

NAMA NEWS

July 2018



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OF MANAGING AGENTS
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The POPI Act

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The POPI Act



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The Protection of Personal Information Act, 2013, or “POPI” as it has colloquially become known, promotes the protection of personal information by requiring that public and private bodies comply with certain standards when collecting, processing, storing and sharing personal information.

This Act is set to become effective towards the end of 2018, once the regulations have been promulgated, and has been described as a compliance disruptor of the highest order. There is absolutely no doubt that this piece of legislation has become necessary and indeed laudable, keeping us in line with overseas

trends. In the preamble to the Act, the legislators weigh up the situation as follows in justifying the promulgation of the POPI Act:

“IT IS RECOGNISED THAT Section 14 of the Constitution of the Republic of South Africa 1996, provides that everyone has the right to privacy;

that the right to privacy includes a right to protection against unlawful collection, retention, dissemination and use of personal information;

that the State must respect, protect promote and fulfil the rights in the Bill of Rights.

BEARING IN MIND THAT consonant with the constitutional values of democracy and openness, the need for economic and social framework of the information society, requires the removal of unnecessary impediments to the free flow of information, including personal information.

AND IN ORDER TO regulate in harmony with international standards the processing of personal information by public and private bodies in a manner that gives effect to the right of privacy subject to justifiable limitations, aimed at protecting other rights and important interests."

Whilst the Act comes from Canada, the concepts of thesis, antithesis and synthesis can be identified from the early Greek philosophers. The thesis could be interpreted to be the right to privacy, the antithesis would be, the need for streamlined economic progress and quick transfer of information, and the synthesis, otherwise known as agreed middle ground, would be the POPI Act which balances all stakeholder interests.

So, we all agree that the core purpose of the Act is to ensure that individuals and juristic persons know exactly what is being done with their personal information.

In the context of Sectional Title, there are two groups of people to hone in on. The first are the individuals or companies owning units in a Sectional Title Scheme. Management Rule 27(2)(b) states that:

"The Body Corporate must prepare and update the following records:

List of Trustees, members and tenants with:

- Full names
- ID Numbers (non-citizens must provide passport numbers)
- Section address
- E-mail address
- Telephone numbers"

More importantly, and increasingly controversial is Management Rule 27(4):

“On receiving a written request, the Body Corporate must make the records and documents referred to in the rule available for inspection by, and provide copies to:

- a. a member;
- b. a registered bondholder;
- c. a person authorised in writing by a member or registered bondholder.

Management Rule 27(5) states that “The Body Corporate must comply with a request for inspection or copying under this rule within 10 days.

This in effect means that any owner can insist upon receiving personal information about another owner, just as long as he makes the request in writing.

My feeling is that this Rule may well be in contravention of the POPI act unless the rule includes a consent provision, and an amendment of the Management Rule may have to be looked at.

The second group of people affected in our Industry, are Managing Agents, as they receive and collect volumes of personal information about schemes and residents. Personal information would include payroll data. CV applications for employment, CCTV TV records, performance reviews of employees and communication

information such as internal e-mails between owners, or between owners and the Managing Agents.

It is important at this juncture to mention that the POPI Act prohibits the processing of “special personal information.” This covers information about a person's religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life, criminal behaviour or biometric information. Quite a pity really, as our complexes constitute fertile ground for substantially interesting information under ‘special personal information’ (said tongue-in-cheek).

The POPI Act will provide challenges to the business of the Managing Agent.

Once the Act becomes effective, there will be a 12 month implementation timeframe. The body overseeing the enforcement of the law will be the Information Regulator. The Chairperson of the Regulator has advised that companies must immediately start working on the following:

1. An awareness process for staff members.
2. A Promotion of Access to Information Act Manual update (PAIA)
3. Internal system to process requests.
4. The appointment of an Information Officer.
5. A compliance framework.

Managing Agents should identify the specific types of personal information to be collected, and should not make the mistake of over collecting irrelevant information, or

keeping any information once their mandate is terminated. They should be cautious about further processing limitations. An example of this is where personal information was originally created to manage a specific building. Then, it became an attractive option to utilise that information to promote an ancillary product, being financing a scheme, or landscaping within a scheme. It is critical that the Managing Agent establish that owners have agreed to the further processing. Over and over the collection of information, it cannot be over emphasised enough that the quality of captured information should be of a high standard. The Companies Information Officer at the Managing Agent must be able to confirm that reasonable and practical steps were taken to ensure that personal information was complete, accurate and up to date.

Another direct question an Information Officer will be hard pressed to answer is what the company is doing to prevent unlawful access to or unlawful processing of personal information. This is the hard question that Liberty Life is dealing with currently.

