instructs the trustees to indicate their agreement to the resolution by their signature, which signatures must be received by the body corporate before expiry of the closing date specified in the notice.

15. Owner meetings:

(1) Subject to sub-rule (7), at least 14 days' written notice of a general meeting specifying the place, date and hour of the meeting must be given to —

(a) all members; (b) all registered bondholders; (c) all holders of future development rights; and (d) the managing agent.

(2) A person who has a right to be notified under this rule may waive that right by notice in writing delivered to the body corporate and may, at any time and in the same way, revoke that waiver; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to notice and any of them may revoke that waiver.

(3) The notice of a general meeting must be accompanied by at least — (a) an agenda, as required in terms of these rules; (b) a copy or comprehensive summary of any document that is to be considered or approved by members at the meeting; and (c) a proxy appointment form in the prescribed format.

(4) A general meeting must be held in the local municipal area where the scheme is situated unless the members have by special resolution decided otherwise.

(5) Registered bondholders, holders of future development rights and the managing agent may attend general meetings and may speak on any matter on the agenda, but they are not, in those capacities, entitled to propose any motion or to vote; provided that such persons are not entitled to attend any part of a general meeting if the members resolve that their presence would unreasonably interfere with the interests of the body corporate or any person's privacy.

(6) Notice of a general meeting must be delivered to — (a) members at their service addresses in terms of rule 4(5), and (b) other persons at the most recent physical, postal, fax or email address of which they have notified the body corporate in writing.

(7) A general meeting may be called — (a) on 7 days' notice if the trustees have resolved that short notice is necessary due to the urgency of the matter and set out their reasons for this resolution; provided that the trustees must not take such a resolution in regard to a meeting referred to in rule 29(2) or (4); (b) on less than 14 days notice, if this is agreed to in writing by all persons entitled to attend.

8) Failure to give proper notice of a general meeting to a person entitled to receive notice does not invalidate a vote taken at the meeting, as long as the body corporate made a reasonable attempt to give the notice.

9) Voting at a general meeting may proceed despite the lack of notice as required by this rule, if all persons entitled to receive notice in writing waive their right to notice. First general meeting

16. First general meeting:

(1) The developer must include with the notice of the first general meeting held in terms of section 2(8) of the Act — (a) an agenda in accordance with sub-rule (2); (b) the documents referred to in sub-rule (2); and (c) a comprehensive summary of the rights and obligations of the body corporate under the policies and contracts referred to in sub-rule (2)(d).

(2) The agenda for the first general meeting of members must include at least the following — (a) a motion to confirm or vary the terms of the policies of insurance effected by the developer or the body corporate; (b) a motion to confirm or vary an itemised estimate of the body corporate's anticipated income and expenses for its first financial year; (c) a

motion to approve, with or without amendment, the developer's — (i) evidence of revenue and expenditure concerning the management of the scheme from the date of the first occupation of any unit until the date of the establishment of the body corporate, as required in terms of section 2(8)(c)(iii) of the Act; and (ii) financial statements relating to the management and administration of the scheme from the date of establishment of the body corporate to the date of notice of the first general meeting referred to in sub-rule (1); (d) subject to section 15(2) of the Act, a motion to ratify or not to ratify the terms of any contract entered into by the developer on behalf of the body corporate; (e) a motion confirming that the developer has — (i) furnished the meeting with copies of the documents referred to in section 2(8) of the Act and in this rule; and (ii) paid over any residue referred to in section 2(9) of the Act; (f) a motion appointing an auditor to audit the evidence and financial statements referred to in sub-rule (2)(c); (g) motions determining the number of trustees and electing trustees; (h) a motion detailing any restrictions to be imposed or directions to be given in terms of section 7(1) of the Act or confirming that there are no such restrictions or directions.

(3) For the purposes of voting on the items of business referred to in sub-rule (2) (c), (d) and (e), any vote held or controlled by the developer is suspended.

(4) In addition to the documents referred to in section 2(8) of the Act, the developer must at or before the first general meeting furnish the body corporate with copies of — (a) all building plans approved by the local municipality; (b) any encroachment permit or other document issued by the local municipality in regard to the improvements in the scheme; (c) plans showing the location of all pipes, wires, cables and ducts referred to in section (3)(1)(r) of the Act; (d) names and addresses of all contractors, subcontractors and any other persons whom the developer has employed to render services or supply materials relating to the development of the scheme; (e) all warranties, manuals, schematic drawings, operating instructions, service guides, documentation from manufacturers and other similar information in respect of the construction, installation, operation, maintenance, repair and servicing of any common property or body corporate assets, occupation certificate, including any guarantee or warranty provided to the developer by a person referred to in sub-rule (4) (d); and (f) all records the body corporate is required to prepare or retain in terms of rule 27. (5) If the developer fails to provide the body corporate with any document referred to in section 2(8) of the Act or in this rule, the body corporate must do all things reasonably necessary to obtain or have the specific document prepared and may recover the reasonable costs incurred in doing so from the developer. (6) If the developer fails to call the first general meeting in compliance with the requirements of section 2(8) of the Act, any member or the body corporate may do so and the body corporate must recover from the developer all costs reasonably incurred in ensuring compliance with the developer's obligations. annual and special general meetings

17. Annual General Meeting:

(1) Subject to sub-rule (2), the body corporate must hold an annual general meeting within four months of the end of each financial year.

