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OF MANAGING AGENTS
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APRIL 2017 | NEWSLETTER/BULLETIN

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THE EXECUTIVE MANAGING AGENT

Article by Elmo-York Stuart, EY Stuart Inc.

The Management Rules, Annexure 1 to the draft Regulations as published under the Sectional Title Schemes Management Act, Act No. 8 of 2011 ("STSM Act") provide for the appointment of an Executive Managing Agent.

Management Rule 28 deals with the appointment of both Managing Agents and the appointment of an Executive Managing Agent.

“Managing Agent” is defined as “any person who provides management services to a Body Corporate”.

“Executive Managing Agent” is defined as “a managing agent appointed to carry out all the functions and powers of the Trustees in terms of Rule 28”.

Criticism has been received to the draft Regulations in that the appointment of an Executive Managing Agent is dealt with under the heading “Managing Agents” under Rule 28, which also deals with the appointment of Managing Agents.

From a representation on the draft Regulations by Mr Lucky Rabotapi, Ombud for KZN, it appears that this matter will enjoy attention, although it remains to be seen

if further clarity will be given.

My interpretation of the definition of an “Executive Managing Agent” regarding his or her authority, duties and obligations as recorded in Management Rule 28, is that an Executive Managing Agent and an Administrator have similar powers. The Executive Managing Agent cannot be any person as it is clear from the definitions that the Executive Managing Agent must be a Managing Agent. However, I am not sure that this is what the legislature intended.

An Administrator is appointed in terms of Section 16 of the STSM Act. He or she can now be appointed by application to a Magistrate’s Court, whereas an Administrator was previously appointed by the High Court.

An Administrator is awarded the powers and duties of the Body Corporate as the Court may direct (to the exclusion of the members of the Body Corporate). In general, therefore, an Administrator is authorized to execute and perform all the powers and functions of the Trustees.

In terms of Management Rule 28, the Executive Managing Agent is also appointed to perform the functions and exercise the powers that would be performed and exercised by the Trustees. As there is little distinction between the two in my view, an Executive Managing Agent should rather be referred to as a “Professional Trustee”.

An Executive Managing Agent is appointed by a Special Resolution of the members or by an application to the

Ombud Service by members who are entitled to 25% of the total quotas of all Sections.

An Executive Managing Agent is therefore appointed, not in addition to the Trustees, but in place of the Trustees.

It is open to debate whether an Executive Managing Agent (who must be a Managing Agent) can wear two hats i.e. be appointed both as an Executive Managing Agent and as a Managing Agent in terms of a contract. In my view the Executive Managing Agent should be a person other than the Managing Agent appointed for the body Corporate and the requirement that an Executive Managing Agent should be a Managing Agent should also be deleted.

Management Rule 28 deals with the specific obligations of an Executive Managing Agent, including inter alia the compulsory inspection of common property at least every six months and the furnishing of a report to the members of the Body Corporate at least every four months. The reports must also include certain specified information.

As the definition presently requires that the Executive Managing Agent must also be a Managing Agent, it follows that the appointment will be in terms of a written agreement. In the case of an Executive Managing Agent, the agreement will provide for additional responsibilities and for his/her remuneration, although the rule is silent on these aspects.

We can expect to see a new direction in the management of Bodies Corporate with the appointment of Executive Managing Agents, which can be to the benefit of many Bodies Corporate where members are unwilling to act as Trustees and where proper management and administration can be achieved without the burden of appointing an Administrator. Only time will tell.

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COMPULSORY AUDITS FOR SMALL SCHEMES

A POSITIVE CHANGE



*Article by: Léandi Steenkamp
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(SA). Senior Lecturer: Department of Accounting
and Auditing, Central University of Technology,
Free State (CUT).*

Prescribed Management Rule (PMR) 40 in the original Sectional Titles Act (STA) allowed bodies corporate with fewer than 10 units to appoint what was called an 'accounting officer' to review the financial statements. PMR 50 in the old STA Regulations defined an 'accounting officer' by referring to the definition in the Close Corporations (CC) Act No.69 of 1984. This definition as per the CC Act is quite wide, and includes members of professional bodies such as The South African Institute of Business Accountants (SAIBA), The South African Institute of Chartered Accountants (SAICA), the Chartered Institute of Management Accountants (CIMA) and The South African Institute of Professional Accountants (SAIPA).

In the recently updated STA, the new STSMA and Regulations thereto, the option for small bodies corporate to appoint

accounting officers were scrapped from the legislation. Therefore, the legislation does not contain any definition of or reference to 'accounting officers' anymore. Rule 17(6)(j)(vi) stipulates that an auditor should be appointed to audit the financial statements, unless all sections in the scheme are registered in the name of one person. Therefore, in future, this change in the legislation may negatively impact on the practices of some members of the above-mentioned professional bodies who used to act as accounting officers for bodies corporate. It may also have an effect on the accounting and auditing fees paid by smaller bodies corporate.

A question that inevitably arises is whether it is less costly to appoint an accounting officer to review the financial statements than to appoint an auditor to perform an audit. In a recent research study that was done on the accountancy of sectional title schemes in the Free State

and North West Provinces, the average cost of 'full' audits was compared to the average cost of accounting officer engagements for small schemes. In the research sample, the average audit fee was between 29% and 57% higher than the average accounting officer fee. However, even though it was less expensive, in practice, very few schemes opted to use the services of accounting officer. This was evidenced by the fact that, for the financial statements in the sample, 39% were audited (contained audit reports); only 3% of the financial statements were completed by an accounting officer (contained a formal accounting officer report); and the remaining 58% financial statements were simply compiled by the managing agent, with no formal report attached. Therefore, the majority of small schemes included in the study either opted for a 'full' audit to be performed or chose to have no assurance done, while the minority had an accounting officer compile the financial statements.