Managing Agents, will need to think about how to secure the integrity and confidentiality of personal information and, furthermore, to consistently update new risks or deficiencies. Both internal and external risks to personal information under the Agents control should be identified, and policies with regard to the use of flashdrives, external hard drives and other storage devices will have to be worked on and bedded down.

An interesting section of the Act for owners and Managing Agents deals with Direct Marketing. Section 69 of the Act outlaws direct marketing by means of any form of electronic communications has to disclose the identity of the advertiser and provide an address to which the customer can send a request to opt out.

All rules and regulations are only as good as the manner in which they are enforced. Let's walk through an example in

a Body Corporate which has a Managing Agent, where the levy statements for one scheme get mixed up with another complex, and all unit owners receive each other's financial information. Any person involved in this ghastly exchange of information may lay a complaint against the Managing Agent and the Body Corporate with the Information Regulator. The Regulator can investigate, request a mediation, refer the matter to the Enforcement Committee, and then ultimately make the final judgement. A guilty party does have the right of appeal to the High Court, and must do so within 180 days.

Section 107 of the Act deals with penalties and administrative fees. Any person or company convicted of an offence in terms of the Act is liable to a fine or imprisonment not exceeding 10 (ten) years or R10 million, depending on which provision of the Act has been contravened.

As can be seen even very large companies who have strong firewalls and anti-virus programmes are still vulnerable to and fall victim to cyber attacks. Mike Addison from Addsure will tell you that losses include, loss of income, downtime, loss of data, and most of all loss of confidence by affected clients which could result in a huge loss of business. Managing Agents would be well advised to cover themselves with cyber liability insurance.



My view is that it is important for Managing Agents and Trustees to start taking steps to comply with the Act and to ensure that Bodies Corporate stay at the forefront of the latest laws.

Marina Constas (BA LLB FA Arb)

Director

BBM Attorneys

NAMA Update

CSOS and VBS Mutual Bank - COMMUNITY SCHEME LEVY CONTRIBUTIONS

On 8 June 2018 NAMA advised its members that it was in consultation with EYS Inc following the publication in the Mail & Guardian regarding an alleged un-authorised investment of R80-million by CSOS in the controversial VBS Mutual Bank, currently under curatorship.

Following the publication and correspondence addressed to the Chief Ombud, NAMA met with Adv. Letele to discuss the concerns raised.

Adv. Letele confirmed the following with regard the financial queries raised:



1. The investment with VBS Mutual Bank is being investigated by the Auditor General and the Department of Human Settlements and all queries emanating from the 2016/2017 financial statements will be addressed in the 2017/2018 financial statements, which is expected to be released towards the end of July 2018.
2. Government grants are still being received and will continue to be received until the end of 2019.
3. CSOS's operations are not affected by the curatorship of VBS Mutual Bank.

Adv. Letele has been called on to furnish NAMA with a formal response to its correspondence and PAIA application.

The directors have agreed that it is imperative that NAMA, as a stakeholder in the community scheme industry, maintains a good relationship with CSOS rather than itself becoming the centre of activity and disputes with stakeholders.

In view of the above the directors advise that NAMA therefore cannot support calls from some of its members to withhold the payment of levies to CSOS. Further, any person or entity guiding a class action would not have the financial and administrative means to collect and manage the community schemes levies. This may, place community schemes at risk and could attract unnecessary issues and

problems if the entity is to become or is seen as a regulator due to receiving these funds.

Please be assured that NAMA will continue to call for co-operation and transparency from CSOS for the benefit of its members.

The Chief Ombud remains committed to CSOS achieving its goals and to become the Service it was intended to be. Therefore, for industry participants to withhold payment of their CSOS levies will only delay the process.

NAMA will continue to engage with CSOS and provide regular feedback to its members.

SOUTH AFRICAN PROPERTY SECTOR:

ECONOMIC CONTRIBUTION

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Executive Summary

There is no economy that can function without fixed property. People need a place to live. Firms need a place to do business. Industries need buildings to house their factories and governments need offices. This makes the property sector critically important. In a country like South Africa, it also means it can play a key role in socio-economic transformation. It is therefore fitting that this report was commissioned by the South African Property Sector Charter Council.

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2019 Fidelity Fund Certificate before 31 October 2018



Ensure payment is made within the prescribed period. Failure to pay on time leads to the accrual of monthly penalties.

It is important to note that the renewal of your Fidelity Fund Certificate will only be issued provided that the estate agency firm is not disqualified in terms of section 27 of the Estate Agency Affairs Act.

