



# Nama News

National Association of Managing Agents

Newsletter serving the  
Sectional Title Property Community



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## What the law says about Rules to be Registered



Article by  
**JUDITH  
VAN DER WALT**

Every Sectional Title scheme is governed by a set of rules comprising Management and Conduct Rules. If the developer does not make new rules when opening the sectional title register, the Management and Conduct Rules prescribed by the Sectional Titles Act of 1986 ("the 1986 Act") automatically applies to the scheme.

After the opening of the register, the members of the Body Corporate are entitled to amend the Management Rules by unanimous resolution and the Conduct Rules by special resolution.

Subject to further procedural requirements imposed by the 1986 Act, the amendments to the Management and Conduct Rules will only become enforceable once the new rules have been filed in the scheme's register at the Deeds Registry where the register is held.

It is therefore clear that all Management and Conduct Rules have to be filed in the scheme's register before they can be enforced, irrespective of the fact that they have been amended or adopted by unanimous or special resolution.

The question now arises: what about House Rules? Can the members of the Body Corporate make House Rules?

It is quite a common occurrence to find a Management Rule (or a "Schedule 1 Rule") applicable to Sectional Title schemes registered under the provisions of the Sectional Titles Act of 1971 ("the 1971 Act"), empowering the Trustees to make House Rules.

The scope of these House Rules is usually limited to rules in connection with the health, safety and cleanliness of the common property.

Any House Rule which purports to deal with a section for example, is therefore not enforceable, and House Rules do not have to be filed in the scheme's register at the Deeds Registry to be enforceable.

The rules prescribed in terms of the 1986 Act do not empower the Trustees to make House Rules.

However, there is no prohibition against empowering Trustees to make such House Rules.

Such power must be embodied in a new Management or Conduct Rule.

If Trustees were empowered to make House Rules under the

1971 Act, they are still entitled to do so irrespective of the fact that the 1986 Act does not allow for it.

### House Rules can create confusion

In many circumstances, House Rules create confusion. The reasoning behind the obligation to file rules in the Deeds Registry is to make the rules freely available to any interested party.

On inspection of the register, any interested party will be able to establish immediately what rules apply to the scheme.

If trustees are empowered to make House Rules, they can

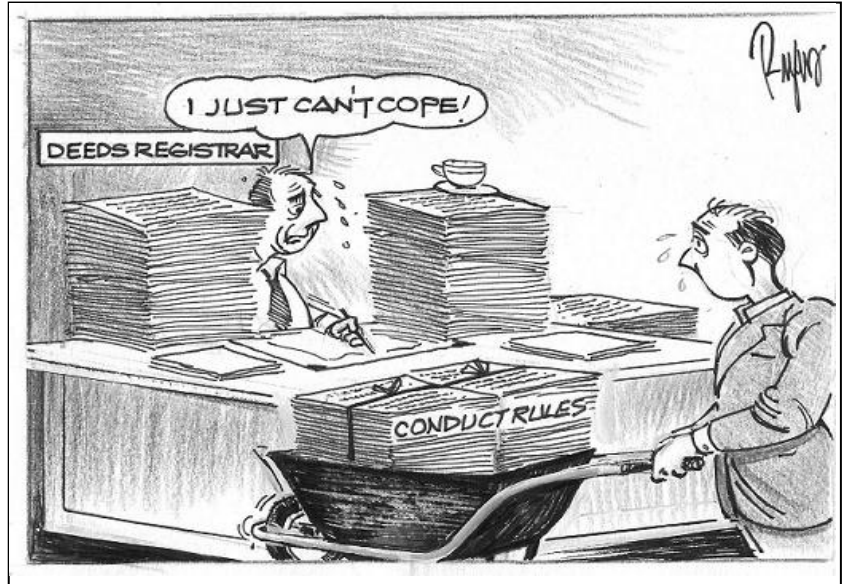
adopt new House Rules at their Trustee meetings as they see fit without informing owners of the new House Rules and without taking into account the views of a certain majority of owners.

I do not ever suggest to or encourage Trustees to make house rules.

### Better route

I believe that the issues often dealt with in House Rules are better dealt with in Conduct Rules.

The process of adopting rules by unanimous and special resolution is more inclusive and transparent and encourages good governance in a Sectional Title scheme.



