



BODIES CORPORATE NEWS

Keeping Trustees Informed

R9.95



MAKING SECTIONAL TITLE WORK

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Bodies Corporate News is provided to empower chairpersons / trustees, by enabling them to maximise the property investment of owners in a complex. Our newsletter needs to reach chairpersons or trustees as we offer them free copies. If you received Bodies Corporate News by chance please pass it on to your Body Corporate.



Trustees be aware of the most common **illegal means** by which owners **extend the parameters** of their living environment



without following procedures in terms of the **Act** and/or **Municipal Regulations**

- o By enclosing patios or balconies
- o By building their own braais or carports on common property
- o By annexing part of the common property by erecting barriers such as walls and fences
- o By building pools or braais on exclusive use areas without trustees approval
- o By extending sections into uninhabitable areas such as garages or courtyards in order to increase the size of the habitable area.

be undertaken as their unauthorised implementation causes huge administrative **problems** for trustees and managing agents. Section 24 and management rule 68, **apply** to the circumstances listed above, and trustees need to be pro-active, and take **immediate** action when they are aware that a **transgression** is underway. In the first instance, trustees will attempt to **halt** the 'project' and **intervene** by considering the possibility of **legalising** the 'project', through the implementation of the **correct procedures** (if at all possible or feasible) if the owner **disregards** the trustees intervention, trustees should then contact the **Surveyor General** and ask for a caveat (condition) to be recorded against the offending unit which would

prevent the unit from being **transferred** to a **new owner**. Alternatively trustees can obtain a **high court interdict** against the owner which forces adherence to section 24 and/or management rule 68.



There are **rules and procedures** to be followed before any of the above alterations, improvements or extensions **can**



If you are a chair / trustee and have not yet confirmed your contact details, please do so in order to remain on our mailing-list.

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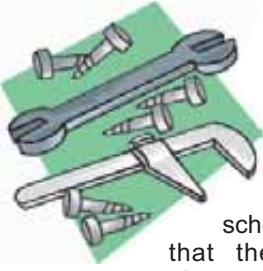
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Maintenance Matters



Some insurance companies require that Sectional Title schemes make sure that their fire fighting equipment is regularly serviced and maintained, with specific reference to the S.A.B.S 0400 code of practice. The code specifies the requirements of S.A.B.S 0105, 1475, and 0139; Maintenance work is normally carried out by an authorised fire protection company who will need to isolate the water supply in order to perform their various tests. In fact they may need to switch the water supply "on and off" on many occasions over several days. This activity can result in dirt within the pipes being dislodged in the process,

and residue usually ends up in the geysers valves and filters. The same situation can occur when the municipality disrupts the water supply when repairs are undertaken in a suburb. This is not an unusual phenomenon, and water users are not protected (unless insured) against the consequences of this often common disturbance. Electricity supply interruptions also occur frequently in developing suburbs, and the consequences of "surges" resulting in damage to equipment are not usually entertained by local authorities. Phone companies often disrupt services when they connect new lines. Owners cannot claim on the grounds of lost business opportunities due to the disruption.

or flush toilets, or use washing machines during the duration of the shutdown.

- Water always flows to the point of lowest pressure, so after routine maintenance water will initially flow toward open taps, or toward geysers that were incorrectly installed.
- Once the water is reconnected, the dislodged dirt must be expelled and if there are no scouring valves, the best option is to open a fire hydrant point, and the garden taps, then wait for the expelled water to clear before opening the shut off valves to individual blocks and/or sections. In fact each section should open its taps just prior to the shut off valves being re-opened, which will ensure that the water now flowing into the unit is expelled through the cold water taps, as this is the route of least resistance. Owners who are keen to protect their hot water cylinders from dirt influx should consider installing in line filters before the H.W.C.

Assisted by Springtide Plumbers

What can trustees do to limit the affects of water service disruptions?

- Advise residents of the service interruption, and times when it will occur.
- Isolate (close off) all the water valves leading to sections or blocks
- Advise occupants not to open any taps

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MAINTENANCE OPTIONS

Maintaining "difficult to access" areas in a residential multistory block can prove to be very expensive, especially if scaffolding is needed. Think of the discomfort caused to residents when scaffolding is erected in close proximity to section entrances or parking bays. Think of maintaining predicaments such as the cleaning of windows, the sealing, waterproofing, or repairing of cracks plus spalling, de rusting, painting, and gutter repairs in our taller buildings, and envisage solutions void of the need for scaffolding.

