



NAMA News

National Association of Managing Agents

Connecting the Industry

August 2015



Article by
IZAK DU PISANIE
EY Stuart Attorneys

INSTALLATION OF SOLAR PANELS (GEYSERS)

With the ever growing demand for energy, the challenges faced by Government to meet these demands and the continuous increase in electricity tariffs, many property owners, sectional title and full title alike, are resorting to renewable energy as an alternative power source. Some known renewable energy sources are:

- Solar Energy
- Wind Energy
- Geothermal Energy Sources
- Hydro Power
- Biogas or Biofuel

Renewable Energy is a clean energy source which can be regenerated for an indefinite period of time, unlike energy sources which are generated through fossil fuels like coal, oil and gas.

The demand for solar energy in sectional title developments for the installation of solar power or solar hot water systems has grown and trustees are faced with approval and ancillary issues such as insurance, maintenance and aesthetical considerations.

Although the installation of solar power or solar hot water system is a step in the right direction to go green and

promote renewable energy, owners of sectional title units must still follow the correct procedure before they commence with any such installations and the applicable rules of the body corporate must still be observed, since it is almost certain that parts of the solar-powered installation will be affixed to common property (roof).

In terms of prescribed conduct rule 4 the trustees are empowered to allow owners to make some changes to the common property, but this authority is limited to safety devices and things designed to stop insects entering sections, i.e. things covering doors and windows and required to make the use and enjoyment of the section safer or more pleasant.

In terms of prescribed conduct rule 5 an owner may not place or do anything on any part of the common property which is, in the discretion of the Trustees, aesthetically displeasing.

In my view, the trustees are not authorized to consent to the installation of a solar power or solar hot water system on common property and that they would exceed their authority by doing so unless authorized in terms of the rules of the Body Corporate. The trustees will have to propose an amendment to the conduct rules by way of a special resolution that supplements the prescribed conduct rules to allow for the authority to consent to an owner's request to install a solar power device and to formulate standard conditions to ensure that the owner is responsible for the installation, insurance and maintenance of the system, as well as to protect the integrity of common property (i.e. waterproofing) and safety of all residents.

The following guidelines can be considered in the drafting of a supplementary conduct rule to regulate the installation and maintenance of a solar power or solar hot water system:

• **Written application:**
Written application by an owner should address the following for consideration:

- All components of the system should be clearly identified by their type, model numbers, proposed location, size, weight, and any penetrations of common property and method of affixing;
- Supporting photographs, plans or drawings should be provided.

• **Pre-conditions to the commencement of work:**
Before any work is commenced, the owner should provide the trustees with certification that the system's installation will not negatively impact the:

- structural integrity of the building;
- integrity of waterproofing of the roof or other common property area;
- and common property walls;
- integrity of fire safety precautions.

• **Installing the system:**
The owner should be liable to:

- use only the services of suitably licensed and accredited installers in order to meet all requirements of the Local Council and to comply with any applicable national building codes and standards;
- maintain the structural integrity of the building;
- maintain the integrity of the building's waterproofing;
- ensure minimal disturbance to other residents;
- keep the common property clean and tidy during the installation;
- repair any damage caused by the installation, whether that damage is to common property to any section or that of other residents or owners;
- be liable for any increase in the insurance premiums of the Body Corporate.

• **Maintenance of the system and common property:**
The owner should:

- maintain the system, in accordance with the manufacturer's specifications;
- use only qualified and licensed tradespeople for maintenance and repair of the system;
- maintain any common property at a point of contact between the system's components and common property;
- repair any damage caused by the system, at any time, to common property other sections or the property of other owners or residents.

Monthly Advertiser A
space available

Monthly Advertiser B
space available

Monthly Advertiser C
space available

• **Removal of the system:**

- The system could need to be de-commissioned, or even part or all of it de-installed, in order to undertake emergency repairs or necessary maintenance to any underlying common property. The rule should outline the responsibilities of each party in such a scenario.
- If the system is removed permanently, the owner may be required to restore all affected common property to its original condition.

• **Indemnity & Costs:**

The owner should indemnify the Body Corporate and be liable to pay the full costs of:

- installing the system;
- maintaining and repairing the system;
- repairing any damage caused to common property;
- removing the system and restoring affected common property to its original condition;

- any increase in the body corporate's insurance premium attributable to the system;
- removal of the system upon change of ownership of the unit concerned unless the purchaser undertakes in writing to take over responsibility with associated indemnities to the Body Corporate,

The owner should indemnify the body corporate against any:

- loss or damage to common property;
- loss or damage to the property of other owners or residents;
- injury to any person;
- damage to the system as a result of work carried out by the body corporate pursuant to any applicable provision of the rules.

• **Breach of conduct rules:**

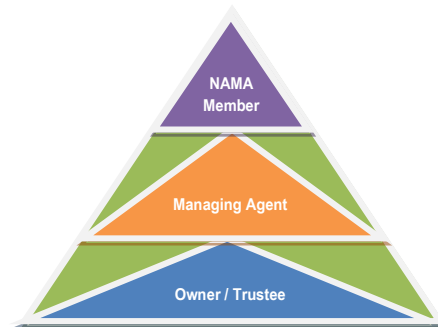
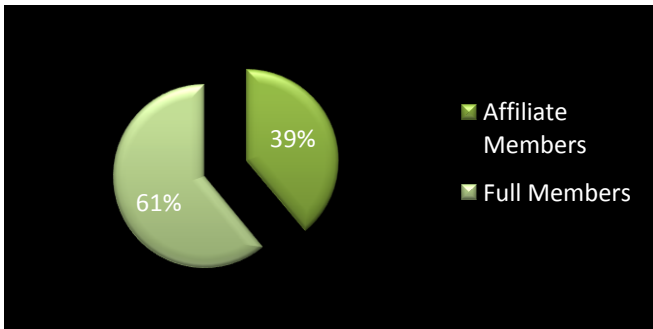
If the owner fails to fulfil the obligations of the conduct rule/s, the body corporate can:

- provide notice in writing requesting that the owner complies;
- perform any necessary work if the owner fails to do so after receiving written notice;
- recover the costs of performing such work.

• **Rights of the Body Corporate:**

The Body Corporate should retain the right to perform emergency repairs or necessary maintenance on underlying common property, even if that necessitates de-commissioning or de-installing the system, under terms and conditions clearly stipulated in the rule/s and to stipulate that the owner will have no claim against the Body Corporate.

Statistical Data



Managing Agent Information

The views expressed by the Managing Agent are not of the publisher, editor or author of the article or editorial

Publisher : NAMA - Lizbé Venter (namanews@nama.org.za)

Contributor to this issue : Izak du Pisanie (eyes@eyslaw.co.za)

Copyright : NAMA – Nothing in this newsletter may be reproduced in whole or part without the written permission of the publishers

Disclaimer : The views expressed are not necessarily those of the publisher, editor or anyone else but the author of the article or editorial.