## FAQs

By Jos van Heerden

### **Can the Body Corporate apply to Court for assistance if an unanimous Resolution is not passed?**

Section (3A) of the Sectional Titles Act states "If a body corporate is unable to obtain a unanimous resolution, it may, subject to the provisions of subsection (3) (c), approach the court for relief."

*Section 3(c) of the Sectional Titles Act states "where the resolution in question adversely affects the proprietary rights or powers of any member as owner, the resolution shall not be regarded as having been passed unless such member consents in writing thereto."*

*From these sections it is clear that a body corporate which is experiencing difficulty in obtaining a unanimous resolution has the right to approach the court for help.*

When assessing the application the courts will consider and evaluate the effects the proposed unanimous resolution would have on the proprietary rights and powers of all the members of the body corporate.

Thus it is essential that the trustees ensure that any proposed unanimous resolution not only protects the proprietary rights of the members but further that the effects of the resolution are fair and equitable to all members.

# 'Adapt or die' - amendment of rules



Article by  
**KAREN BLEIJS**

If the Sectional Titles Act is a constant, the Rules are dynamic and designed to adapt to changing needs and circumstances. In this regard, if I may say so, the legislator was a genius. This ties in neatly with the phrase coined by American jurist Roscoe Pound: "The law must be stable, but it must not stand still".

Section 35 of the Act makes the Management and Conduct Rules of a scheme applicable to *all* members of a Body Corporate whilst specifically providing that these Rules can be changed to suit the needs of any scheme.

This means the average yuppie residential scheme in Bantry Bay, the laid-back retirement village in Knysna or even the superlative commercial office park in Bryanston!

A commercial body corporate will face day-to-day situations like advertising signage placed on common property or customer parking, so the Conduct Rules will have to address issues unique to this type of scheme.

A residential scheme's Conduct Rules on the other hand, will deal with issues such as what steps an occupant must take if she wants to slaughter a cow to celebrate her daughter's wedding in terms of customary law, how household refuse must be disposed of or how and when fines will be

imposed.

Management Rules on the other hand set out how a scheme is administered.

The procedure to amend the Rules is set out in the Act and for ease of reference is summarised as follows:

## Management Rules

▶30 days notice by prepaid registered post must be given of Special General Meeting to pass a **Unanimous Resolution** to amend or substitute existing management rules;

▶New Rules/amendments to accompany agenda for meeting;

▶Quorum: 80% of all members of Body Corporate must be present in person or by proxy or by representative recog-

nised in law;

▶Voting: 100% of all members present (proxies counted) must vote in favour of the amendments or resolution will not pass;

▶New Rules acquire legal force and effect only once lodged with deeds office.

## Conduct Rules

▶30 days notice by prepaid registered post must be given of Special General Meeting to pass Special Resolution to amend or substitute existing conduct rules.

▶New Rules/amendments to accompany agenda for meeting;

▶Quorum: normal quorum for holding of a general meeting;

▶Voting: 75% of all members present (proxies counted) must vote in favour of new Rules, and votes must be counted in number and by value (participation quota), for resolution to pass;

▶New Rules acquire legal force and effect once they are lodged with deeds office.

And so thankfully the Rules of a scheme allow the "law" to evolve and not simply "stand still".

This is what makes sectional title living so eminently workable provided it is managed properly!



## REFRESHINGLY SILLY

A jumper cable walks into a bar. The bartender says, "I'll serve you, but don't start anything."

◆◆◆

A man walks into a bar with a slab of asphalt under his arm and says: "A beer please, and one for the road."

◆◆◆

Two hydrogen atoms walk into a bar.

One says, "I've lost my electron."

The other says, "Are you sure?"

The first replies, "Yes, I'm positive..."

◆◆◆

Two fish swim into a concrete wall. One turns to the other and says, "Dam!"

◆◆◆

An invisible man marries an invisible woman. Their kids were nothing to look at either.

◆◆◆

Deja Moo: The feeling that you've heard this bull before.

## ABOUT RULES

Hell, there are no rules here - we're trying to accomplish something.

--Thomas A. Edison

The golden rule is that there are no golden rules.

-- George Bernard Shaw

We started off trying to set up a small anarchist community, but people wouldn't obey the rules.

-- Alan Bennett

There are two rules for success: Never tell everything you know.

-- Roger H. Lincoln

If you obey all the rules, you miss all the fun.

-- Katherine Hepburn

## Block for Managing Agents

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