There is a practical solution; Trustees can engage a "Rope Access Company" which can engage in maintenance work in hard to reach areas, and at the same time save Bodies Corporate thousands of Rands in costs.

Rope Access Companies use abseiling rope systems to attend to predicaments in hard to reach areas.

Most Rope Access Companies are compliant with the O.H.S.A Act, and the various associations and insurance predicaments that interface with their category of operation. (Trustees should seek confirmation of their compliance).

We wish our readers & sponsors a Joyful Christmas and a Prosperous New Year.

Our help line and office will close from the 20th of December till the 3rd of January next year.

Trustees, continue with the good work and don't allow your building to deteriorate just because our help line is closed for a week (For a pictorial view of what can happen when trustees lose interest see photos on right.)





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ASK THE EDITOR

Try to
Rob will answer your questions

Many requests for information are received, most are answered when you phone our help-line 086 757 7882 (9:00am - 4:30 pm). A few are answered within the pages of this magazine.

Q Our problem, regards pets. What advice could you give us. House Rules were amended and Registered on the 1st of March 2003.

Animals, Reptiles and Birds

1.1 Residents of a section shall not, without the written consent, of the Trustees, which approval may not be unreasonably withheld, keep any animal, reptile or bird in a section or on the common property.

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1.2 When granting such approval, the Trustees may prescribe any reasonable condition.

1.3 The Trustees may withdraw such approval in the event of any breach of any condition prescribed in terms of rule(2)

1.4 No dogs or cats will be allowed in the complex. Dogs and cats for which permission was granted may stay in the complex until they pass on and may not be replaced.

1.5 No resident of a section in terms of which permission has been granted to keep dogs and cats, may allow that such dogs or cats utilise the common area without proper supervision.

1.6 The consent provided to keep dogs and cats shall be withdrawn to any transgressions of rule (5)

1.7 The residents shall be held responsible for any damage that may be incurred as a result of the conduct of any animals, reptiles and or birds. Residents are also responsible for pet sanitation on the common area and there own section.

We also have signs on main gate stating no pets allowed.

The tenant states she only received house rules days after she moved in, and will not abide by our rules, she states, that we must take her to court. How would you deal with the situation.

A Amending rules is a tricky business and I hope that a professional assisted you and that you obtained a 75% resolution. Rules need to be well drafted. I am not a legal expert so I cannot comment on the legitimacy of your amended rules, but for the purpose of your question I will assume that you have legitimate rules in place.

Your tenant cannot disregard rules on the basis that she only received these after she moved in. The argument is irrelevant. It is not up to the trustees to provide rules to a tenant, it is up to the owner of the section to provide rules to his tenant. Giving rules is always a positive gesture, but trustees are not present when the owner or agent signs a lease with a tenant. The tenant should ideally view the

rules BEFORE signing a lease. In any event, no pets are allowed unless the trustees have been approached, and have given their written consent. Clearly your tenant is in violation of the rules, and you will need to initiate arbitration or litigation procedures. I find that a letter from an attorney which outlines a desire to institute proceedings usually works. Few can afford high legal costs!

Q My neighbour complains when I use my portable braai on my balcony.

Braai'ing is part of our culture. I try to control the smoke as I do not want to cause a disturbance to my elderly neighbour. She has complained to the trustees who have written to me asking that I refrain from braai'ing. What should I do?

A Living in a Sectional Title Complex differs greatly from living in a freestanding home. Close proximity living is not easy, as one must compromise and consider others. Many people who currently live in blocks of flats seem unable to grasp the reality of this circumstance.

Yes, braai'ing is a South African tradition, but so is the right to a lifestyle free of intrusion by the activities of neighbours who create a disturbance to others, through activities related to their own enjoyment.

There is no easy answer; perhaps in the "give & take" process one should consider the degree by which your activity causes discontent (nuisance) to your neighbours through the release of smoke and smell. One must also consider the impact that your activity has on maintenance costs (repainting) and insurance clauses! Obviously balcony braais present an insurance fire risk in most cases. If braai'ing is prohibited in line with amendments to conduct rules an individual could motivate the trustees to allocate an area of common property and build a braai area (by seeking approval via a 75% resolution for a non luxurious improvement to common property) and therefore solve the problem!



