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## **THE SECTIONAL TITLE MANAGEMENT ACT, No. 8 OF 2011**

On the 7th of October 2016 the Sectional Title Schemes Management Act (8 of 2011) (“the Schemes Management Act”) and the Community Schemes Ombud Service Act (9 of 2011) (“the Ombud Service Act”) were proclaimed.

The two Acts work in conjunction to improve the regulation of Sectional Title Schemes, Share Block Schemes and Home Owners Associations among others.

### The Sectional Title Amendment Act (Department of Human Settlements)

Historically our Sectional Titles Act was based on the Australian equivalent published in 1961, referred to as Stata Titles. Our first Sectional title laws came into force in 1971 and has undergone a number of amendments and transformations in order to develop and adapt the act to adjust to the needs of communal living.

The Schemes Management Act deals with the management of sectional titles and has stripped these provisions from the Sectional Titles Act. The Schemes Management Act has repealed and replaced Section 37 to Section 48 of the Sectional Titles Act. Under the new regime the Sectional Titles Act prescribes how a sectional title scheme is established and the Schemes Management Act governs how a body corporate must manage the scheme.

In addition to the usual duties of the body corporate to determine and raise levies, open and operate the bank account, maintain the common property, machinery and equipment to the benefit of the scheme and deal with Insurance the body corporate must notify the Chief Ombud, Local Authority and Registrar of Deeds of the domicilium address for the scheme.

The Schemes Management Act requires a body corporate to establish two funds, namely an administrative fund and a reserve fund [Section 3 (b) of the STMA]. Regulation 26 (1) (b) provides that the body corporate must keep separate books of account for the administrative and reserve funds. Levies collected from the owners will be paid into these two funds.

The funds allocated toward the administrative fund will be used for operating expenses incurred during the body corporate’s financial year.

The portion of funds allocated to the reserve fund will be used to pay future expenses arising from the unforeseen or major maintenance to common property. The reserve fund mitigates the need for special levies which can be financially detrimental to owners

The regulations to the STMA provided for a minimum annual contributions to the Reserve Fund for the financial year being budgeted for:

- If the amount in the reserve fund at the end of the previous financial year is less than 25% of the total contributions to the administrative fund for the previous financial year, the contribution to the reserve fund must be at least 15% of the total contributions to the administrative fund budgeted for in the new financial year.

- If the amount in the reserve fund at the end of the previous financial year equal to or more than 100% of the total contributions to the administrative fund for the previous financial year, there is no minimum contribution to the reserve fund.

- If the amount in the reserve fund at the end of the previous financial year is more than 25% but less than 100% of the total contributions to the administrative fund for the previous financial year, the contribution to the reserve fund must be at least the amount budgeted to be spent in the administrative fund on repairs and maintenance to the common property in the new financial year.

Section 3 (2) states that contributions accrues from the passing of the resolution by the trustees of the body corporate, may be recovered by application to the Chief Ombud from the persons who were owners of the units when the resolution was passed, provided upon change of ownership the successor in title becomes liable for the pro rata payment of such contributions.

Section 3 (3) states that special contributions accrues from the passing of the resolution by the trustees of the body corporate, may be recovered by application to the Chief Ombud from the persons who were owners of the units when the resolution was passed, provided upon change of ownership the successor in title becomes liable for the pro rata payment of such contributions.

Section 6 (5) provides that a member may be represented in person or by proxy at a meeting, provided a person may not act on a proxy of more than two members

Section 6 (7) provides that when votes are calculated in number, each member has one vote.

Section 6 (8) provides that where a unanimous resolution would unfairly adversely affect one member, the resolution will not be effective unless the member consents in writing within seven days from date of the resolution.

If a body corporate or owner is unable to obtain a special or unanimous resolution they approach the Chief Ombud for relief.

In terms of section 10 the scheme is administered by virtue of Management and Conduct rules, which rules may to the extent provided for be amended, altered or added to either by the Developer when scheme is opened or by the body corporate always subject to the approval by the Chief Ombud.

Section 10 (5) further provides that if the management or conduct rules are substituted, added to, amended or repealed the developer or the body corporate must lodge with the Chief Ombud a notification in the prescribed form, whereafter the Chief Ombud will examine the proposed change and if the Chief Ombud is satisfied issue a certificate indicating his approval, which is the date from which the change becomes effective and operational.

Section 13 (g) deals with the purpose for which a section may be used as shown expressly or by implication on the registered sectional plan and is further amplified by regulation 30 (f) with reference to the purpose for which a section or eua area can be used as inferred by the applicable town planning by-laws or rules of the body corporate or as is obvious from the construction lay out or available amenities.

Part three of the regulations deals with trustees and regulation 5 therein provides where a body corporate consists of less than 4 members, each member is automatically a trustee without the need to make elections, whereas in scheme with more than 4 members they must elect trustees.

Regulation 10 confirms that no document signed on behalf of the body corporate is valid and binding unless it is signed on authority of a trustees resolution by:

- 2 trustees or a managing agent in respect of clearance certificates or
- 2 trustees or 1 trustee and a managing agent in respect of any other document

Regulation 16 deals with a Developer's obligations to call for a first general meeting and provides specifics of information and documents that the Developer must provide at the first meeting.

Regulation 17 deals with Annual General Meetings and General Meetings and provides an exception in that a body corporate is no longer required to hold an AGM, provided that within 1 month of the end of its financial year, all members in writing waive the right to the meeting and consent in writing to motions that deal with all items of business.

Further along in regulation 17 it provides that a body corporate also does not have to hold a special general meeting to consider a matter if all the members waive the right to a meeting and consent to the resolution in writing.

Regulation 22 requires the body corporate to have a maintenance repair and replacement plan in place so as to prepare for the maintenance of major capital items on the common property for a period of 10 years. The term major capital items can be defined to include electrical systems, plumbing, drainage, heating, lifts, roofing, painting, security systems and recreational and parking areas. The maintenance plan must be approved by the body corporate at the AGM, giving owners peace of mind over the effective management of costs. Regulation 24 (2) makes it clear that the Reserve Fund must be used for the implementation of the maintenance, repair and replacement plan.

Annual contributions to the Reserve Fund for the repair, maintenance and replacement of major capital items is determined by the following formula;

Estimated costs – past contribution

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Expected life

Regulation 23 (6) makes it compulsory for the body corporate to take out public liability insurance to cover compensation for bodily injury, death or illness of a person in connection with the common property or damage or loss of property sustained in connection with the common property.

Regulation 23 (7) makes it compulsory for the body corporate to take out fidelity insurance against the risk of money being lost as a result of fraud or dishonesty by an “insurable person” which means anyone who has access to or control over money belonging to the scheme. The regulations prescribe a minimum amount of fidelity insurance that must be taken out and state that the policy must pay out without the scheme having to pursue criminal or civil proceedings to recover the stolen money.

Regulation 29 provides details around the passing or resolutions to make alterations or improvements to the common property that is not reasonably necessary and where it is reasonably necessary.

Two new welcome additions to Conduct rules are;

- that occupiers or owners who suffer from disability and who requires assistance of a service dog, must be considered to have the trustees consent to keep the dog.
- that occupiers or owners must be considered to have trustees consent to install a locking or safety device to protect a section against intruders provided it is soundly built and consistent with the design, colour and style approved by trustees.

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