(2) The body corporate is not obliged to hold an annual general meeting if, before or within one month of the end of a financial year, all members in writing waive the right to the meeting and consent in writing to motions that deal with all the items of business that must

be transacted at the annual general meeting; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to the meeting and consent to the resolutions in writing.

(3) All general meetings other than the annual general meeting are special general meetings.

(4) The trustees may by resolution call a general meeting whenever they think fit and must do so if either — (a) members entitled to 25 per cent of the total quotas of all sections; or (b) the holder of mortgage bonds over not less than 25 per cent in number of all the primary sections, deliver to the body corporate a written and signed request for a special general meeting; provided that if the trustees fail to call a meeting thus requested within 14 days of delivery of the request, the members or bondholder concerned are entitled to call the meeting.

(5) Members or a bondholder who request a meeting in terms of sub-rule (4) must include one or more motions or matters for discussion with their request and these motions or matters must be included, without amendment, in the agenda for the meeting.

(6) The order of business at general meetings is as follows: (a) confirm proxies, nominees and other persons representing members and issue voting cards; (b) determine that there is a quorum; (c) elect a person to chair the meeting, if necessary; (d) present to the meeting proof of notice of the meeting or waivers of notice; (e) approve the agenda; (f) approve minutes from the previous general meeting, if any; (g) deal with unfinished business, if any; (h) deal with any business referred to in sub-rule (5); (i) if the meeting is the first general meeting referred to in section 2(8) of the Act, deal with the business set out in rule 16(2); (j) if the meeting is an annual general meeting (i) receive reports of the activities and decisions of trustees since the previous general meeting, including reports of committees; (ii) approve the schedules of insurance replacement values referred to in rule 23(3), with or without amendment; (iii) determine the extent of the insurance cover by the body corporate in terms of rules 23(6), (7) and (8); (iv) approve the budgets for the administrative and reserve funds for the next financial year; (v) consider the annual financial statements; (vi) appoint an auditor to audit the annual financial statements, unless all the sections in the scheme are registered in the name of one person; (vii) if the body corporate has more than four members who are owners of primary sections and is not managed by an executive managing agent in terms of rule 28, determine the number of trustees to be elected to serve during the next financial year; and (viii) elect the trustees; (k) report on the lodgment of any amendments to the scheme's rules adopted by the body corporate under section 10 of the Act and, if applicable, table a consolidated set of scheme rules; (l) deal with any new or further business; (m) give directions or impose restrictions referred to in section 7(1) of the Act; and (n) dissolve the meeting.

(7) Subject to sub-rules (5) and (6), the trustees determine the agenda for an annual or special general meeting; provided that the agenda must contain— (a) a description of the general nature of all business, and (b) a description of the matters that will be voted on at the meeting, including the proposed wording of any special or unanimous resolution.

(8) If any of the items of business that require member approval are not approved at an annual general meeting or any adjournment of the meeting; the resolution not to approve the relevant document must include the reasons for non-approval and the body corporate

must have the document revised and submitted to another general meeting for approval as soon as reasonably possible, until it is approved.

(9) The body corporate does not have to hold a special general meeting to consider a resolution if all members waive the right to the meeting and consent to the resolution in writing; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to the meeting and consent to the resolution in writing.

(10) A body corporate may make arrangements for attendance at an annual or special general meeting by telephone or any other method, if the method— (a) is accessible to all members and other persons entitled to attend the meeting; (b) permits all persons participating in the meeting to communicate with each other during the meeting; and (c) permits the chairperson to confirm, with reasonable certainty, the identity of the participants.

(11) A person who attends a meeting as provided under sub-rule (10) is considered present in person at the meeting.

18. Chairperson:

(1) The chairperson of the trustees must preside as chairperson at every general meeting of the body corporate, unless otherwise resolved by members at the meeting.

(2) If there is no chairperson or the chairperson of the trustees is not present within 15 minutes after the time appointed for the meeting, or is unwilling or unable to act as chairperson, the members present must elect a chairperson for such meeting.

(3) A chairperson must — (a) maintain order, regulate the orderly expression of views and guide the members and other participants through the business of the meeting in accordance with the common law of meetings; (b) ensure that all motions and amendments proposed are within the scope of the notice and powers of the meeting; (c) ensure that the scheme's rules, the minute books and any other documents relevant to the items of business on the agenda are available at the meeting; (d) act fairly, impartially and courteously to all members and others entitled to attend the meeting; (e) ensure that all members and other persons entitled to speak are able to express their views without unnecessary disturbance or interruption; (f) adjourn the meeting, when it is not able to complete or continue with its business; (g) make decisions on points of procedure; (h) settle disputes by giving rulings on points of order; and (i) surrender the chair to a temporary chairperson elected by the members for any period during which the chairperson wishes to engage in the debate of any item of business.

