



NATIONAL ASSOCIATION
OF MANAGING AGENTS
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Hennie van Eck

**EQUITY DIRECTOR & HEAD OF LITIGATION
- JOUBERT GALPINSEARLE ATTORNEYS**



NAMA 2019 National Conference



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LEGAL ASPECTS -SECTIONAL TITLE INSURANCE

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INTRODUCTION

- Community schemes have become popular over the years, particularly sectional title schemes
- Sectional schemes appoint managing agents and their duties include arranging insurance
- Some relevant legal aspects i.r.o. such insurance are highlighted



THE LAW

- Legislation
 - Sectional Titles Act 95 of 1986 (STA)
 - Sectional Titles Schemes Management Act 8 of 2011 (STSM Act)
 - Community Schemes Ombud Service Act, 9 of 2011 (CSOS)
- Rulings by Ombudsman
 - Community Scheme Ombud Service (CSOS)
 - Ombudsman for Short Term Insurance (OSTI)



LEGAL ASPECTS

- Body corporates
 - Maintain all buildings and common property
 - Insure all buildings and common property
 - Collect insurance contributions from home owners and pays premiums to Insurer
- Home owners
 - Repair and maintain their section and exclusive use areas
 - Notwithstanding body corporate insurance may take additional insurance to cover a higher replacement value and/or risks not insured by the body corporate



LEGAL ASPECTS CONT.

- Annually at the AGM
 - Schedule of insurance replacement values (buildings, units and improvements to common property) and
 - Determination of extent of insurance by body corporate
- Tri-annually
 - Body corporate must obtain a replacement valuation
- Copies
 - Body corporate (agent on its behalf) must keep records of all insurance policies as well as premiums paid



RISKS TO INSURE

RISK	LEGISLATION
Buildings for replacement value against fire and other prescribed risks	Section 3(1)(h) STSMA
Such other risks as the owners may determine by special resolution	Section 3(1)(i) and MR23(1)(a)(iii) STSMA
Risks that holders of registered 1 st mortgage bonds over not less than 25 % in number of primary sections by written notice to the body corporate may require to be covered by insurance	MR23(1)(a)(ii) STSMA
Fidelity Insurance, includes managing agents	Regulation 15 of CSOS and MR23(7) STSMA
Public Liability Insurance	MR23(6) STSMA
Lightning, explosion and smoke	Regulation 3(a) STSMA
Riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting o.b.o. or in connection with any political organisation	Regulation 3(b) STSMA
Storm, tempest, windstorm, hail and flood	Regulation 3(c) STSMA
Earthquake and subsidence	Regulation 3(d) STSMA
Water escape, including bursting & overflowing of water tanks, apparatus or pipes	Regulation 3(e) STSMA
Impact by aircraft and vehicles	Regulation 3(f) STSMA



THE INSURANCE POLICY MUST SHOW

REQUIREMENT	LEGISLATION
Specify a replacement value for each unit and exclusive use area	MR23(1)(b) STSMA
Restrict the application of any "average" clause to individual units and exclusive use areas, so that no such clause applies to buildings as a whole	MR23(1)(c) STSMA
A clause i.t.o. which the policy is valid and enforceable by any holder of a registered mortgage bond over a section or exclusive use area against the insurer notwithstanding circumstances which would otherwise entitle the insurer to refuse payment of the amount insured, unless the insurer terminates the insurance on at least 30 days' notice to the bondholder	MR23(1)(d) STSMA
May include provision for "excess" amounts to be paid by the member/home owner	MR23(1)(e)



NON-COMPLIANCE

- Failure to take out insurance/increase insurance/submit a claim
 - Owners can make Application to court
 - For an order requiring the association to
 - take out insurance
 - to increase the amount of insurance
 - take action i.t.o. a policy to recover an amount
 - “association” includes any structure that is responsible for the administration of a community scheme