Even though the change in legislation may have cost implications for some small schemes who did not opt for full audits in the past, the change can be seen as a positive improvement, especially from a governance perspective. Financial statements that have been audited by an external auditor are considered to be more reliable than those that have not. Obtaining audited body corporate financial statements is becoming increasingly important for banking institutions in their decisions to extend mortgage loans, and many prospective buyers require externally audited financial statements in order to assess the financial health of a scheme before making the decision to buy into a sectional title scheme. An external audit can also assist in identifying weaknesses in the internal control systems of a scheme, and as a

result, process or operational deficiencies can be quickly corrected or improved. Further, an independent review of the financial statements can provide great comfort to both owners and trustees, without putting undue strain on personal relationships.

This is one topic amongst others that will be discussed in the following morning seminar **“Financial statements for sectional title schemes: Making sense of old and new legislative requirements”**

(CLICK TO VIEW) presented by the **Centre for Legal Compliance.**

www.legalcompliance.org





CSOS

CHIEF OMBUD'S CIRCULAR NO: 1 OF 2017

Implementation of the Sectional Titles Schemes Management Act (Act No 28 of 2011) and the Sectional Titles Schemes Management Regulations, 2016

[CLICK HERE TO READ MORE](#)



CSOS

PRACTICE DIRECTIVE NO: 1 OF 2017

**ON THE PAYMENT OF LEVIES AND FEES IN TERM
OF COMMUNITY SCHEMES OMBUD SERVICE**

COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011
(ACT NO. 9 OF 2011 AND THE REGULATIONS.)

[CLICK HERE TO READ MORE](#)

[CLICK FOR CSOS BANKING DETAILS](#)

EMPIRE GARDENS

CONTRIBUTION TOWARDS LEGAL FEES

Article by Eldo-York Stuart from EY Stuart Inc.

Dear NAMA Member,

We thank our members who contributed and who assisted to canvass for contributions towards legal fees for the Empire Gardens BC appeal.

Judgment was reserved and we kindly call on those who have not yet contributed to consider the matter and to make your contributions.

We are approximately R100 000-00 short of our target.

CONTRIBUTION FORM

Please complete and return to accounts2@eyslaw.co.za together with proof of payment of the contribution.

We want to give special recognition to the following contributors for their contributions and efforts:

- **Du Toit Havemann Lloyd Attorneys:** R50 000-00 - thank you Mr. Wayne du Toit
- **Ballito Estates** who contributed in excess of R18 000-00
- Contributions from **Dynamic Realty Management** and **Whitfield Professional Property Services:** R7 500-00
- Contributions from **Lumen Rock SC Property Management Services** and the **Bellbuoy Group**



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NOTICE TO: HOUSING-OWNERS ASSOCIATIONS (HOA's)

ALL ESTATE AGENTS, MANAGING AGENTS AND STAKEHOLDERS

1. PURPOSE

The Estate Agency Affairs Board (EAAB) together with representative bodies of estate agents and estate agencies and of HOA's has met in order to provide guidance in respect of practices relating to the payment of fees/sharing of commission to procure any degree of exclusivity . . .

[CLICK FOR FULL ARTICLE](#)



PROPERTY PRACTITIONERS BILL

The long-awaited Draft Property Practitioner's Bill has been released by The Department of Human Settlements via the Estate Agency Affairs Board.

Please find below the link to the Draft Bill on our website for download.

[CLICK FOR DRAFT BILL](#)

COMMENT

Interested persons and organizations have been awarded 30 days to provide public comment by end April 2017

NAMA would like to encourage all its members to provide their comment in writing on an official letter head to the relevant persons.

Our members are also requested to forward a copy of their comment to admin@nama.org.za

We will **NOT** respond to or comment on each individual response received.

NAMA will present its own comment to the Department of Human Settlement and the Estate Agency Affairs Board after a consultation process.

We will first and foremost provide notification that the allowed period of 30 days is not sufficient especially taking into consideration that April 2017 consist of many public and national school holidays.

NAMA STRETCHING ITS INTERNATIONAL RELATIONS

WITH STRATA COMMUNITY AUSTRALIA AT OUR 2017 NAMA , KING PRICE INDABA



**SOUTH AFRICAN STRATA HEAVYWEIGHTS
WELCOME SCA TO THEIR ANNUAL
CONFERENCE**

BIG LESSONS ON OFFER FOR AUSTRALIAN LEADERS IN 'HUGE' SOUTH AFRICAN SECTOR

The properties within Australia's \$1.2 trillion strata property continue to reach soaring new heights, and very soon sector leaders will be venturing skywards themselves in search of some new ideas, thanks to their international counterparts.

National President Erik Adriaanse has been invited to represent Strata Community Australia in South Africa this September, as part of the National Association of Managing Agents' (NAMA) annual Indaba conference.

It's a tour a few years in the making, and one that SCA is eager to come out of with some valuable lessons that can be applied back home.

[CLICK FOR FULL ARTICLE](#)

NAMA EVENTS

WESTERN CAPE REGION

22 April 2017

Flag Ship Seminar, Rondebosch

Email Kate at namawc@nama.org.za for more information

KWAZULU-NATAL REGION

22 April 2017

Topic: Sectional Title Training Seminar

Venue: Richardsbay

Email Vanida at namakzn@nama.org.za for more information

Click to view NAMA
Event details

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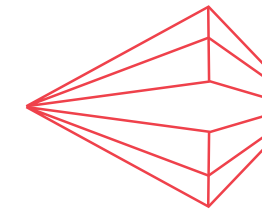
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