(4) A chairperson at a general meeting must not— (a) from the chair, attempt to influence members' views on any item of business; or (b) disclose in advance of a vote how the chairperson intends to vote on any item of business .

19. Quorum:

(1) Business must not be transacted at any general meeting unless a quorum is present or represented.

(2) A quorum for a general meeting is constituted— (a) for a scheme with less than 4 primary sections or a body corporate with less than four members, by members entitled to vote and holding two thirds of the total votes of members in value; (b) for any other scheme, by members entitled to vote and holding one third of the total votes of members in value, provided that at least two persons must be present unless all the sections in the

scheme are registered in the name of one person, and provided further that in calculating the value of votes required to constitute a quorum, the value of votes of the developer must not be taken into account.

(3) For the purpose of establishing a quorum and for the purposes of section 6 of the Act, the value of votes of any sections registered in the name of the body corporate must not be taken into account and the body corporate must not be considered to be a member.

(4) If within 30 minutes from the time appointed for a general meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time; provided that if on the day to which the meeting is adjourned a quorum as described in sub-rule (2) is not present within 30 minutes from the time appointed for the meeting, the members entitled to vote and present in person or by proxy constitute a quorum.

20. Voting & representatives:

(1) A motion at a general meeting — (a) does not need to be seconded; and (b) except for a special or unanimous resolution, must be adopted by resolution of the majority of the votes, calculated in value, of the members present and voting.

(2) Except for special and unanimous resolutions, a member is not entitled to vote if — (a) a member fails or refuses to pay the body corporate any amount due by that member after a court or adjudicator has given a judgment or order for payment of that amount; or (b) that member persists in the breach of any of the conduct rules of the scheme referred to in section 10(2)(b) of the Act after a court or an adjudicator has ordered that member to refrain from breaching such rule.

(3) For the purposes of any vote, the values of votes of any sections registered in the name of the body corporate are considered abstentions.

(4) Where a member is as such a trustee for a beneficiary, that member exercises voting rights to the exclusion of persons beneficially interested in the trust and such persons are not entitled to vote.

(5) A member's appointment of a proxy in terms of section 6(5) of the Act and the proxy's acceptance of the mandate must, except in the case of an appointment in a mortgage bond, be substantially in the prescribed form and must be— (a) delivered to the body corporate 48 hours before the time of the meeting; or (b) handed to the chairperson before or at the start of the meeting.

(6) A proxy need not be a member, but must not be the managing agent or an employee of the managing agent or the body corporate.

(7) When two or more persons are entitled to exercise one vote jointly, that vote may be exercised only by one person, who may or may not be one of them, jointly appointed by them as their proxy.

(8) The outcome of each vote, including the number of votes for and against the resolution, must be announced by the chairperson and recorded in the minutes of the meeting.

(9) If a special resolution is passed at a general meeting by members holding less than 50 per cent of the total value of all members' votes— (a) the body corporate must not take any action to implement that resolution for one week after the meeting, unless the trustees resolve that there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage to the scheme; and (b) within seven

days from a resolution referred to in sub-rule 9 (a), members holding at least 25 per cent of the total votes of all members in value may, by written and signed request delivered to the body corporate, require that the body corporate hold a special general meeting to reconsider the resolution.

(10) If a demand referred to in sub-rule (9)(b) is delivered to the body corporate, the trustees must not implement the resolution unless— (a) it is again passed by special resolution; or (b) a quorum is not present within 30 minutes of the time set for the meeting.

21. Financial Year, Function & Powers:

(1) The financial year of a body corporate established after the Act comes into operation must run from the first day of October of each year to the last day of September of the following year unless otherwise resolved by the body corporate in general meeting.

(2) The body corporate must not — (a) make loans from body corporate funds without the authority of a unanimous resolution; (b) refund to any member a contribution lawfully levied and paid; (c) distribute to a member or any other person any portion of the body corporate's profits or gains except— (i) upon destruction or deemed destruction of the buildings, or (ii) where such profit or gain is of a capital nature.

(3) The body corporate may, on the authority of a written trustee resolution— (a) levy members with a special contribution if additional income is required to meet a necessary expense that cannot reasonably be delayed until provided for in the budget for the next financial year; (b) increase the contributions due by the members by a maximum of 10 per cent at the end of a financial year to take account of the anticipated increased liabilities of the body corporate, which increase will remain effective until members receive notice of the contributions due by them for the next financial year; provided that the trustees must give members notice of such increased contributions by notice in terms of rule 25, with such changes as are required by the context; (c) charge interest on any overdue amount payable by an member to the body corporate; provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005), compounded monthly in arrear; (d) invest any moneys in the reserve fund referred to in sections 3(1)(b) of the Act in a secure investment with any institution referred to in the definition of “financial institution” in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990); (e) enter into written and signed contracts in respect of its powers and duties under the Act and these rules; (f) join organisations and subscribe to services to further its purposes under the Act and these rules; (g) delegate to one or more of the trustees, to a member, agent or an employee such of their powers and duties as they deem fit, and at any time to revoke such delegation; provided that when they delegate any power or duty they must specify in writing— (i) the power or duty concerned; (ii) a maximum amount of the body corporate's funds that may be spent for a particular purpose; and (iii) any conditions that may be applicable; and (h) approach the Community Scheme Ombud Service for relief.

