GUIDELINES AND QUICK REFERENCE FOR OWNERS IN A SECTIONAL TITLE SCHEME

HOME OWNERS MANUAL

A SUMMARY ON SECTIONAL TITLE LIVING

Eagle Blue

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1. KEY ROLE PLAYERS IN A SECTIONAL TITLE SCHEME

BODY CORPORATE

A Body corporate is made up of all the owners of a unit in a sectional title scheme and is a legal entity. A body corporate exists to represent the owners and to ensure that the financials and administrative needs of the building or complex are met.

Every buyer of a unit in a sectional title automatically becomes a member of the body corporate when they become an owner. Owners of units in a sectional title scheme cannot refuse to become a member of the body corporate, it is compulsory. An owner remains a member of the body corporate until they pass on or sell their unit.

The Body corporate meets once a year at an Annual General meeting.

When a developer builds a complex, they will open a sectional title register once the first unit has been transferred into the owner's name. The developer will hold the first general meeting to formally announce the body corporate.

TRUSTEES

The trustees are known as the executive organ of the Body corporate and are appointed to represent the Body Corporate and carry out the functions and duties of the body corporate. Trustees are voted in by the body corporate members and are in essence the decision and law makers. A minimum of 2 trustees are required, however an odd number is recommended so as to avoid a tie when taking a vote. Alternatively, a chairman may be elected as their vote counts for 2. Trustees are expected to meet no less than every quarter and if a chairman is to be elected, this should be done at the first trustees meeting held.

The trustee's main function is to maintain, manage and run the common property areas of a scheme to the benefit of all the members of the body corporate. They are to enforce rules and ensure the rules are upheld by all the residents. Trustees are responsible for amending and updating all governance documentation and filing same with the ombudsman. Trustees are responsible for managing the finances on behalf of all the owners of the body corporate.

Trustees stand for a period of one year but may be re-elected at the next AGM by the body corporate.

MANAGING AGENT

Because trustees do not have the time or skill set of attending to the day-to-day running's of a scheme, it is highly recommended that all schemes appoint a qualified and experienced managing agent, however, a managing agent does not have the ability to make decision over the building or body corporate without the approval of the trustees. In essence, the buck stops at the trustees.

When electing a managing agent, the trustees should ensure that they are registered with the National association of managing agents (NAMA) as well as the Estate agency affairs board (EAAB). These accreditations would protect the sectional title scheme should it incur any losses due to theft or misconduct from the managing agent.

Nama is a non-profit organisation formed to ensure that managing agents perform their duties with efficiency and keep trustees updated on any amendments or additions in the section title as well as educate trustees of their key roles and responsibilities. Although it is not law for a managing agent to be accredited with NAMA, it is common practice for trustees to request their managing agent to agree to the rules set out by NAMA, as it secures a level of protection for the scheme.

Managing agents are generally responsible for the following:-

- Sending out of levy statements.
- The collection of levies.
- Bookkeeping.
- Assisting with maintenance issues.
- Advising trustees on matters arising.

2. MEETINGS

In a sectional title scheme, there are 4 meetings which need to take place.

- The first general meeting of the body corporate.
- AGM – Annual general meeting.
- Special general meeting.
- Trustee meetings.

All decisions made in a body corporate are done so by resolution, either by the trustees or members of the body corporate.

Every meeting held within a scheme, whether by the trustees or the body corporate, must be recorded in the minute book. If a minute book is not kept, it will be very difficult for members to remember what was decided 5-15 years ago, especially if there has been a change of trustees or unit owners through the years.

The fundamental principles of every meeting are as follows:-

- Notice must be given to all attendees.
- An agenda must be followed.
- A quorum of members must be present.
- All discussions must be recorded in the minute book.
- Any votes made at a meeting is limited to one per person present or by proxy.

THE FIRST GENERAL MEETING

The first general meeting must be held within the first 60 days of the establishment of the body corporate. If a developer does not call the meeting, any member of the body corporate may do so.

AGM – ANNUAL GENERAL MEETING

Management rules require the body corporate to hold the AGM within 4 months of the end of the financial year.

Notice should be given to all owners of the scheme not less than 14 days prior to the meeting. The notice is not restricted to working days. Public holidays and weekends may be included in the notice period. Notice can be sent via email but must be sent via post too. An AGM is declared invalid if members have not been given enough notice.

Points of discussion at an AGM are as follows:-

- Proposed budget and approval thereof.
- Annual financial statements.
- Approval of insurance cover and updated valuations.
- Appointment of auditor.
- Approval of levy amount.
- Decide on number of trustees required.
- Election of trustees
- Address for legal notices to be sent – domicilium citandi et executandi.

An AGM must have a quorum of 66.66% if the scheme has 4 or less sections and 33.33% if the scheme has more than 4 sections.

After an AGM, trustees must send out in writing the agreed upon levies to all owners in the scheme. Failing this owners have a technical defence in not paying levies.

