

# The Roles of Trustees and Managing Agents in Sectional Title Schemes

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## INTRODUCTION

This article briefly examines some of the fundamental roles of trustees and managing agents in respect of their management of sectional title schemes.

## IMPORTANT CONCEPTS

At the outset, it is necessary to establish the governing legislation and authorities applicable to sectional title schemes, which includes the Sectional Titles Act (“STA”)<sup>1</sup>, the Sectional Title Schemes Management Act (“STSMA”), the STSMA Regulations (“the Regulations”)<sup>2</sup> and the Prescribed Management Rules, (“PMR”) which form an annexure of the STSMA.

It is important to note that although we base this article (in part) on the requirements of the PMR, that, the management rules of a sectional title scheme can be amended in terms of section 10 of the STSMA and it is therefore necessary to confirm whether the PMR find application in respect of individual sectional title schemes or if they have been lawfully amended. In the event of a valid amendment, the amended management rules will find application.

## WHAT ARE TRUSTEES AND MANAGING AGENTS?

Curiously, neither the STA, nor the STSMA provide a definition for the word “trustee”. However, section 7 of the STSMA clarifies this position and determines that the functions and powers of the body corporate must be carried out by the trustees (subject to the Act and the conduct rules) and section 8 of the STSMA burdens the trustees with a fiduciary duty which is owed to the body corporate in this regard. Accordingly, the trustees of a body corporate are required to act on behalf of the body corporate and in the interests of the body corporate at all times.

The onus of managing a sectional title scheme is material and for this reason, many body corporates elect to appoint a managing agent to assist the trustees in the daily management of the scheme.

Importantly, a managing agent acts on the instruction of the trustees, alternatively the body corporate (other than an executive-managing agent) and accordingly, the trustees remain responsible for the management of the sectional title scheme.

## HOW ARE THE TRUSTEES AND MANAGING AGENTS APPOINTED?

Trustees are voted into office at the annual general meeting (“AGM”) of a body corporate, alternatively at a special general meeting concluded for this purpose and are then elected annually at every subsequent AGM<sup>3</sup>. In terms of the PMR, any eligible person can be nominated by a member of the body corporate to hold the office of a trustee. A nomination of this nature must be in writing and accompanied by the consent of the nominated person.<sup>4</sup>

Managing agents are appointed contractually through the execution of the bilateral management agreement in terms of which they derive their mandate.

## WHO LEADS THE TRUSTEES?

The trustees of the scheme are ‘led’ by the chairperson of the body corporate. The chairperson is trustee elected, by majority vote, at the first meeting of the trustees<sup>5</sup>, and holds office until the end of the next AGM<sup>6</sup>.

Importantly, trustees are ordinarily only entitled to one vote when it comes to voting on trustee resolutions, however, in the event of a stalemate, the deciding vote will be that of the chairperson<sup>7</sup>.

## CONCLUSION

The roles of trustees and managing agents in sectional title schemes are onerous and require the application of due care and diligence at all times.

The sectional title landscape is complex and is easily misunderstood. In the event that you have a query in respect of the management of your sectional title scheme, alternatively the performance of your duties as

a trustee or managing agent, speak with an attorney for clarity.

Kindly contact the authors of this article on 011 568 8500 for more information.

*Please note: this article is for general public information and use. It is not to be considered or construed as legal advice.*

*Each matter must be dealt with on a case-by-case basis, and you should consult an attorney before taking any action contemplated here.*

<sup>1</sup>Sectional Titles Act 95 of 1986

<sup>2</sup>Sectional Title Schemes Management Act 8 of 2011

<sup>3</sup>Rule 7(4)

<sup>4</sup>Rule 7(1) & (2) of the PMR

<sup>5</sup>Rule 12(3) of the PMR

<sup>6</sup>Rule 12(4) of the PMR

<sup>7</sup>Rule 14 of the PMR



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