(4) The body corporate must ensure that all money received by the body corporate is deposited to the credit of an interest-bearing bank account — (a) in the name of the body corporate; or (b) that is a trust account opened in terms of either the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), or the Attorneys Act, 1979 (Act No. 53 of 1979).

22. Maintenance, Repair & Replacement Plan:

(1) A body corporate or trustees must prepare a written maintenance, repair and replacement plan for the common property, setting out — (a) the major capital items expected to require maintenance, repair and replacement within the next 10 years; (b) the present condition or state of repair of those items; (c) the time when those items or components of those items will need to be maintained, repaired or replaced; (d) the estimated cost of the maintenance, repair and replacement of those items or components; (e) the expected life of those items or components once maintained, repaired or replaced; and (f) any other information the body corporate considers relevant.

(2) The annual contribution to the reserve fund for the maintenance, repair or replacement of each of the major capital items must be determined according to the following formula: [(estimated cost minus past contribution) divided by expected life].

(3) A maintenance, repair and replacement plan takes effect on its approval by the members in general meeting; provided that on approval of such a plan, members may lay down conditions for the payment of money from the reserve fund.

(4) The trustees must report the extent to which the approved maintenance, repair and replacement plan has been implemented to each annual general meeting.

23. Insurance:

(1) The insurance policies of the body corporate in terms of sections 3(1)(h) and (i) of the Act — (a) must provide cover against — (i) risks referred to in regulation 3; (ii) risks that members resolve must be covered by insurance; and (iii) risks that holders of registered first mortgage bonds over not less than 25 per cent in number of the primary sections by written notice to the body corporate may require to be covered by insurance; (b) must specify a replacement value for each unit and exclusive use area, excluding the member's interest in the land included in the scheme; provided that any member may at any time by written notice to the body corporate require that the replacement value specified for that member's unit or exclusive use area be increased; (c) must restrict the application of any "average" clause to individual units and exclusive use areas, so that no such clause applies to the buildings as a whole; (d) must include a clause in terms of which the policy is valid and enforceable by any holder of a registered mortgage bond over a section or exclusive use area against the insurer notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured, unless and until the insurer terminates the insurance on at least 30 days' notice to the bondholder; and (e) may include provision for "excess" amounts.

(2) A member is responsible — (a) for payment of any additional premium payable on account of an increase in the replacement value referred to in sub-rule (1) (b); (b) for any excess amount that relates to damage to any part of the buildings that member is obliged to repair and maintain in terms of the Act or these rules, and must furnish the body corporate with written proof from the insurer of payment of that amount within seven days of written request.

(3) A body corporate must obtain a replacement valuation of all buildings and improvements that it must insure at least every three years and present such replacement valuation to the annual general meeting.

(4) A body corporate must prepare for each annual general meeting schedules showing estimates of — (a) the replacement value of the buildings and all improvements to the common property; and (b) the replacement value of each unit, excluding the member's interest in the land included in the scheme, the total of such values of all units being equal to the value referred to in sub-rule 4(a).

(5) On written request by any registered bondholder and the furnishing of satisfactory proof, the body corporate must record the cession to that bondholder of that member's interest in any of the proceeds of the insurance policies of the body corporate.

(6) A body corporate must take out public liability insurance to cover the risk of any liability it may incur to pay compensation in respect of — (a) any bodily injury to or death or illness of a person on or in connection with the common property; and (b) any damage to or loss of property that is sustained as a result of an occurrence or happening in connection with the common property, for an amount determined by members in general meeting, but not less than 10 million rand or any such higher amount as may be prescribed by the Minister in any one claim and in total for any one period of insurance.

(7) A body corporate must take out insurance for an amount determined by members in general meeting to cover the risk of loss of funds belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by a trustee, managing agent, employee or other agent of the body corporate.

(8) A body corporate, authorised by a special resolution of members, may insure any additional insurable interest the body corporate has — (a) in the land and buildings included in the scheme; and (b) relating to the performance of its functions, for an amount determined in that resolution.

24. Administrative & Reserve Funds:

(1) The administrative fund referred to in section 3(1)(a) of the Act must be used to fund the operating expenses of the body corporate for a particular financial year.

(2) The reserve fund maintained in terms of section 3(1)(b) of the Act must be used for the implementation of the maintenance, repair and replacement plan of the body corporate referred to in rule 22.

(3) The following amounts must be paid into the reserve fund — (a) any part of the annual levies designated as being for the purpose of reserves or the maintenance, repair and replacement plan; (b) any amounts received under an insurance policy in respect of damage or destruction of property for which the body corporate is responsible; (c) any interest earned on the investment of the money in the reserve fund; (d) any other amounts determined by the body corporate, and all other body corporate income must be paid into the administrative fund.

(4) Money may be paid out of the administrative fund in accordance with trustee resolutions and the approved budget for the administrative fund.

