



NATIONAL ASSOCIATION
OF MANAGING AGENTS
SHAPING OUR PROFESSION

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MANAGING DIRECTOR – BALLITO ESTATES



NAMA 2019 National Conference



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SECTIONAL TITLE

Presented by :

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Practical Scheme Management – Topics

- (a) Portfolio Manager (PM) – General Time Management
- (b) Compliance with legislative time frames (CSOS, SARS, circulation of scheme documentation, agenda's, minutes, levy increase notice, first trustee meeting etc)
- (c) Quorum requirements
- (d) Communication with owners, trustees and service providers

(a) PORTFOLIO MANAGER (PM) – GENERAL TIME MANAGEMENT

- Most Portfolio managers have between 25 – 35 schemes to manage to time management | extremely important
- No matter how busy you are each scheme must be treated as though it is the only scheme you are managing!
- to achieve this means a LOT of time management.

PORTFOLIO MANAGER (PM) – GENERAL TIME MANGEMENT

- it helps to have templates for all the meetings and standard letters including but not limited to :
 - AGM for sectional title and HOAs if applicable, trustee meetings, which might differ e.g. some might have report back on port folios and some just be the standard agenda including matters arising and new Complex matters;
 - Prior to every meeting it is important to complete the agenda using the template;
 - After each matter arising it is important to complete the action that has been taken e.g.
Matter Arising – Repair Swimming pool gate – Ferroart submitted a quote in the sum of R1000 to repair the gate, this quote was accepted by the trustees and the gate has been repaired.



PORTFOLIO MANAGER (PM) – GENERAL TIME MANGEMENT

- It is important to respond to emails. Most of the day will be taken up with emails BUT if you keep trustees informed at all times you might find your emails reducing.
- It is so easy to BCC trustees on emails when responding to queries or giving job orders so that they know exactly what is going on at all times. At least then they will see how you spend your time 😊
- consider putting a response on your email advising the sender that their email has been received and will be responded to asap.

PORTFOLIO MANAGER (PM) – GENERAL TIME MANAGEMENT

- trustees are notorious for not responding to emails – get a policy approved and recorded at a trustee meeting where e.g. if you send a quote and they don't respond within 2 working days it is taken as accepted. If this is a policy accepted by the trustees and recorded it really does save time and ensures that you can get the work done;
- Speaking of meetings – a question often asked is “how long should a trustee meeting last” – obviously this is difficult to answer BUT if the agenda has gone out prior to the meeting and questions have been asked and answered then the meeting should not last longer than say 2 – 2 1/2 hours at most!

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES

CSOS : ACT 9 of 2011

- Regulation 2 says this levy must be collected monthly from the units in the scheme and paid to CSOS quarterly;
- To levy is calculated on the lesser of R40 or 2% of the monthly levy charged by the scheme excluding the first R500.
- To submit the levy collected to CSOS : regulation 18 (1) says documents referred to in S59(b) of the Act must be filed within 4 months after the end of the scheme's financial year

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

CSOS : ACT 9 of 2011

- S 59 : says “in each calendar year and at such times as may be prescribed – Pay to the Service a levy in an amount calculated as prescribed, subject to such discounts or waivers as may be prescribed, and
- File with the service : in an annual return in the prescribed form;;ii a copy of its annual financial statements and ;iii any other prescribed documents or information.

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

CSOS ACT 9 OF 2011

- So annual returns must be submitted within 4 months of the Scheme financial year end
- Domicilium Citandi Ex Executandi on registration and thereafter if it changes.
- ITO S 41, any dispute lodged asking for an order declaring any decision to be voided, may not be made later than 60 days after such decision has been taken.,

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

CSOS : ACT 9 of 2011

- S 57(2) An appeal after an order is given must be lodged within 30 days after the date of delivery of the order of the adjudicator;
- Amended rules must to STSMA 8 OF 2011 27(1)(a) be lodged with CSOS 10 days after their amendment;
- On receipt of a request to inspect BC documents, they must be provided within 10 days or where rules are requested within 5 days;
- If MA services are terminated they have to hand over within 10 days of termination all documents in S27 to the BC;

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

SARS: TAXATION

- 1) Body Corporates are subject to income tax in terms of Section 10(i)(e) of the Income Tax Act.
- 2) All Body Corporates must become registered taxpayers even if there is no tax liability. Application for registration needs to take place within 21 days of the inaugural general meeting held after the establishment of the Body Corporate..

