

Personal Liability of Body Corporate Trustees: What Every Trustee Should Know

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INTRODUCTION

Accepting a trusteeship is not a small commitment. Section 8 of the Sectional Titles Schemes Management Act 8 of 2011 (“**STSMA**”) establishes that a trustee stands in a fiduciary relationship to the body corporate. This is a relationship of trust and with it comes significant legal responsibility.

What does this mean in practice? A trustee must act in the best interests of the body corporate at all times. They must not exceed their powers. And they must never benefit personally at the body corporate’s expense. Breach any of these duties, and personal liability may follow.

UNDERSTANDING THE LEGAL FRAMEWORK: SECTION 8 OF THE STSMA

The statutory duty to act in good faith

Section 8(2) of the STSMA imposes a clear mandate: trustees must exercise their powers “*in the interest and for the benefit of the body corporate*” and must “*not act without or exceed*” those powers. Put simply, every decision a trustee makes should be guided by one question, namely; is this in the body corporate’s best interests?

Conflicts of interest demand particular vigilance. A trustee must avoid any situation that could compromise the body corporate’s interests. Where a conflict does arise, the law requires honesty: the trustee must disclose the nature and extent of the conflict to the other trustees without delay.

The consequences of breach

Section 8(3) of the STSMA sets out the consequences in stark terms. A trustee who breaches their fiduciary duties is:

“liable to the body corporate for –
(a) any loss suffered as a result thereof by the body corporate; or

(b) any economic benefit received by the trustee by reason thereof.”

The practical implications are significant. If a trustee’s wrongful conduct causes financial loss to the body corporate, or results in the trustee being unjustly enriched, that trustee may be held personally liable.

Consider this scenario: a trustee’s own business enters into a contract with the body corporate, but the trustee fails to disclose the conflict of interest and participates in the decision to approve that contract. The result? A conflict of interest and potential breach of fiduciary duty, with potential personal liability to follow.

A narrow exception

Section 8(4) of the STSMA does provide a limited exception to liability for breach of fiduciary duty. A trustee’s conduct will not constitute a breach where all members of the body corporate, being fully informed and aware of the material facts, have given their written approval, whether before or after the conduct in question.

MINIMISING EXPOSURE: A PRACTICAL CHECKLIST FOR TRUSTEES

The good news is that trustees can take concrete steps to minimise their exposure to personal liability in the following ways:

- 1. Know your limits:** Stay within your delegated powers. Do not spend beyond the approved budget or commit to acts that exceed your authority. Familiarise yourself with the body corporate’s governing documents and when in doubt, seek professional advice before acting.
- 2. Declare conflicts early:** Transparency is your protection. Declare any actual or potential conflict of interest as soon as it arises. Where appropriate, recuse yourself from discussions and voting on matters in which you have a personal interest.

3. **Secure proper approval:** Certain decisions require the approval of the members of the body corporate. Acting unilaterally without the necessary authority is a fast track to personal liability and should be avoided.
4. **Trustee indemnity insurance:** This is a valuable risk management tool that no trustee should overlook. Such insurance can provide financial protection against legal liability and associated costs arising from the performance of a trustee's duties. Ensure you understand the scope of cover and identify any gaps in protection.

CONCLUSION

Serving as a trustee is a position of considerable authority, but that authority comes with significant responsibilities. Every decision must be made in good faith, within the scope of your powers, and in the best interests of the body corporate. Stray from these principles, and personal liability may follow.

When uncertainty arises, seeking professional advice at an early stage is not an expense, it is an investment.



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