(5) Money may be paid out of the reserve fund — (a) at any time in accordance with trustee resolutions and the approved maintenance, repair and replacement plan; or (b) if the trustees resolve that such a payment is necessary for the purpose of an urgent maintenance, repair or replacement expense, which purpose includes, without limitation — (i) to comply with an order of a court or an adjudicator; (ii) to repair, maintain or replace any property for which the body corporate is responsible where there are reasonable

grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property; (iii) to repair any property for which the body corporate is responsible where the need for the repairs could not have been reasonably foreseen in preparing the maintenance, repair and replacement plan; or (iv) to enable the body corporate to obtain adequate insurance for property that the body corporate is required to insure; provided that the trustees must report to the members on any such expenditure as soon as possible after it is made.

(6) Expenditure under sub-rule (5)(b) — (a) must not exceed — (i) the amount necessary for the purpose for which it is expended; or (ii) any limitation imposed by the body corporate on expenditure; and (b) must comply with any restrictions imposed or directions given by members.

25. Contributions & Charges:

(1) The body corporate must, as soon as possible but not later than 14 days after the approval of the budgets referred to in rule 17(6)(j)(iv) by a general meeting, give each member written notice of the contributions and charges due and payable by that member to the body corporate, which notice must — (a) state that the member has an obligation to pay the specified contributions and charges; and (b) specify the due date for each payment; and (c) if applicable, state that interest at a rate specified in the notice will be payable on any overdue contributions and charges; and (d) include details of the dispute resolution process that applies in respect of disputed contributions and charges.

(2) If money owing is not paid on the dates specified in the notice referred to in sub-rule (1), the body corporate must send a final notice to the member, which notice must state — (a) that the member has an obligation to pay the overdue contributions and charges and any applicable interest immediately; and (b) if applicable— (i) the interest that is payable in respect of the overdue contributions and charges at the date of the final notice; and (ii) the amount of interest that will accrue daily until the payment of the overdue contributions and charges; and (c) that the body corporate intends to take action to recover the amount due if the overdue contributions and charges and interest owing are not paid within 14 days after the date the final notice is given.

(3) Subject to rules 21(3) (a) and (b), after the expiry of a financial year and until they become liable for contributions in respect of the next financial year, members are liable for contributions in the same amounts and payable in the same instalments as were due and payable by them during the past financial year.

(4) A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.

(5) The body corporate must not debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.

(6) The body corporate must in its annual financial statements account for all contributions and any other charges debited to members' accounts.

(7) On request in writing by a member the body corporate must make available a full and detailed account of all amounts debited and credited to the member's account with the body corporate.

26. Financial Records, Budget & Audit:

(1) A body corporate must — (a) keep proper books of accounts that— (i) record all its income, expenditure, assets and liabilities; (ii) disclose all amounts recovered from members by the body corporate or any managing agent or other service provider acting on its behalf; (iii) include individual accounts for each member; and (iv) contain all other information necessary to allow members to assess the body corporate's financial situation and their financial situation in regard to the body corporate. (b) keep separate books of account and bank accounts for its administrative and reserve funds referred to in sections 3(1)(a) and (b) of the Act; (c) prepare annual financial statements for presentation at the annual general meeting, which statements must include analyses of the — (i) amounts due to the body corporate in respect of contributions, special contributions and other charges, classified by member and the periods for which such amounts were owed; (ii) amounts due by the body corporate to its creditors generally and prominently disclosing amounts due to any public authority, local municipality or other entity for services including, without limitation, water, electricity, gas, sewerage and refuse removal, classified by creditor and the periods for which such amounts were owed; (iii) amounts advanced to the body corporate by way of levy finance, a loan, in terms of a guarantee insurance policy or otherwise, setting out the actual or contingent liability of the body corporate and the amounts paid by the body corporate and by any member in terms of such arrangement; (iv) amounts in the reserve fund showing the amount available for maintenance, repair and replacement of each major capital item as a percentage of the accrued estimated cost and the rand value of any shortfall; (v) premiums and other amounts paid and payments received by the body corporate and any member in terms of the insurance policies of the body corporate and the expiry date of each policy; and (vi) amounts due and payable to the Community Schemes Ombud Service. (d) prepare a maintenance, repair and replacement plan in accordance with rule 22 for presentation at the annual general meeting; (e) prepare budgets for the administrative and reserve funds comprising itemised estimates of the anticipated income and expenses during the next financial year for presentation at the annual general meeting; provided that such budgets may include discounts not exceeding 10 per cent of a members' annual contributions applicable if all those contributions are paid on or before the due dates; (f) prepare a report adopted by the trustees reviewing the affairs of the body corporate during the financial year for presentation at the annual general meeting.

(2) On the application of any member, registered bondholder or of the managing agent, the body corporate must make all or any of the books of account and records available for inspection and copying.

(3) The body corporate must ensure that all the body corporate's books of account and financial records are retained for a period of six years after completion of the transactions, acts or operations to which they relate.

(4) Unless all the sections in the scheme are registered in the name of one person, the body corporate must present audited financial statements to a general meeting for consideration within four months after the end of the financial year.

