

Appointment, Regulation, Duties and Termination of Managing Agents in Sectional Title Schemes

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13 October 2026

INTRODUCTION

Sectional title schemes continue to be a growing sphere in South Africa's property landscape. Their legal environment is governed by a tripartite legislative framework encompassing the Sectional Titles Act ("STA")¹, the Sectional Titles Schemes Management Act ("STSMA")², and the Community Schemes Ombud Service Act ("CSOS Act")³. This article focuses on managing agents, detailing their appointment, regulatory duties, and termination as key players in sectional title schemes.

DEFINITION, FUNCTIONS AND DISTINCTION OF MANAGING AGENTS

In South African sectional title law, a managing agent is defined as an estate agent who provides management services to a Body Corporate in a professional capacity.⁴ Although the STSMA requires that the functions and powers of a Body Corporate be carried out by its trustees, many schemes choose to appoint managing agents to reduce the substantial administrative and operational workload.⁵

A Standard Managing Agent ("SMA") operates strictly according to the instructions provided by the trustees or the Body Corporate, who remain ultimately responsible for the governance of the scheme.⁶ The primary role of SMAs is to support the daily management of a scheme, which includes collecting contributions (levies) and maintaining common property.

In contrast, an Executive Managing Agent ("EMA") is a specialist appointed to perform all functions and exercise all powers typically held by the trustees. Unlike SMAs, EMAs take over the board of trustees' executive duties.⁷ These broader powers include *inter alia*:

- **Financial Management:** Collecting levies, paying legal obligations (e.g., municipal accounts), and preparing annual financial statements;

- **Maintenance and Insurance:** Identifying risks to be insured against, handling insurance claims, and maintaining all common property in a state of good repair; and
- **Administrative Compliance:** Convening general meetings, keeping all records, and providing legally entitled persons with access to those records.

APPOINTMENT OF MANAGING AGENTS

The appointment of a managing agent is a formal legal act governed by the STSMA and the **Prescribed Management Rules (PMR)**.

APPOINTMENT OF SMAS

SMAs are appointed by way of a trustees' resolution, or as required by a registered mortgagee holding 25 per cent in number of the primary sections, or by a resolution of members. The appointment must be formalised through a **duly signed written contract** (a bilateral management agreement), which serves as the formal source of their mandate.

APPOINTMENT OF EMAS

The appointment of an **EMA** is subject to more stringent procedures:

1. **Special Resolution:** A Body Corporate may appoint an EMA by a resolution passed by at least **75%** of members, calculated in both value and number.
2. **CSOS Application:** If a special resolution cannot be obtained, members entitled to at least **25% of the total participation quotas** may apply directly to the CSOS for the appointment of an EMA.

Upon such application, the CSOS provides a list of qualified panellists who must meet specific professional criteria, including registration with the Property Practitioners Regulatory Authority ("**PPRA**") (formerly the Estate Agency Affairs Board), holding a valid **Fidelity Fund Certificate**, possessing a minimum **NQF5 qualification**, and maintaining **Professional Indemnity insurance** of at least R5 million.

RULES AND REGULATORY GOVERNANCE APPLICABLE TO MANAGING AGENTS

Managing agents operate within stringent rules and professional frameworks. First, they must hold a valid Fidelity Fund Certificate. Second, they are bound by the PMRs and the specific conduct rules of the Body Corporate, which outline their behavioural standards and administrative requirements within the scheme.

Governance obligations become more prominent in respect of EMAs. The CSOS has established a specific *Code of Conduct for Executive Managing Agents*,⁸ requiring them to manage the scheme with professional skill, care, and diligence. Critically, an EMA owes a fiduciary duty to every member of the Body Corporate, in terms of PMR 28(3)(d), which subjects the EMA to all the duties and obligations of a trustee under the STSMA, including the fiduciary duties imposed by section 8 thereof. The specific rules of a Body Corporate can also limit what an agent can do. The trustees or the Body Corporate may set restrictions or give clear instructions about how agents should perform their duties. It is also notable that with these strict rules South African law offers protection to agents performing their functions as was set out in *Body Corporate Montpark Drakens and Others v Smuts*.⁹ Herein the Court agreed that our law confers upon both trustees and agents a clear right to perform their functions without improper interference from owners.

In terms of EMAs, transparency is mandated through periodic reporting. They are legally required to inform all members of the scheme about its management every four months. They must also provide quarterly reports to the CSOS in accordance with the conditions of their appointment.

TRANSGRESSIONS AND BREACHES OF DUTY

In the South African sectional title environment, a managing agent's authority is strictly defined by the STSMA, the Prescribed Management Rules (PMR), and the underlying management agreement. Conduct that deviates from these instruments constitutes a breach of duty, justifying disciplinary action or termination.

