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IMPACT OF NEW PMR 28 ON MANAGEMENT AGREEMENTS WITH BODY CORPORATES



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Up until 7 October 2016, Managing Agents were able to enter into management agreements with Bodies Corporates for a period of 1 year. At the end of the initial period the agreements would automatically renew from year to year. This was regulated by Prescribed Management Rule 46 to the Sectional Titles Act 95 of 1986. From 7 October 2016, Prescribed Management Rule (PMR) 28 to the Sectional Titles Schemes Management Act (STSM Act) 8 of 2011 was introduced as a replacement to the PMR 46. The new PMR provides that management agreements may be for a maximum period of 3 years. However, PMR 28 does not make provision for the automatic renewal of this agreement entered into between the parties at the expiry of the initial period.

PMR 28(7) states that "A management agreement may not endure for a period exceeding 3 years and may be cancelled, without liability or penalty, despite any provision of the management agreement or

other agreement to the contrary – by the body corporate on two months' notice, if the cancellation is first approved by a special resolution passed at a general meeting...".

The question that now arises, in respect of management agreements entered into before 7 October 2016, which are currently in use and may be in use for several years to come, relate to the validity of the automatic renewal clause from year to year on expiry of the initial one year period.

Is this clause still valid or are these agreements, and specifically such clause dealing with the one year period and the automatic renewal, now invalid as this clause appears to be in conflict with new PMR 28?

Let's unpack the following scenario. In 2020 a Body Corporate, following a special resolution obtained at general meeting, decides to cancel their management agreement entered into 2010, with immediate effect. This agreement contained the automatic renewal clause. The Managing Agent informs the Body Corporate that the agreement has just renewed in terms of the contract entered into in 2010 and has the remainder of the one year period to run, in this case 9 months and tenders performance for this period or alternatively demands payment for 9 months. The Body Corporate refuses to pay the Managing Agent, maintaining that the legislation changed in October 2016 and averring that the clause setting out that the agreement would renew for 1 year periods at a time, was since October 2016, void and therefore unenforceable and that they are thus permitted in law to cancel the agreement with immediate effect.


The answer to this question and the legal position in the scenario painted above in respect of the Body Corporates immediate cancellation is contained in the wording of new PMR 28 (7) rule quoted above.

In terms of PMR 28 in respect of management agreements entered into before October 2016 for a one year period and renewable from year to year there is an opinion that such agreements can endure for up to a 3-year period. In this scenario, the time period is measured from the commencement date of the Rule, being 7 October 2016.

Further, in terms of new PMR 28 (7), and specifically the wording therein "despite any provision of the management agreement or other agreement to the contrary", the new Rule is clear in that cancellation is only on 2 months' notice after approval by way of a special resolution at a general meeting, despite what any other agreement may say to the contrary.

It is recommended that Managing Agents, at the expiry of existing agreements entered into before 7 October 2016, enter into new management agreements with bodies corporate, and if suited to their business models amend the agreement term to 3 years. The aforesaid will allow for the revision of all other terms contained in the agreements to ensure the legality and enforceability thereof.

Remember this discussion does not apply to HOA's so you can proceed unabated when contracting with HOA's as your clients.

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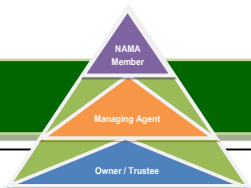


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