(5) The audit of a body corporate annual financial statements — (a) must be carried out by an independent auditor who has not participated in the preparation of the annual financial statements or advised on any aspect of the accounts of the body corporate during the period being reported on; (b) need not be carried out in accordance with any recognized financial; reporting framework of guidelines for financial accounting; (c) must include opinions as to whether or not— (i) the annual financial statements accurately reflect the financial position of the body corporate for the financial year under review, with such qualifications and reservations as the auditor considers necessary; (ii) the body corporate has complied with the accounting requirements set out in rules 21, 24 and this rule 26, with a specific description of any failure to comply with such requirements; (iii) the books of account of the body corporate have been kept and its funds have been managed so as to provide a reasonable level of protection against theft or fraud; and (iv) the financial affairs of the body corporate appear to be effectively managed; (d) must be completed within four months of the end of the body corporate's financial year.

27. Governance Documents & Records:

(1) The body corporate must— (a) lodge a notification of an amendment to the scheme's rules referred to in section 10(5) of the Act as soon as reasonably possible, but not later than 10 days after the date of the relevant resolution of the body corporate; and (b) compile and keep a complete set of all management and conduct rules including — (i) an index; and (ii) a prominent reference to any rules that confer exclusive use rights, vary the effects of the participation quotas in regard to the value of votes or the liability for contributions, or impose either a financial or a maintenance obligation on members; (c) prepare a consolidated set of rules whenever they are amended.

(2) The body corporate must prepare and update the following records — (a) minutes of general and trustee meetings, including the following information — (i) the date, time and place of the meeting; (ii) the names and role of the persons present, including details of the authorisation of proxies or other representative; (iii) the text of all resolutions; and (iv) the results of the voting on all motions; (b) lists of trustees, members and tenants with their— (i) full names; (ii) identity numbers or, in the case of non- South African citizens, their passport numbers; and (iii) section addresses and mailing addresses, if different; (iv) telephone numbers; and (v) email or other electronic addresses, if any; (c) lists of — (i) sections shown on the sectional plan, indicating in each case whether it is a primary or a utility section, its participation quota and the name of the member in whose name it is registered; (ii) exclusive use areas with descriptions of purposes and numbers, if any, indicating whether the rights to each area are conferred in terms of section 27 of the Sectional Titles Act or in terms of a rule, and a reference to the relevant rule where applicable; and (iii) registered bondholders with their names and addresses; (d) details of all future development rights including — (i) names and addresses of all registered holders of such rights; and (ii) copies of all documentation prepared in terms of section 25(2) of the Sectional Titles Act for any such right; and (e) any other records required by the regulations.

(3) The body corporate may obtain and keep copies of all of the following: (a) The registered sectional plan and any registered amending sectional plan; (b) the Act and the regulations; (c) resolutions that deal with changes to the common property, including the conferring of exclusive use rights on members; (d) consents and approvals given by the body corporate to members; (e) waivers and consents given by members; (f) written contracts to which the body corporate is a party; (g) any decision of an adjudicator, arbitrator, magistrate or judge in a proceeding in which the body corporate is a party, and any legal opinions obtained by the body corporate; (h) the budget and financial statement for the current year and previous years; (i) income tax returns; (j) insurance policies, endorsement and claim forms; (k) correspondence sent or received by the body corporate and trustees; and (l) any other records required by the regulations.

(4) On receiving a written request, the body corporate must make the records and documents referred to in this rule available for inspection by, and provide copies of them to — (a) a member; (b) a registered bondholder; or (c) a person authorised in writing by a member or registered bondholder.

(5) The body corporate must comply with a request for inspection or copying under this rule within 10 days unless the request is in respect of the rules, in which case the body corporate must comply with the request within five days.

(6) The body corporate may charge a fee for a copy of a record or document other than the rules, provided that the fee is not more than the reasonable cost associated with the process of making the copy, and the body corporate may refuse to supply the copy until the fee is paid. (7) If the body corporate terminates its contract with an employee or a managing agent, that person must within 10 days deliver to the body corporate all records referred to in this rule that are in the person's possession or under the person's control. (8) The records referred to in this rule must be in writing or in a form that can be easily converted to writing.

28. Executive Management Agent:

(1) The body corporate may, by special resolution, appoint an executive managing agent to perform the functions and exercise the powers that would otherwise be performed and exercised by the trustees.

(2) Members entitled to 25 per cent of the total quotas of all sections may apply to the Community Scheme Ombud Service for the appointment of an executive managing agent.

(3) An executive managing agent — (a) is subject to all the duties and obligations of a trustee under the Act and the rules of the scheme; (b) is obliged to manage the scheme with the required professional level of skill and care; (c) is liable for any loss suffered by the body corporate as a result of not applying such skill and care; (d) has a fiduciary obligation to every member of the body corporate; (e) must arrange for the inspection of the common property at least every six months; and (f) must report at least every four months to every member of the body corporate on the administration of the scheme.

(4) The reports of an executive managing agent referred to in sub-rule (3)(f) must include at least the following details — (a) proposed repairs to and maintenance of the common property and assets of the body corporate within the next four months; (b) matters the executive managing agent considers relevant to the condition of the common property and the assets of the body corporate; (c) the balance of each of the administrative and reserve

funds of the body corporate on the date of the report and a reconciliation statement for each fund; and (d) for the period since the appointment of the executive managing agent or from the date of the last report — (i) the expenses of the body corporate, including repair, maintenance and replacement costs; and (ii) a brief description of the date and nature of all decisions made by the executive managing agent.

