

How different regulations affect ST schemes and homeowner's associations

Marina Constas, specialist sectional title attorney and director of BBM Attorneys, explains how innovations and special provisions that apply to sectional title apartments and town houses do not necessarily apply to homeowners' associations. It is important to know the difference between the two and how different regulations may or may not affect them, she says.



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“The latest buzz words in the property industry are community schemes. The Department of Human Settlements, currently the umbrella body for such schemes, has taken control of their regulation. Community schemes include sectional title complexes, homeowners’ associations, shareblock developments, retirement villages, gated estates with constitutions and social co-operatives, which now fall under Section 1 of the Community Schemes Ombud Service (CSOS) Act 9 of 2011,” she points out.

Sectional Title Schemes Management Act

But while the CSOS Act covers all community schemes, sectional title stakeholders must also consider the Sectional Title Schemes Management Act 8 of 2011 (STSMA), where recent amendments have introduced several new innovations. “These must be understood and embraced by the sectional title industry. However, they do not automatically relate to homeowners’ associations and other community schemes,” she explains. Examples include the establishment of a reserve fund and a mandatory maintenance, repair and replacement plan.

“While many trustees manage their buildings very well and have always had buffer funds, an inordinate number find themselves in financial difficulty, with buildings being run from hand to mouth each month. This reserve fund aims to ensure that buildings do not fall into disrepair. A related maintenance, repair and replacement plan is another complete innovation in the STSMA. From now on, the body corporate must prepare a written maintenance, repair and replacement plan which sets out the major capital expenses within the next 10 years.”

STSMA amendments

Constas points out that other important STSMA amendments include the stipulation that any changes to the management or conduct rules of a sectional title scheme must be approved by the Chief Ombud after the necessary resolutions have been taken. “The duties of owners have also been changed. An owner must now notify the body corporate of any change of

ownership or occupancy in his unit. In terms of insurance, trustees are now obligated to obtain valuations every three years and owners may not obtain an insurance policy in respect of damage arising from risk covered by the policy of the body corporate. On the financial front, the complex's budget may now include a 10% discount on levies if an owner's contributions are all paid on the due dates. There is no longer a reference to an accounting officer in the sectional title legislation. Consequently, all buildings, even those with 10 or less units, must be audited."

The new concept of executive managing agents has now been included in the rules for sectional title schemes.

"Distinguishable from an ordinary managing agent, the executive managing agent actually steps into the shoes of the trustees and is liable for any loss suffered by the body corporate as a result of not applying care and skill.

"Even pets have been revised in the STSMA legislation," Conostas quips. "Disabled residents who require an assistance dog to reside with them and accompany them on common property no longer need the formal consent of trustees."

While the STSMA's recent innovations do not automatically apply to homeowners' associations, Conostas reveals that they may choose to adopt certain provisions from the Act. "So, if I live in a cluster golf estate development, the maintenance, repair and replacement plan does not apply in my scheme unless the scheme has legally adopted that particular rule. If I live in a sectional title scheme, the managing, repair and replacement rule automatically applies," she explains.

Community Schemes Ombud Service Act

The Community Schemes Ombud Service (CSOS) Act, on the other hand, applies to all community schemes. "The service is there to regulate, monitor and control the quality of all community scheme governance documentation and provide dispute resolution," she says.

Whilst the CSOS Act does not specifically talk about a compliance certificate for homeowners' association rules, the Ombud's office will be effecting amendments to bring the law regarding registration and rule compliance for homeowners' associations in line with sectional title schemes. In the interim, the Ombud's service is encouraging homeowners' associations to send rules in for vetting, Conostas states.

She says that the Ombud currently has jurisdiction to deal with any disputes in cluster schemes and notes that the Community Schemes Ombud Services levy must be paid by homeowners' associations whether they are company registered or simply have a constitution.

Conostas says that although the Ombud service faced serious challenges in its infancy, great strides have been made, with over 33,000 complexes having paid over monies. Those homeowners' associations that have not registered with CSOS will be penalised, she advises.

"Now that the Ombud's office is gaining traction, there will be time to augment and improve the provision of services and to flesh out interesting issues in the industry, such as the AirBnB onslaught," concludes Conostas, who is a CSOS board member.

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