CSOS OMBUD RULINGS

- Negligence must be proved
- ***MAHARAJ v THE TRUSTEES OF MORNINGSIDE RIDGE BC***
 - Body Corporate gate closed and damaged claimant's vehicle
 - CIA Insurance refused the claim
 - No evidence of negligence by body corporate as per policy
 - Also body corporate contracted out of liability i.e. disclaimer notice
 - Gate beams were thereafter replaced
 - CSOS ruling
 - As beams were replaced it indicates they were faulty
 - However body corporate was not negligent
 - Claim is not covered i.t.o. policy
 - Disclaimer & Indemnity notice not a valid defence i.e. *"no one would expect a gate to randomly close on one's car"*
 - MR 23(6) i.e. Public Liability Insurance not applicable as no negligence by body corporate proved



CSOS RULINGS CONT.

- Insurance of buildings and common property excludes illegal structures
- ***JORDAAN v TRUSTEES OF MAXI MEWS BODY CORPORATE***
 - Tiles fell on owner's awning and damaged owner's awning
 - Insurer found the awning was illegal i.t.o. the schedule of insured buildings and improvements
 - CSOS ruling
 - Damage was caused by a *vis major* to the owners section
 - The owner must take insurance for damage caused by *vis major* to owner's section
 - Damage to awning excluded from body corporate insurance as it was an illegal structure



CSOS RULINGS CONT.

- Body corporate must maintain common property
- *OPPERMAN v TRUSTEES OF PEARL GARDENS BC*
 - Owner claims damage to ceiling, cornice & walls of his garage
 - Damage due to failure to maintain roof which is part of common property
 - Insurer rejected similar claims and owners repaired own roofs. A precedent was set i.e. owners liable for own roof repairs
 - Owner claims body corporate must repair the roof
 - CSOS ruling
 - Body corporate had to repair & maintain common property
 - Body corporate must insure the common property
 - Insurer rejected claim due to lack of maintenance
 - Insurer's rejection upheld. Lack of maintenance is excluded
 - Body corporate must repair damage at its cost to owner's garage



OSTI OMBUD RULINGS

- Insurance only covers sudden and unforeseen risk
- **WATER DAMAGE**
 - In July '12 new owner saw damp in kitchen & painted over it
 - Damp reappeared in Jan '13 & owner claimed
 - Damp caused by leak, which damaged cupboards & floors
 - Insurer rejected the claim. Damage over long period, was not sudden or unforeseen as per the policy wording
 - Leak wasn't disclosed to new owner on occupation in July '12
 - OSTI ruling
 - Damage occurred prior to new owner's occupation
 - However insurance does not cover damage left unattended, caused over long period, which was pre-existing and not sudden or unforeseen
 - Insurer's rejection upheld



OSTI RULINGS CONT.

- Insurance covers loss to property, not consequential damage
- **UNLAWFUL USE OF SIM CARD**
 - Body corporate's intercom & SIM card for intercom stolen
 - Thieves incurred illegal costs of R30k on stolen SIM card
 - Body corporate claimed R30K loss on the SIM card
 - Insurers rejected the claim. Is consequential loss, excluded from the policy, which only covers loss to property
 - OSTI ruling
 - Policy wording excludes consequential loss
 - R30k illegal SIM card costs not covered
 - Upheld insurer's rejection of claim



OSTI RULINGS CONT.

- Fair wear and tear excluded
- **WEAR AND TEAR**
 - Owner claimed for water damage to cupboards, tiles & electrical plug due to the unit above flooding
 - Insurer rejected the claim. Flood caused by pipe which burst due to gradual wear and tear
 - Policy wording excludes damage caused by wear and tear, gradual deterioration etc
 - OSTI ruling
 - Policy excludes gradual wear and tear
 - Upheld insurer's rejection of claim



CONCLUSIONS

- Insurance compliance is vital
- Managing agents are encouraged to understand and strictly comply with what is required
- The use of experienced, reputable and specialist insurance brokers and insurers are recommended
- Failure to comply can result in criminal charges and/or civil claims



- Hennie van Eck & Lauren Cunningham
- T 041 396 9220
- E hve@jgs.co.za

THANK YOU