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UNDERSTANDING EXCLUSIVE USE AREAS

Use areas created in terms of Section 27 and 27A of the Act

An Exclusive Use Area is a **part** or parts of the common property for the **exclusive use** by the owner or owners of one or more sections. **The land** on which a scheme is situated, **plus parts** of the **building** which are **not included** in a section are all deemed to be **common property**, which is **jointly owned** by all members (owners) in **undivided shares**, the size of which is determined by the size of **an owners section**. In terms of the 1986 Act a developer can allocate exclusive use areas to sections by sketching them on to a Sectional Plan, and then **registering them** in the deeds office when he applies for the opening of the **sectional title register**. A certificate of real right is then issued to the developer for all the exclusive use areas **shown on the plan**. When the time comes to transfer a section to a new owner the developer then **cedes**

his rights to the new owner. This type of exclusive use area is created in terms of **section 27** of the act and is regarded as **urban immovable property**, which **can be bonded** and freely bought or sold between owners of a scheme. This type of exclusive use area would be the **most favoured** by an owner. Many developers cannot afford **the expense** of registering this category of exclusive use area, and as a result the land remains part of the common property. Many owners **believe** that they own their parking bay or garden area when in fact **they don't**.

The law has acknowledged this problem and allows for a **body corporate** to address the situation through the **creation of** exclusive use areas using **section 27A** of the Act: Such exclusive use areas are created by amending the body corporates' **own conduct rules** after **agreement** has been obtained **from owners** at a meeting in which 75% of the owners **voted in favour** of the resolution, by number and value. (Some argue that a unanimous resolution should be obtained)

There are **provisions to consider** when conferring section 27A rights of exclusive use upon members of the body corporate, i.e.,

a) *Such rights are not urban immovable*

property rights.

b) *The rule must include a scale layout plan clearly indicating the location of the exclusive use areas, and a distinct number must be given to each area. The rules must specify the purpose of each exclusive use area.*

c) *A schedule showing the allocations to each member must be included.*

*Help us
to help you*

Answers to certain questions received on the help line are given based on the information callers provide, which is only accurate when the caller has a copy of the sectional plan and rules (as lodged in the deeds office) plus has knowledge of any restrictions imposed on trustees powers.

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New Sectional Title Publications Demystifying Sectional Title

De"mist"ifying Sectional Title sets out to simplify difficult to understand concepts, and brings home in a practical manner, the ins and outs of living in a sectional title complex.

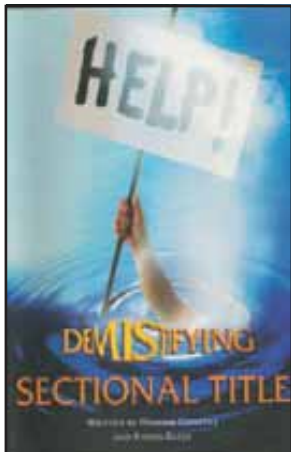
Knowledge is power, and never is this more apt than in a community lifestyle.

This book is a must for all trustees who want to understand sectional title concepts - and it's available locally via Propell who have purchased copies for redistribution to interested parties at cost price. I.e. R251.00 plus postage. This book is written by Marina Conostas of **Biccari Bollo Mariano**.

Attorneys, Notaries, Conveyances.

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PHONE BILL BLUES

The phone bill was exceptionally high and the man of the house called a family meeting.

Dad: People this is unacceptable. You have to limit the use of the phone. I do not use this phone, I use the one at the office

Mum: Same here, I hardly use this home telephone as I use my work telephone.

Maid: So what is the problem? We all use our work telephones.



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ALARMS

Ideally the application to the deeds office is drafted and lodged by an attorney, liability for maintenance of the exclusive use area should be included in the rule, as should the owners **additional contribution** in respect of his exclusive use right. Obviously the rule created exclusive use area application must be lodged in the deeds office. Exclusive use rights conferred by rules are **personal rights** and are not able to be registered.

This second category of exclusive use area does not provide full rights of ownership and such areas cannot be **bought or sold**, though they are reserved for the exclusive use of the relevant owners.