(5) The body corporate may, if trustees so resolve, and must if required by — (a) a registered mortgagee of 25 per cent in number of the primary sections; or (b) a resolution of members, appoint a managing agent to perform specified financial, secretarial, administrative or other management services under the supervision of the trustees.

(6) A management agreement for any managing agent must comply with the requirements as may be set out in the regulations.

(7) A management agreement may not endure for a period longer than three years and may be cancelled, without liability or penalty, despite any provision of the management agreement or other agreement to the contrary — (a) by the body corporate on two months notice, if the cancellation is first approved by a special resolution passed at a general meeting, or (b) by the managing agent on two months notice.

(8) The body corporate or trustees may by ordinary resolution cancel the management agreement in accordance with its terms or refuse to renew the management agreement when it expires.

29. Improvements to Common Property:

(1) The body corporate may on the authority of a unanimous resolution make alterations or improvements to the common property that is not reasonably necessary.

(2) The body corporate may propose to make alterations or improvements to the common property that are reasonably necessary; provided that no such proposal may be implemented until all members are given at least 30 days written notice with details of — (a) the estimated costs associated with the proposed alterations or improvements; (b) details of how the body corporate intends to meet the costs, including details of any special contributions or loans by the body corporate that will be required for this purpose; and (c) a motivation for the proposal including drawings of the proposed alterations or improvements showing their effect and a motivation of the need for them; and if during this notice period any member in writing to the body corporate requests a general meeting to discuss the proposal, the proposal must not be implemented unless it is approved, with or without amendment, by a special resolution adopted at a general meeting.

(3) A body corporate must, if so directed by a resolution of members — (a) install and maintain separate meters to measure the supply of electricity, water, gas or the supply of any other service to each member's sections and exclusive use areas and to the common property; and (b) recover from members the cost of such supplies to sections and exclusive use areas based on the metered supply.

(4) A body corporate may on the authority of a special resolution install separate pre-payment meters on the common property to control the supply of water or electricity to a section or exclusive use area; provided that all members and occupiers of sections must be given at least 60 days notice of the proposed resolution with details of all costs associated with the installation of the pre-payment system and its estimated effect on the cost of the services over the next three years.

(5) If a pre-payment system referred to in sub-rule (4) is installed — (a) the body corporate is responsible to ensure that the system does not infringe on the constitutional rights of section occupiers to access basic services; and (b) any member who leases a unit to a tenant is responsible to ensure that the system does not infringe the rights of the tenant in terms of the Rental Housing Act, 1999 (Act No. 50 of 1999), or any other law.

30. Use of Sections & Common Property:

The body corporate must take all reasonable steps to ensure that a member or any other occupier of a section or exclusive use area does not— (a) use the common property so as to unreasonably interfere with other persons lawfully on the premises, in breach of section 13(1)(d) of the Act; (b) use a section or exclusive use area so as to cause a nuisance, in breach of section 13(1) (e) of the Act; (c) contravene the provisions of any — (i) law or by-law relating to the use of a section or an exclusive use area; or (ii) conditions of a license relating to use of the building or the common property, or the carrying on of a business in the building; or (iii) conditions of title applicable to sections or exclusive use areas; (d) make alterations to a section or an exclusive use area that are likely to impair the stability of the building or interfere with the use and enjoyment of other sections, the common property or any exclusive use area; (e) do anything to a section or exclusive use area that has a material negative affect on the value or utility of any other section or exclusive use area; (f) subject to the provisions of section 13(1)(g) of the Act, use a section or exclusive use area for a purpose other than for its intended use as — (i) shown expressly or by implication on a registered sectional plan or an approved building plan ; (ii) can reasonably be inferred from the provisions of the applicable town planning by-laws or the rules of the body corporate; or (iii) is obvious from its construction, layout and available amenities; (g) construct or place any structure or building improvement on an exclusive use area which in practice constitutes a section or an extension of the boundaries or floor area of a section without complying with the requirements of the Act and the Sectional Titles Act; provided that the body corporate may by ordinary resolution — (i) give consent for such a structure or building improvement, if they are satisfied that it does not require compliance with such requirements; (ii) prescribe any reasonable condition in regard to the use or appearance of the structure or building improvement; and (iii) withdraw any consent if the member or other occupier of a section breaches any such condition.

31. Obligation to Maintain:

(1) Notwithstanding that a water-heating installation forms part of the common property and is insured by the body corporate, a member must maintain, repair and, when necessary, replace such an installation which serves that member's section or exclusive use area; provided that where such an installation serves sections owned or exclusive use areas held by more than one member, the members concerned must share the maintenance, repair and replacement costs on a pro-rata basis.