Votes at an AGM can be made by

- Show of hands.
- Secret ballot.
- By participation quota – A majority vote in value, will allow a vote to pass.

SPECIAL GENERAL MEETING

Trustees or owners can request a special general meeting if any specific issues within the scheme arise and need to be dealt with.

The notice period of a special general meeting depends on if there is a resolution required to be passed or not. The SGM may be called to simply discuss matters with the body corporate that do not require a resolution for consideration and voting. However if a resolutions is required then depending on the kind of resolution (ordinary or special) the notice period is 14 days or 30 days respectively.

TRUSTEES MEETING

A trustee may call a trustees meeting at any time and can be regulated as the trustees deem fit. No less that 7 days written notice is to be provided as well as the time and place of the meeting. An agenda must be set out for the meeting.

Members of the scheme, registered bondholders, holders of future development rights and the managing agent may attend trustee meetings and may speak on any matter on the agenda, however, they are not entitled to propose any motion or to vote; non-trustees are not entitled to take part in discussions of contraventions of the Act or rules; or any other matters which the trustees believe would interfere with the interests of the body corporate or any person's privacy.

As with any meeting of a sectional title scheme, it is important that minutes of all trustee meetings are recorded and filed in the minute book. The quorum for a trustees meeting is a minimum of 50% in number but not less than two trustees. When passing a resolution at a trustees meeting, each trustees vote counts as one, however, should a deadlock vote be reached on any voting matter, the chairman has the power of a deciding vote.

A trustee is not allowed to vote on a matter that he/she has a personal interest in, or if he/she has a dispute with the body corporate.

A motion at a trustees' meeting need not be seconded.

The minutes of the trustees meeting are to be distributed to all who were entitled to receive notice of the meeting, within 7 days of the meeting date.

3. LEVIES

WHAT IS A LEVY

A levy is defined as an additional sum of money usually paid as a tax.

Every person who buys a sectional title unit must pay a levy. At the end of every financial year, the trustees are to determine the levy and if it is approved by the body corporate at the AGM the trustees will pass a resolution and will confirm the levy amount in writing for the following financial year. Levies are revised annually and are set out according to participation quotas (see section 4 below). The larger a section, the higher your levies will be.

WHAT IS A SPECIAL LEVY

Trustees are entitled to raise special levies and may do so from time to time. Such levies may be made payable in one lump sum or by instalments. Although a special levy does fall within the laws of the sectional title act, it is advised that sectional title schemes improve their financial position by maintaining a healthy reserve fund which will in turn cover any unforeseen maintenance, repair or replacement costs thereby eradicating the need for a special levy.

WHAT DO LEVIES INCLLUDE

- Levies include the cost, repair, upkeep, control, management, and administration of the common property.
- Administration fees incurred by the body corporate – these could include managing agent fees and auditing fees.
- Water and sewerage charges, unless charged separately.
- Insurance premiums.
- Staff salaries, UIF, PAYE, Pension, regional services council levies.
- Water and electricity for common property areas.
- Lift maintenance (If applicable).
- Security.
- Gas or boiler.
- Garden maintenance.
- Reserve fund - A portion should be allocated to maintain a healthy reserve fund to accommodate for any large repairs or maintenance such as painting, waterproofing, security upgrade etc.
- Rates and taxes do not form part of the levies. Rates and taxes are billed directly to the owner of a unit in the scheme by their municipality and the responsibility of paying such falls on the owner.

WHAT HAPPENS IF I DO NOT PAY MY LEVIES

Levies are a legal requirement of all homeowners in a sectional title; therefore, a levy cannot be withheld for any reason whatsoever. Any owner who does not pay his/her levies will be handed over for debt collection and will incur legal fees. Owners who refuse to pay, run the risk of their property sold on auction to cover outstanding debt.

Should an owner be in the process of selling his property, the buyer is only liable to pay levies from the date of registration.

COLLECTION OF LEVY ARREARS

Since a body corporate is run like a business, if any owner defaults on levy payments, they are doing so at the detriment of the other owners as they will nee to subsidise his/her levies. If an owner does not pay his levies by the 7th of the month, a summons should be sent to the owner by no later than the 15th of the following month. It is important for trustees to stay on top of levy payments as this will avoid the accumulation of debt by any owner, which is a costly and timeous exercise to recoup.

It is important that the body corporate amend their conduct rules to state the procedures of levy collections and to note that legal costs will be claimed.

LEGAL HAND OVERSTEPS FOR LEVY COLLECTIONS

- Warning letter sent to owner.
- Handover to attorney.
- Summons served.
- Summons can be undefended or defended by the owner.

If Undefended:-

- Default judgement.
- Warrant of execution against movables or attach the unit.

If defended:-

- a timeous, drawn out and often postponed court battle will follow.

