



NATIONAL ASSOCIATION  
OF MANAGING AGENTS  
SHAPING OUR PROFESSION

## NAMA Notice Board

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## Alert Level 3: A response to the new Regulations and its effect on Community Schemes

1. On 24 May 2020, President Cyril Ramaphosa announced that as from 1 June 2020, the whole of South Africa would move to alert level 3. In his address, he stated: *"Now it is time for most of us to return to work and to resume parts of our lives that have been on hold since the lockdown began."* He further cautioned that: *"...I want to emphasise that the easing of some restrictions does not mean that the threat posed by the coronavirus has passed or that our fight against the disease is over."*
2. As an introduction, it should be noted that prior to alert level 3, the government implemented an exclusionary method, meaning that apart from essential and permitted services, all other activities were prohibited (the same applying to personal movement). The alert level 3 methodology now embraces a welcome change of mindset, in that, it is an inclusionary approach and only excludes that which is not permitted.
3. In this article we will explore how the new level 3 regulations will impact community schemes and occupiers of individual units within the scheme.
4. It should however be mentioned that, in the recent case of Reyno Dawid De Beer and two others v Minister of Cooperative Governance And Traditional Affairs (in which judgement was delivered on 3 June 2020), the Gauteng Provincial Division of the High Court declared most of the level 4 and level 3 regulations unconstitutional and therefore invalid. The Court however suspended the operation of the declaration of invalidity for a period of 14 business days, affording the relevant minister an opportunity to "start again" by promulgating new regulations in line with the values that underpin our democratic society.
5. Thus, until the expiry of the 14-day period (or an extension thereof as provided for in the judgment), the level 3 regulations continue to be of full force and effect.
6. SCHEME EMPLOYEES INCLUDING GARDENERS, CLEANERS AND OTHER GENERAL WORKERS EMPLOYED BY THE SCHEME
  - 6.1 All the scheme's employees are permitted to return to work as from 1 June 2020.
7. EMPLOYEES INCLUDING DOMESTIC WORKERS AND OTHER GENERAL WORKERS EMPLOYED BY INDIVIDUAL RESIDENTS
  - 7.1 Employees of individual residents are permitted to return to work as from 1 June 2020, subject to a limited exception relating to those persons who exclusively render personal care services such as hair dressing, beauty treatments, make-up, nails, piercing, and tattoos, all of which are specifically excluded in the regulation.

## 8. OUTSIDE SERVICE PROVIDERS AND SUB-CONTRACTORS TO A COMMUNITY SCHEME

- 8.1 All services that are provided by service providers and sub-contractors to both individual units and to the common property of a scheme are permitted to resume their services as from 1 June 2020. These services include amongst others:
  - 8.1.1 Construction services;
  - 8.1.2 Gardening services;
  - 8.1.3 Maintenance services;
  - 8.1.4 Painting services;
  - 8.1.5 Tree felling services; and,
  - 8.1.6 General Handyman Services.
- 8.2 Service providers must adhere to the relevant occupational health and safety directions published in respect of their specific industry and the applicable labour legislation.

## 9. EXERCISING

- 9.1 As from 1 June 2020, exercise is permitted between the hours of 06h00 and 18h00, within and outside of the community scheme, provided that such activities are not undertaken in organised groups and there is strict adherence to health protocols and social distancing measures.

## 10. COMMON PROPERTY AMENITIES

- 10.1 Owners, tenants and occupiers will only be able to use the common property, such as driveways, laundry rooms and washing lines, insofar as the use of such common property is for necessary or essential use.
- 10.2 Communal swimming pools, braai areas, gyms and other recreational facilities are to remain closed until the further easing of restrictions.

## 11 MEETINGS

- 11.1 The position in relation to owners and trustees meeting is unchanged by the level 3 regulations and "in person" meetings thus remain prohibited.
- 11.2 It is advised that, to the extent that owners and trustees are required to meet, they continue to do so by electronic means through the utilisation of electronic platforms such as Skype, Zoom, Microsoft Teams or the like.
- 11.3 This is so for the simple reason that trustees (and owners) are not employees of the community scheme, and the community scheme cannot be considered as a workplace, therefore meetings by owners and trustees do not fall within the extended permissions set out in the regulation.

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11.4 Our view as set out above is supported by the Community Schemes Ombud Service (CSOS).

11.5 We are further fortified in our contention by virtue of the following considerations:

11.5.1 Regulation 33 allows a person to leave his or her place of residence only under certain circumstances. Leaving one's home to attend an owner's or trustees' meeting is not one of the these permitted circumstances.

11.5.2 Regulation 37 further prohibits all gatherings, with limited and specifically prescribed exceptions. An owner's or trustees' meeting is not one of the mentioned exceptions.

11.5.3 The first rule in the interpretation of statute (which for the purposes of this note also includes regulations) is that one must follow the plain and grammatical meaning of the words used by the legislature (in this case, the Covid-19 Command Council).

11.5.4 The obvious departure point would thus be to refer to the express wording of the provisions, applying logic and common sense to the interpretation of its provisions.

11.5.5 owners' and trustees' meetings simply do not constitute workplace gatherings for work purposes (as permitted in regulation 37(1)(c)).

## 12. VISITORS AND SOCIAL GATHERINGS

12.1 Social gatherings remain prohibited. Visitors will not be allowed to enter the community scheme for recreational purposes. However, in circumstances where a visitor is required to provide care to a family member who resides within the community scheme, such a visitor will be permitted to enter the community scheme. Should it be necessary for such a visitor to travel between provinces, metropolitan areas, districts or hotspots to provide care to an immediate family member, such a person will be required to obtain the necessary affidavit.

12.2 Minister Jackson Mthembu, however, commented during a media briefing on 28 May 2020 by stating;

*"...the way that the regulations and directions stand now, is that we can now visit our families in the neighbourhood..."*

12.3 The above statement cannot be substantiated by any provision contained in the regulations. It is, therefore, suggested that one should be cautious to blindly act in accordance with the advice of Minister Mthembu.

## 13. REAL ESTATE AGENTS AND RENTAL AGENTS

13.1 People employed in the property industry, and more specifically real estate agents and rental agents, are now allowed to resume work. As a result, agents will be permitted to enter the community scheme for work purposes.

## 14. SHORT TERMS LEASES

14.1 Short term home sharing, letting, and renting within a community scheme for leisure purposes is prohibited. If such unit within a community scheme is utilised for business purposes, and not leisure, same will be permitted, subject to the necessary permits being in place.

## 15. PERSONAL CARE SERVICES

15.1 Personal care services including hair dressing, beauty treatments, make-up and nails and piercing and tattoos remain prohibited. Persons rendering such services should not be allowed to enter the community scheme to render such personal care services.

## 16. COVID-19 COMMUNITY SCHEME PLAN AND HEALTH PROTOCOLS

16.1 Community schemes must ensure that they have;

16.1.1 implemented a COVID-19 plan; and

16.1.2 nominated a COVID-19 compliance officer.

16.2 It is advisable that community schemes develop measures to ensure that they meet the standards of health protocols and social distancing measures for the public and for service providers, as required.

16.3 Community Schemes with employees must comply with the *COVID-19 Occupational Health And Safety Measures in Workplaces Directives*, as published on 29 April 2020 by the Department of Employment and Labour, and further ensure that their employees adhere to acceptable standards of hygiene, health protocols and social distancing measures at all times.

17. The implementation of alert level 3 brings us slightly closer to the semblance of normality that we long for. A change that is most certainly welcomed, albeit somewhat overdue.

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