(2) If despite written demand by the body corporate, a member refuses or fails to — (a) carry out work in respect of that member's section ordered by a competent authority as required by section 13(1)(b) of the Act; or (b) repair or maintain a section owned by that member in a state of good repair as required by section 13(1)(c) of the Act; and that failure threatens the stability of the common property, the safety of the building or otherwise materially prejudices the interests of the body corporate, its members or the occupiers of

sections generally, the body corporate must remedy the member's failure and recover the reasonable cost of doing so from that member; provided that in the case of an emergency, no demand or notice need be given to the member concerned.

Conduct Rules

Prescribed in terms of section 10(2)(b) of the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011).

1. Keeping of animals, reptiles and birds:

- (1) The owner or occupier of a section must not, without the trustees' written consent, which must not be unreasonably withheld, keep an animal, reptile or bird in a section or on the common property.
- (2) An owner or occupier suffering from a disability and who reasonably requires a guide, hearing or assistance dog must be considered to have the trustees' consent to keep that animal in a section and to accompany it on the common property.
- (3) The trustees may provide for any reasonable condition in regard to the keeping of an animal, reptile or bird in a section or on the common property.
- (4) The trustees may withdraw any consent if the owner or occupier of a section breaches any condition imposed in terms of sub-rule (3).

2. Refuse and waste disposal:

- (1) The owner or occupier of a section must not leave refuse or other materials on the common property in a way or place likely to interfere with the enjoyment of the common property by another owner or occupier.
- (2) Unless the body corporate provides some other way to dispose of refuse, the owner or occupier of a section must keep a receptacle for refuse of a type specified by the trustees in a clean and dry condition and adequately covered in the section, or on a part of the common property designated by the trustees for the purpose.
- (3) The owner or occupier of a section must — (a) move the refuse receptacle referred to in sub-rule (2) to places designated by the trustees for collection purposes at the times designated by the trustees and promptly retrieve it from these places; and (b) ensure that the owner or occupier does not, in disposing of refuse, adversely affect the health, hygiene or comfort of the owners or occupiers of other sections.

3. Vehicles:

- (1) The owner or occupier of a section must not, except in a case of emergency, without the written consent of the trustees, park a vehicle, allow a vehicle to stand or permit a visitor to park or stand a vehicle on any part of the common property other than a parking bay allocated to that section or a parking bay allocated for visitors' parking.
- (2) A consent under sub-rule (1) must state the period for which it is given.

4. Damage to common property:

- (1) The owner or occupier of a section must not, without the trustees' written consent, mark, paint, drive nails, screws or other objects into, or otherwise damage or deface a structure that forms part of the common property.

(2) An owner or occupier of a section must be considered to have the trustees' consent to install a locking or safety device to protect the section against intruders, or a screen to prevent entry of animals or insects, if the device or screen is soundly built and is consistent with a design, colour, style and materials approved in writing by the trustees.

(3) The owner or occupier of a section must keep a device installed under sub-rule (2) in good order and repair.

5. Appearance of section and exclusive use area:

(1) The owner or occupier of a section must not, without the trustees' written consent, make a change to the external appearance of the section or any exclusive use area allocated to it unless the change is minor and does not detract from the appearance of the section or the common property.

(2) The owner or occupier of a section must not, without the trustees' written consent — (a) erect washing lines on the common property; (b) hang washing, laundry or other items in a section or any exclusive use area allocated to it if the articles are visible from another section or the common property, or from outside the scheme; or (c) display a sign, notice, billboard or advertisement if the article is visible from another section or the common property, or from outside the scheme.

6. Storage of flammable materials:

(1) Subject to sub-rule (2), the owner or occupier of a section must not, without the trustees' written consent, store a flammable substance in a section or on the common property unless the substance is used or intended for use for domestic purposes.

(2) This rule does not apply to the storage of fuel or gas in — (a) the fuel tank of a vehicle, boat, generator or engine; or (b) a fuel tank or gas cylinder kept for domestic purposes.

7. Behaviour of occupiers and visitors in sections and on common property

(1) The owner or occupier of a section must not create noise likely to interfere with the peaceful enjoyment of another section or another person's peaceful enjoyment of the common property. (2) The owner or occupier of a section must not obstruct the lawful use of the

common property by any other person.

(3) The owner or occupier of a section must take reasonable steps to ensure that the owner or occupier's visitors do not behave in a way likely to interfere with the peaceful enjoyment of another section or another person's peaceful enjoyment of the common property.

(4) The owner or occupier of a section is obliged to comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any other grant of rights of occupancy.

8. Eradication of pests:

(1) The owner of a section must keep the section free of wood-destroying insects, including white ants and borer beetles.

(2) The owner or occupier of a section must allow the trustees, the managing agent, or their duly authorised representatives to enter the section on reasonable notice to inspect it and take any action reasonably necessary to eradicate any such pests and replace damaged woodwork and other materials.

(3) The body corporate must recover the costs of the inspection and replacement referred to in sub-rule (2) from the owner of the section.

In terms of PMR 22(3), a MR&R plan takes effect when approved by the members of the body corporate at a general meeting, provided that on approval of the MR&R plan, the members may specify conditions for the payment of money from the reserve fund.

Trustee report

PMR 22(4) provides that the trustees must report, at each AGM, the extent to which the approved MR&R plan has been implemented.