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

SARS: TAXATION

3) Provisional Tax

Body Corporates are excluded from the definition of “provisional taxpayer” and are not required to make provisional tax payments or submit provisional tax returns

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

SARS: TAXATION

- 4) Body Corporates are required to submit an annual tax return (IT14 return) within 12 months of the Body Corporates financial year end. A Body Corporate that has taxable income must settle its tax liability on assessment.
- 5) A Body Corporate falls within the definition of “Company” in the Income Tax Act. Any taxable income is subject to the company tax rate (currently at 28%).

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

SARS: TAXATION

- 6) Levy income received is fully exempt from income tax. These levies include ordinary levies which cover day to day running, maintenance and operating costs as well as levies raised for capital improvements or to create a reserve for future capital and maintenance. Building penalty levies and stabilisation fund levies are also included as levy income.

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

SARS: TAXATION

- 7) While levy income is completely exempt from income tax, all other income accruing to the Body Corporate is taxable subject to an exemption of up to a maximum of R50 000. Other income may include investment income, rental income, penalties on late payments, advertising income etc. A proportionate share of the actual expenses incurred to earn other income can also be deducted from taxable income.

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

SARS TAXATION

- 8) A Body Corporate must appoint a tax representative known as the Public Officer when registering for income tax. SARS preferably likes an elected trustee to hold this position. SARS wants a natural person and not a juristic person. Sometimes a managing agent is prepared to act in this capacity. However, there could be practical issues if the Body Corporate changes managing agents. Due to independence issues the Body Corporate auditor would not act in this capacity. SARS must be notified within 21 days any change in the public officer.

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

SARS TAXATION

- 9) Body Corporates and Share Block Companies automatically qualify for the exemption in terms of Section 10(i)(e) of the Income Tax Act. Home Owners and Management Associations also qualify for the exemption in terms of Section 10(i)(e) provided they get approval from the Tax Exemption Unit.
- 10) Body Corporates are exempt from registering for VAT. However, a Body Corporate can apply for Voluntary registration for VAT. This maybe an option if the units are owned by Commercial VAT Vendors.

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

SARS: TAXATION

- 11) If the Body Corporate has employees it will need to register for PAYE, WCA and UIF.
- 12) A Body Corporate is subject to Capital Gains Tax on disposal of assets. 80% of the Capital Gain is included in taxable income. In practice it is highly unlikely to occur as the common property in a Body Corporate is owned by the Sectional Title owners jointly in undivided shares and not by the Body Corporate.

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

AGENDA'S etc, TO BE SEND OUT:

(HOA) HOMEOWNERS ASSOCIATIONS:

- must be ito the Constitution or Ol – usually 21 days – always calculate these as “clear” days;

➤ SECTIONAL TITLE:

- **INAUGURAL MEETINGS:** ito S2(8)(a) a developer must call a meeting within 60 days after the establishment of the body corporate;
- **TRUSTEE MEETINGS:** generally 7 days notice, PMR 11(1)

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

AGENDAS etc, TO BE SENT OUT – SECTIONAL TITLE ...continued

GENERAL MEETINGS:

- Ito 17(1) the AGM must be held within 4 months of the end of each financial year
- Ito 15(1), 14 days notice giving date, time and venue of the meeting. This time can be reduced if agreed to in writing by all persons entitled to attend (15(7)(b)) or on 7 days notice ito 15(7)(a) if the trustees have resolved that the short notice is necessary due to the urgency of the matter and set out their reasons for this resolution. This short notice cannot however be given for a meeting to approve reasonably necessary improvements or the installation of prepaid meters.

(b) COMPLIANCE WITH LEGISLATIVE TIMELINES continued...

