

Short Notes on:

SECTIONAL TITLE SCHEMES MANAGEMENT ACT: PART 1 BODY CORPORATES

Introduction

In 2011 the Sectional Title Schemes Management Act¹ (hereinafter referred to as the Management Act) was assented to by then-President Jacob Zuma. The need for the Act was created by the extensive use of the format in the property landscape. Although there already exists a Sectional Titles Act², the Management Act better regulates the functions and authority of the different role-players involved in a development scheme.

The Different Role Players

Once a project has been completed by a developer, as the sole owner of all of the units and the common property, there would be no need for a body corporate to be established. However, once any person other than the developer becomes the owner of any of the units of the development, a body corporate shall be deemed to be established in terms of Section 2(1) of the Management Act. The Trustees of a development are members that are nominated and elected by the body corporate members who then carry out the functions of the body corporate on its behalf. Trustees are bound by the authority conferred upon them and cannot operate outside of the rules or restrictions of authority afforded to them, except with special permissions or resolutions.

Upon establishment of the body corporate, the developer must convene a meeting of the members of the body corporate not more than 60 days after establishment thereof. At this meeting, the developer is to provide the members at the time with information such as the sectional plan, confirmation that all the rates up to date of establishment of the body corporate is paid and proof of revenue and expenditure in the time between first occupation and the first body corporate meeting.³ The failure by a developer to convene such a meeting is an offence for which the developer could face a fine or even up to two years imprisonment.

¹ 8 of 2011.

² 95 of 1986.

³ Section 2(1) of the Management Act.

In terms of the Management Act, the developer is no longer a member of the body corporate when it ceases to have a share in the common property of the sectional title. Any other member is no longer a member of the body corporate once they cease to be the owner of a unit in the scheme.⁴

The Powers and Functions of the Body Corporate

For purposes of this discussion, I will only mention a few of the functions and powers of the established body corporate in terms of the Management Act. The obligations placed on the body corporate are outlined in legislation to prevent any grey areas in the operation and maintenance of the development.

The body corporate is conferred powers in terms of the Management Act⁵ and whose overall position can be described as a vehicle for the development's unified continuity. It is responsible for the opening and operation of all bank accounts, appointment of all agents and employees in the name of the development scheme and, with the necessary approval, purchase or facilitation of the transfer of immovable property. It is also responsible for the hiring or letting of any movable property for the use and enjoyment by owners and protection of the common property.

In terms of its functions⁶, the body corporate is to maintain the common property and see to it that the common property is regularly serviced and/or repaired. It is to further establish a fund and collect levies from the owners to cover the estimated annual maintenance costs involved with the development scheme. Insurance policies for the protection of the buildings in the development scheme are also entered into by the body corporate, with there being a general obligation to maintain the common property for the benefit of all owners.

There are also the administrative functions in that the body corporate is to ensure that the is compliance with any general laws and scheme rules. These rules are adopted at the body corporate's direction and can take any form desired, as long as there is harmony with the provisions of the Management Act, Sectional Titles Act and other recognised legal precedents.

⁴ Section 2 of the Management Act.

⁵ Section 4 of the Management Act.

⁶ Section 3 of the Management Act.

Conclusion

The above is a brief overview of the provisions of the Management Act for better understating of the role players involved with a body corporate and their functions and powers. In part 2 of the discussion of the Management Act I will briefly outline some of the further requirements of operation. Should you require any assistance in addressing body corporate matters it is advisable to consult with an attorney with the necessary experience to guide you adequately.

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