BUILDING ON EXCLUSIVE USE AREAS

1. Exclusive use areas created under section 27 of the Act:

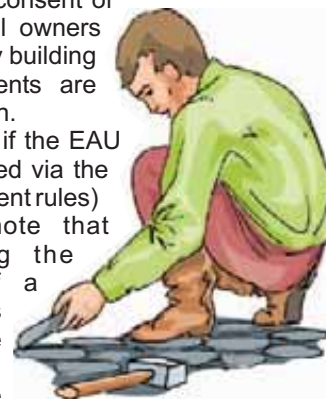
"No owner may construct or place any structure or building improvement on his exclusive use area unless written consent is provided by the trustees. Trustees may not unreasonably refuse consent.

2. Exclusive use areas created under Section 27A of the Act:

There is no provision made for improvements to an exclusive use area when it is created in terms of the rules, however when drafting the rules, conditions may be specified regarding improvements. If not, the owner would

need the consent of 75% of all owners before any building improvements are undertaken.

(Or 100% if the EAU was created via the management rules) Please note that extending the limits of a separate issue and will be dealt with in a future editorial.



Managing agents do schemes pay them peanuts yet expect miracles

A Managing Agents' viewpoint

An interesting comparison was sent to our offices which we now share with our readers.

Managing Agents fees vary from R50.00 to R80.00 per unit depending on the schemes size, dynamics, profile and functions that they are required to perform on behalf of trustees. Functions will vary from scheme to scheme and naturally affect fees. Many owners rely on Rental Agents to select suitable tenants, collect rent timeously, and deposit their rentals into an account. Invariably the rental agent will also attend to lease agreements, and regular inspections of the premises. For this activity owners are prepared to pay rental agents 10-12% of the monthly rental.

A 40m² bachelor flat with a rental of R1,800.00 was sited as an example. In such a situation an owner will happily pay the rental agent R1,800.00 x 10% = R180.00 per month for a small unit. Managing Agents charge R50 - R80 per month per unit and argue that their fees are more reasonable as their functions are wide ranging, more comprehensive and usually include insurance responsibilities, the payment of accounts, levy collections, monthly statements, organising maintenance quotes, organising and attending meetings, notices, resolutions, proxies, the taking of minutes, A.G.M's and correspondence with owners when problems arise, to list perhaps the obvious. *It makes one think and invites comment.* - bcn@xsinet.co.za

In need of advice?

PHONE OUR HELP LINE 9am - 4:30pm 086 757 7882

Unfortunately we are not able to reply to each of the hundreds of emails that we receive each month requesting written answers.

ACKNOWLEDGMENT

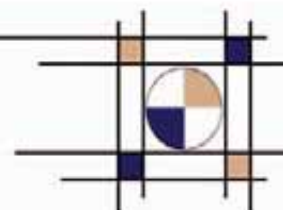
THIS PUBLICATION ACKNOWLEDGES THE CONTRIBUTION MADE TO THE SECTIONAL TITLE INDUSTRY BY TERTIUS MAREE, GRAHAM PADDOCK, MARINA CONSTAS AND KAREN BLEIJS WHO'S PUBLISHED WORK PROVIDES US WITH ADDITIONAL INSIGHT.

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PEACE OF MIND FOR TRUSTEES

PROFESSIONAL NATION WIDE ELECTRICITY SUPPLY AND MANAGEMENT

Editors Comment

Bodies Corporate News was launched 15 months ago IT'S TIME FOR AN OVERVIEW OF THE PUBLICATION AND OUR INDUSTRY

There are times when we need to revisit our initial objectives, and consider the new realities that present themselves through communications with our readers.

There is absolutely no doubt in my mind that trustees use and read Bodies Corporate News, and that it provides valuable information that is desperately needed. What is clear is that our publication needs to consider a rebirth in that it should increase the scope of its activity and extend its influence to incorporate the responsibilities and predicaments that owners face, and how they can best compliment their schemes and support trustees. Our position in the market place is positive with regard to our readers, though there are opportunities for trustees to participate more by way of subscriptions, written articles, and support for our selected service providers/advertisers. Without advertisers we could face expansion limitations. We need to thank all our sponsors, especially Propell for their support of our vision. A review reveals that:

- B.C.N exists in a media environment in which academics provide most editorial.
- Many trustees are ordinary citizens and appreciate a publication that provides information which is easy to understand.
- The efforts of academics is central to our existence, and their contribution is crucial in that our study of their work and views, which in combination with the editor's practical experience, facilitates the means by which we apply their contribution in a simplified format.
- Our help line received thousands of calls, and we were able to assist

numerous people with fundamental information. We are not legal experts but can assist trustees with the basics. What other means is available to them? Naturally, complex issues are referred to our legal boffins.