AGENDAS etc, TO BE SENT OUT – SECTIONAL TITLE...continued

GENERAL MEETINGS:

- Where a special or unanimous resolutions are being taken 30 days notice must be given to S6(2).
- PMR 20(9)

(c) QUORUM REQUIREMENTS

- **Trustee meetings:** 50% but not less than 2
- **General meetings:** less than 4 – 2/3rds of total votes in value
- **Any other schemes** PMR 19 : 1/3rd (33 1/3) members entitled to vote in value provided that at least 2 persons are present unless all sections are in one person's name. value of votes of the Developer must not be taken into account
- **if NO Quorum** PMR 19(4) says you have to wait 30 min and then adjourn to the next week, same time same place if no quorum after 30 days, whoever is present or represented will form the quorum

(c) QUORUM REQUIREMENTS continued...

- **Trustee nominations PMR 7(2):** must be with the body corporate service address 48 hours before the AGM.
- **Proxies:** must either be received 48 hours before the AGM OR handed in prior to the opening of the AGM
- **Minutes, PMR 9(e):** minutes of both general and trustees must be distributed asap but no later than 7 days after the date of the meeting

(c) QUORUM REQUIREMENTS continued...

- **Levy Increase notice, ito S25(1):** must asap but no later than 14 days after the approval of the budget at a General Meeting, give each member written notice of the contributions due and payable. This notice must include the amount payable, how it is to be paid, interest rate for late payment and action to be taken if not paid.

COMMUNICATION WITH OWNERS, TRUSTEES & SERVICE PROVIDERS

- It is so very important to COMMUNICATE with trustees and owners and so very easy to do so with Email. Under each scheme you should, at the press of a button, be able to send an email to all owners OR only the trustees;
- When copying all owners we suggest that you BCC them to keep email addresses private in case the email is “hacked” and the open emails are used for scam purposes;
- NEWSLETTERS are a real help but in general the Managing agent does not have the time to do this and one of the Trustees should be encouraged to take on this task

COMMUNICATION WITH OWNERS, TRUSTEES & SERVICE PROVIDERS

- MINUTES – in terms of PMR 9(e) minutes must be distributed “not later than 7 days after the date of the meeting”
- This means that owners will remember the process followed at the meeting and can identify whether the minutes are a true reflection of the meeting;
- this means any queries can be dealt with immediately while the meeting is still fresh in everyone’s minds;
- It also ensures that matters arising from the meetings can be quickly followed up.
- It is of course beneficial to still include these minutes of the previous meeting when sending the following year’s AGM notice;

COMMUNICATION WITH OWNERS, TRUSTEES & SERVICE PROVIDERS

- Most Trustees do not distribute the minutes of their meetings to all owners but taking into consideration that members are entitled to be at all trustee meetings and view the minute book – why the reluctance ?

- There will be a dual purpose in circulating trustee meeting minutes :
 - It will keep all owners completely informed of what is happening;
 - It will ensure that trustees keep their meetings professional in that they stick to the agenda and deal in a business like and transparent manner with all issues knowing that all owners will be viewing the minutes

COMMUNICATION WITH OWNERS, TRUSTEES & SERVICE PROVIDERS

- trustees often face criticism when one of them is involved in contract work at the scheme. by distributing the minutes owners will be able to see that :
 - The trustee involved quoted like any other contractor and did not have an unfair advantage;
 - Was not present when the contract was discussed
 - And did not take part in any decision on the contract award.



COMMUNICATION WITH OWNERS, TRUSTEES & SERVICE PROVIDERS

- **Other issues that have been identified and asked that I comment on are :**
 - Who determines when and where a meeting is held :
- Trustee meetings – any trustee can call a trustee meeting. it is beneficial if, at one trustee meeting the date for the next meeting is agreed and recorded in the minutes;
- AGM – the act in PMR 27 says the BODY CORPORATE must call the AGM – this then gives the Trustees time to set the meeting taking into consideration whether or not 14 or 30 days notice needs to be given;

COMMUNICATION WITH OWNERS, TRUSTEES & SERVICE PROVIDERS

AGM con : PMR 17 says that the notice of meeting must include the venue, day and time of the meeting. As the trustees are setting this obviously they can chose these criteria. To hold a meeting outside of the scheme's jurisdiction requires a special resolution. This does happen e.g. where the units are mainly holiday let and the owner reside in Gauteng – the meeting can be held in Gauteng IF the resolution is obtained.

**Thank you very much for attending
the NAMA Seminar and listening to
this invaluable presentation....**

Advocate Barbara Shingler