The nature of the breach often depends on the agent's specific role. For SMAs, primary transgressions include the failure to follow valid trustee instructions or acting outside the scope of their delegated mandate. An EMA, who steps into the shoes of the trustees, is held to a higher standard. Under PMR 28(3) and the CSOS Code of Conduct, an EMA owes a fiduciary duty to every member of the Body Corporate. A breach for an EMA includes failing to act with professional skill and care or neglecting to avoid material conflicts of interest, such as receiving undisclosed benefits from third-party service providers.

Common examples of breaches across both categories include:

- **Financial Mismanagement:** This is often seen in the unlawful withholding of Body Corporate funds or the failure to pay local municipality accounts, which places utility services at risk.
- **Administrative Failures:** Neglecting to maintain proper records or refusing to provide legally entitled persons with access to governance documents is a material transgression.
- **Statutory Non-compliance:** For EMAs, this includes the failure to provide the mandatory updates to members every four months or quarterly reports to the CSOS.

TERMINATION OF MANAGING AGENTS

The process of terminating a managing agent is formal and governed by PMR 28, along with the specific terms outlined in the bilateral management agreement.

STANDARD MANAGING AGENTS

A SMA's contract may be cancelled by the Body Corporate or the trustees through an ordinary resolution in accordance with the contract's terms, or by refusing to renew the agreement upon its expiry. While trustees typically initiate this process, owners may influence removal by convening a Special General Meeting ("**SGM**") to express dissatisfaction and vote on termination. In the case of *Trustees of Pelican Park Body Corporate v Solver Property Management*,¹⁰ the adjudicator confirmed that a valid trustee resolution, further supported by an SGM vote, provided the necessary legal authority to terminate an agent's mandate.¹¹

EXECUTIVE MANAGING AGENTS

The termination of an EMA is subject to more stringent procedural requirements. Termination by the Body Corporate may be effected on two months' notice, provided the cancellation is first approved by a special resolution of the members (requiring 75% approval in value and number).

INVALID APPOINTMENTS AND LEGAL RECOURSE

A managing agent's mandate may also be terminated if the original appointment was invalid. Under PMR 9(d), trustees must appoint agents through a duly signed written contract following a proper resolution. If a contract is signed without a majority trustee resolution, it is procedurally flawed and deemed null and void.

In cases of dispute, the CSOS holds the power under Section 39(5)(b) of the CSOS Act, to declare that a Body Corporate has the right to terminate an agent and order that the appointment is indeed terminated.

HANDOVER REQUIREMENTS

Upon termination, the law imposes strict handover obligations. A standard agent must deliver all records and funds in their possession within 10 days. An EMA is granted a slightly longer window, required to hand over all books of account and administrative records within 14 days.

CONCLUSION

Ultimately, the effective management of a sectional title scheme relies on a strong, transparent relationship among trustees, owners, and managing agents, especially EMAs. While EMAs offer vital professional expertise, they are ultimately accountable to the Body Corporate and its members.

It is essential for trustees and owners to exercise vigilant oversight, as demonstrated in *Body Corporate Montpark Drakens and Others v Smuts*, where the court interdicted an owner from disrupting or interfering with the proper administration of the scheme, affirming that trustees and agents must be permitted to discharge their functions without improper interference.

Regardless of their role, all agents must adhere strictly to the STSMA, the PMRs, the Code of Conduct, and principles of good governance, as these elements are crucial for maintaining property value and fostering community harmony.



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¹ Sectional Titles Act 95 of 1986.

² Sectional Titles Schemes Management Act 8 of 2011.

³ Community Schemes Ombud Service Act 9 of 2011.

⁴ Community Scheme Ombud Service Code of Conduct for Executive Managing Agents (2017) 3 para 1(i) (hereafter CSOS EMA Code of Conduct).

⁵ Squier and Magwaza "The roles of trustees and managing agents in sectional title schemes" (2024) 1.

⁶ Squier and Magwaza (n 5) 1-2 para 5.

⁷ CSOS EMA Code of Conduct (n 4) 6 para 5.1.

⁸ Community Scheme Ombud Service Code of Conduct for Executive Managing Agents (2017).

⁹ *Body Corporate Montpark Drakens and Others v Smuts* (22380/05) [2006] ZAGPHC 38 (26 April 2006) [2006] ZAGPHC 38

¹⁰ *Pelican Park v Solver Property Management CSOS5782/GP/23* (CSOS) 9 December 2023.

¹¹ *Ibid* at paras 23(a), 34 and 41.