- Through the help line we have gained a valuable insight into the market place. There is a desperate need for advice, training, and, in our opinion, amendments to the act.

Tertius Maree is a respected authority on sectional Title matters, and we attended a seminar that he held in Somerset West. Many of his revelations are of interest to us all. We highlight some of his concerns:

- There is a need for Sectional Title Scheme leaders to form associations in the various districts (such as those that exist in the Helderberg and Port Elizabeth areas) and to present a united front, even leading to a provincial organisation, and eventually to a national organisation. The owners of Sectional Title units need to have a voice in national decision making forums. At present they don't! What role can Bodies Corporate News play to facilitate this?
- The concept of land ownership, results in economic stature, financial empowerment, and social development which is historically rooted in western culture. For some of us the concept started in 1652, whereas others were totally excluded, often removed from land or forced to live in hostels. Ownership was not an option and was alien to millions until recently. Fast urbanisation and a lack of skills amongst many new home owners causes many



schemes to fail. Opportunities for the previously disenfranchised to enter this arena needs to be practically encouraged in an environment wherein practical support as apposed to restrictions is facilitated. The empowerment of the Sectional Title concept also depends on the successful financial experiences of new entrants into this alien western land ownership arrangement.

- The financial ambitions of municipalities provide potential for concern in that the implementation of the new Property Rates Act could focus unreasonably on properties relative to their location, the prospect of extracting the maximum from owners who are perceived to be able to contribute most is latently evident. It's easy for government to differentiate by area. LOCATION, LOCATION, LOCATION = TAXATION, TAXATION, TAXATION. We must stop thinking in terms of "us and them" but rather think of property owners as one entity!

Editor



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- ▶ examine your complex in detail and assess your needs
- ▶ draw up a specification which will provide a comprehensive solution and add value to any painting, waterproofing, roofing, structural repairs, or general refurbishment project
- ▶ In addition to preparing tender documents Wallmark will provide options and adjust these to suit your budget constraints. Wallmark will even oversee the maintenance project, and recommend a credible service provider.
- ▶ In addition Wallmark has an association with Levy Finance provider Propell, who can finance the project and ensure that the levies raised are paid when due.

Some WALLMARK supported applicators who are credible and comply with the necessary regulatory and legal requirements

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Levy finance companies add **value** to **Sectional Title Schemes**

We cite an example wherein a Levy Finance Company extended the lifeline of a building that was in dire need of repair. In fact owners even found it difficult to sell their units for more than they had originally paid, 3 years after purchasing.



Propell financed the levy roll, including arrears, and a special levy was raised to address maintenance issues.



The building was completely refurbished and security walls were built to reduce the incidents of theft and crime. Owners were then able to sell units at market related values.

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Letters **received from readers**



Dear Editor,

I would like to thank you for sending your Bodies Corporate News to me since its inception. The information contained therein has proved very informative to our board of trustees on quite a few occasions.

Yours Sincerely - Lois Romijn

Dear Editor,

I have been receiving your informative newsletter, Bodies Corporate News. I find your newsletter to be the most informative sectional title publication available and wish it could reach a wider audience. Keep up the good work of educating people about how sectional title works.