4. PARTICIPATION QUOTA’S

PARTICIPATION QUOTA

A participation quota is used to calculate the contribution of each owner which included levies & special levies. Participation quota is also used to work out the value of the vote per owner of a section. This is important as all votes at an AGM and SGM are calculated on value and not hand count. Participation quota is used to work out each owner’s undivided share in common property.

HOW TO WORK OUT YOUR PARTICIPATION QUOTA

Your floor area of your section i.e., $85m^2$ divided by the sum total of all floor areas in the scheme i.e., 11 $186m^2$ multiplied by 100.

$85m^2 \div 11\ 186m^2 = 0.0075987 \times 100 = 0.7599\%$

The participation quota can be found on the last page of the sectional title plan.

5. THE DIFFERENT AREAS IN A SECTIONAL TITLE SCHEME

SECTIONS

A section is shown as a section on a sectional little plan. A section is the area between walls, including ceilings, doors, and windows.

EXTENDING A SECTION

An owner wishing to extend their section will require the permission of the body corporate. This must be done at a special general meeting. A graphic representation of the proposed exterior of the section must be provided at the meeting. A land surveyor is also required to indicate the effect of the participation quota once the extension is complete.

If the owners request to extend the section is approved at the SGM, then steps set out in section 24 of the Sectional Titles Act of 1986 must be followed.

It is the duty of the trustees to ensure these steps are followed by the owner. Trustees are obliged to ensure that the owner complies with the law, as any default will hold the body corporate liable.

COMMON PROPERTY

Common property of any section title development is any area that does not form part of a section. This includes pathways, parks, parking areas, walls, roof, gates, and the outer skin of a building as well as the foundations. Common property is owned by all the members of the body corporate in undivided shares. Common property is controlled and maintained by the body corporate.

EXCLUSIVE USE AREA

Exclusive use areas are the common property that has been set aside for the use of the owner of a particular section, i.e., Parking Bay.

Be careful to note that just because your balcony or garden is walled, it does not mean that this is an exclusive use area. Exclusive use areas may be utilised or created in the management conduct rules.

It must be noted that there will be additional contributions paid by owners for EUA's over and above the levy. The contribution is not optional. The contribution is not calculated per square meterage of the area, but rather by how much per month will defray the costs of insurance, water & electricity, and maintenance for the area.

6. SCHEME MAINTENANCE

MAINTENANCE PLAN

All Bodies Corporate will have to ensure that a proficient 10-year maintenance plan is set up, upon implementation of the STSM Act. The maintenance plan must include all substantial repairs and refurbishments that do not form part of the day to day maintenance of the scheme. In this regard it is recommended that accredited companies or contractors draw up this maintenance plan. The positive of this change is that it prevents the deteriorating of a building.

ESTATE MANAGER

Although every scheme has Trustees to manage the affairs of the Scheme, they do not get remunerated and in most cases have full time jobs so are unable to manage the maintenance and daily running of the common property areas. A Caretaker or Estate Manager may be appointed by the trustees to fulfil these daily duties.

While it is the trustee's responsibility to ensure the upkeep of the common areas in the scheme the estate manager will be responsible for the running and managing of any maintenance required such as garden/park, external walls, and security systems. The Estate manager is also in a position to enforce the rules of the scheme with the owners and to report any misconduct to the trustees.

Any internal maintenance of a unit must be handled by the owner. He / she may use their own contractor to attend to the problem and are responsible for the payment of such maintenance.

7. SECTIONAL TITLE INSURANCE

BODY CORPORATE INSURANCE

There are three types of insurance the body corporate is responsible for.

- Building or homeowners insurance – this covers the buildings in the scheme against any fire, unpredictable weather damage (including burst geysers), water damage, impact by vehicles or aircraft and damage caused from housebreaking.
- Public liability insurance – this covers the body corporate against any claims made against it for damage, loss of life or injury to anyone on the common property of the scheme.
- Fidelity insurance – this is insurance cover against fraud or dishonesty committed bya scheme executive or managing agent.

It is the responsibility of the body corporate to obtain replacement valuations of all the buildings every three years, which must be presented at the AGM. Trustees and managing agents should familiarise themselves with the policy wording and ensure all necessary cover is mentioned.

While the body corporate is responsible for taking the above insurance out, it is the members responsibility to pay any excess amount that relates to damage of any part of the buildings that the member is obligated to maintain or repair. This will include any excess payable to claims relating to his/her section or EUA.

HOUSEHOLD INSURANCE

Household or content insurance is the cover of all personal items in an owner's home and covers everything inside his/her unit, eg. Jewellery, electronics, art, rugs, clothing, and any other items of value.

Each owner is entitled to insure their household contents with an insurance company of their choice. They are also responsible to ensure they have adequate cover and must maintain updated valuations of items such as jewellery and art.

The homeowner is responsible for paying the monthly insurance premium and any claims made will be made directly with his/her insurance company.