

E-COMMERCE

Have you ever wondered how e-commerce is affecting Sectional Title? It's certainly worth considering taking into account that the growth of e-commerce in South Africa is comparable to the statistics presented by the UK and America. More and more owners and Trustees are communicating by way of e-mail. The questions that immediately come to mind are – Can minutes be stored electronically? Are proxies by e-mail valid? In doing some research it is clear that we are governed by the Electronic Communications and Transactions Act 25 of 2002. The Act applies in respect of any electronic transaction or data message. The Act purports to give electronic format notices and records, the same status as original paper versions thereof. Where a document must be signed, and the parties have not agreed on the type of electronic signature, the Act states that the requirement is met if a method is used to identify the person and to indicate the person's approval of the information communicated, or if the method was as reliable as was appropriate for the purpose for which the information was communicated.

In the Sectional Titles Act, it states in Management Rule 34 that the trustees shall keep minutes of all meetings of the body corporate in a minute book of the body corporate. Now surely, it would be archaic to indefinitely continue to use a CNA A4 black book in perpetuity? A minute book can be of equal effect in a paper version as it can be legally enforceable in a "book" saved on disc? Bear in mind that the Management Rules may be changed by unanimous resolution. For clarity, it would be ideal to amend Management Rule 34(b) to reflect that the minute book may be in electronic format.

What about proxies? Management Rule 67(2) states that a proxy shall be appointed under the hand of the appointer, and shall be handed to the Chairman prior to the meeting. We can certainly look to Section 13 of the Electronic Communication and Transaction Act to argue that an electronic signature, or

even the expression of interest is legally enforceable in an electronic format. Again this Management Rule may be amended to keep up with the times. In support of the recognition and legal enforceability of electronic forms of communication is the Companies Bill 2007 (not yet an Act). Whilst the Companies Act does not apply to Sectional Title, we can detect future trends. The Bill states that – “present at a meeting” includes a virtual presence by electronic proxy.

The new Bill also allows the creation, distribution and retention of company notices and records in electronic format only, and even gives an electronic copy of a document the same status as original paper versions thereof.

Documents like share certificates, proxies, annual financial statements, prospectuses and annual reports are freed from paper and may not only be created electronically, but also be signed, retained and sent in electronic format.

As with all things, as players in the Sectional Title industry, we must be aware of changes in technology that may improve the efficiency and speed at which we can work to best serve our complexes. At the same time, we should have a heightened awareness of the importance of personal human contact. So many disputes have been created through the use of abrupt e-mail or sms messages, which do not correctly import the tone or intention of the writer. There is still nothing like a discussion over a nice cup of tea!

Marina Constat

Director

BBM Inc Attorneys