Yours Sincerely - George Starita

HELP LINE FEEDBACK

The 10 most common questions asked in the past 12 months

- Do owners have to pay a Special Levy Raised for maintenance work / or because other owners did not pay their levies? **Yes**
- Can a tenant be a trustee? **Yes - as long as most trustees or their spouses are owners.**
- Can we take action against owners who do not obey our house rules? **Rules are enforceable when they are backed by relevant resolutions, are well drafted, and lodged in the deeds office. Trustees cannot make house rules unilaterally.**
- Can a tenant attend a trustees meeting? **No, unless most trustees agree.**
- Can trustees give permission for an extension to a section? **No - resolutions involving owners are required.**
- Can tenants attend an AGM? **No, unless they have a proxy from the owner.**
- Is an AGM legal if we only received 14 days notice? **Yes (unless a unanimous or special resolution is proposed)**
- Can owners attend a trustees meeting? **Yes - they can speak but not vote.**
- Can trustees meet and make decisions when some are absent? **Yes - provided half the trustees are present, and at least two attend the meeting.**
- Can trustees make decisions regarding common property? **No, except in cases where an owner has exclusive use rights, or an owner wants to undertake minor alterations such as burglar bars, safety gates or mosquito screens.**

The questions and answers have been simplified and consolidated to the degree that caution should be exercised when making decisions bases on the answers provided. The examples are indicative of the type of calls that we receive.



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New amendments to Management Rules

On the 18th of November 2005 Management Rules 36, 37, 40 and 46 were amended.

Management Rule 36 deals with the estimated income and expenses to be prepared by trustees before every AGM. **Rule 36(2) has been updated** to provide that the trustees must make reasonable provision for the maintenance of the common property. **In terms of Section 37(1)** of the Sectional Titles Act 95 of 1986 the body corporate is required "...properly to maintain the common property (including elevators) and to keep it in a state of good and serviceable repair" (Section 37(1)(j)). By amending Rule 36(2) the legislature is **emphasising the need** to budget adequately for maintenance of the common property.

Management Rule 37 requires trustees to prepare financial statements in conformity with generally accepted accounting practice which fairly represent the state of affairs of the body corporate and its finances and transactions at the end of the financial year. An additional sub-rule, namely **sub-rule 37(2)**, requires that the financial statement, which is to be tabled at every AGM, must include the following:

1. An analysis of the periods of debts and the amounts due in respect of levies, special levies and other contributions;
2. An analysis of the periods and the amounts due, owing by the body corporate to creditors, in particular public or local authorities in respect of rates, taxes and charges for consumption of services such as water, electricity, sewage and refuse removal;
3. The expiry dates of all insurance policies.

This additional sub-rule has probably been included to **ensure transparency** in the financial dealings by the trustees on behalf of the body corporate. In the past a number of buildings have been financially mismanaged

and trustees have been slow to collect arrear levies so as to ensure that creditors are paid timeously. In many instances local authorities have taken court action against bodies corporate where rates and taxes have not been paid. Body Corporate Insurance policies have also been allowed to lapse in many instances.

Management Rule 40 previously allowed bodies corporate with less than ten units to appoint an accounting officer instead of an auditor. Accounting officers often did not sign the body corporate's financial statements. Amended Rule 40 provides that schemes comprising less than ten units may, at their annual general meetings, appoint either an auditor or an accounting officer but that the auditor or accounting officer, whichever is applicable, must sign the financial statements.

Management Rule 46 deals with the appointment of a managing agent. Up until now a registered mortgagee of 50% of units could insist on the appointment of a managing agent. This figure has been reduced to 25%, making it easier for a mortgagee to insist on the appointment of a managing agent. Up until now the contract had to appoint the agent to "control, manage and administer the common property" but additional words require the managing agent also to attend to the all the body corporate's obligations to any public or local authority on behalf of unit holders.

The reasoning behind the additional wording is no doubt due to the fact that a number of bodies corporate are in financial difficulty with

local authorities regarding arrear rates, water and electricity bills etc. The managing agent will no longer be able to blame the trustees for negligence in attending to these matters and will even have to go so far as to check monthly water bills to ensure that there are no water leaks etc. Reputable managing agents already attend to these tasks but the amendment is necessary in order to **ensure clarity** and to prevent managing agents from **trying to escape responsibility for fulfilment of this essential task**.

Previously the managing agent was contracted for a year at a time, renewable annually. The rule now provides that the appointment will be for an initial period of one year, and thereafter is terminable upon a month's written notice by either party. The previous wording that the agreement was voidable at the instance of either party if not reduced to writing within thirty days is no longer applicable, **presumably because the contract is no longer renewable on a year to year basis**.

If you require an emailed copy of the amendments please forward a request to mail@lomas.co.za. Alistair Lomas-Walker



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