Both Fidelity Fund Certificate annual renewals and late renewal penalty fines are managed through the link <https://www.eaab.org.za/myffc> “Renew Individual FFC” to obtain your FFC for the preceding year.

The renewal of Fidelity Fund Certificates for 2019 will be open on **01 July 2018** via the MyEAAB agents portal available on the EAAB website www.eaab.org.za

For further assistance contact our Contact Centre
+27 (0)87 285 3222

Nedbank provides real-time working capital solutions with great benefits

Money expert Nedbank understands that managing your working capital is crucial for your business to function seamlessly, especially in the property sector.



Poovendran Naidoo
National Head: Transactional Banking, Global Trade and Investment Sales

This is one of the reasons Nedbank has teamed up with payment partner Pay@ to devise an innovative SMS payment solution that gives clients the ability to pay through a payment link. The link for bill or collection payments can be sent to your clients by SMS.

And this solution comes with amazing benefits to help make your working capital work for you:

- Real-time validation of transactions that eliminate unallocated payments in your backoffice.
- A single integration point for payment channels, making full real-time integration or offline integration with real-time payment notifications possible.

- Prepopulated references that ensure accurate reconciliations.
- Reconciliation of all payments with a detailed report and daily bulk settlement.
- Enhanced short-term cashflow through effective cashflow management.
- Better client service through simple, safe and convenient payment mechanisms offered to your clients.
- An effective funds collection mechanism and better debtor management.

For more than four decades the National Association of Managing Agents (NAMA) has played a key role in educating its members on the regulations and terms and conditions that govern the property industry.

'Nedbank is committed to providing innovative solutions and is confident that solutions such as **Pay@** allow its clients, including NAMA members, to focus on their business and remain confident

that their financial goals are being met,' says Poovendran Naidoo, Nedbank National Head of Transactional Banking, Global Trade and Investment Sales.

'This solution is in line with the Nedbank **Whole-View Business Banking™** philosophy, which complements and addresses business needs by providing a bird's-eye view of your business and a different perspective on how your money needs to flow to match your goals,' he adds.

To find out more about **Nedbank's SMS payment solution with Pay@** please contact your transactional specialist or send an email to business@nedbank.co.za.

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Whether you live in a Homeowners Association or a Body Corporate we have a solution for you.

Sectional Title Solutions is a solutions-driven consultancy business, focusing on delivering value-added products and services to Sectional Title Bodies Corporate and Homeowners Associations.

We aim to provide sustainable solutions that will benefit all unit owners and stakeholders, while reducing inefficient costs and generating much-needed revenue for Bodies Corporate and Homeowners Associations. Ultimately, we aim to ensure financial sustainability and protection of the unit's investment value for its owner.

Our value-added solutions include:

- state of the art Fibre-To-The-Home solutions
- innovative arrear levy and project funding solutions
- cost-saving energy efficiency and solar solutions
- revenue generating outdoor media and advertising solutions
- legal and levy advisory services

Our solutions-based approach, combined with our emphasis on a symbiotic working relationship with managing agents and their estates, is what adds real value to our clients.

Guided by this "win, win, win" philosophy, STS has partnered with several industry leaders as well as smaller niche specialist service providers, to provide our clients with the most effective value-added solutions, regardless of the size of the clients' unique project requirements.

Contact us on +27 11 977 1977 or info@stsolutions.co.za for more info.
www.stsolutions.co.za



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A background image showing a group of people in a meeting or seminar. They are seated at a curved wooden table, and several hands are visible holding pens and writing on documents or clipboards. The image is slightly blurred, focusing on the foreground where a person is writing on a document held by a clipboard.

Events

WESTERN CAPE REGION

18 AUGUST 2018 – Trustee Training Seminar

Please contact Kate at namawc@nama.org.za for more information.

EASTERN CAPE REGION

25 JULY 2018 – Regional Meeting

Please contact Lizbé at namanorth@nama.org.za for more information.

GAUTENG EAST REGION

27 JULY 2018 – Breakfast Seminar

Please contact Isabella at namaeast@nama.org.za for more information.

GAUTENG NORTH REGION

26 JULY 2018 – Breakfast Seminar

Please contact Lizbé at namanorth@nama.org.za for more information.

GAUTENG WEST REGION

25 JULY 2018 – Breakfast Seminar, Mosaiek Lifestyle Centre, Johannesburg

Please contact Meriechen at namawest@nama.org.za for more information.

FREE STATE REGION

24 AUGUST 2018 – Breakfast Seminar

Please contact Meriechen at namawest@nama.org.za for more information.

KWAZULU-NATAL REGION

31 AUGUST 2018 – Breakfast Seminar, Durban

Please contact Vanida at namakzn@nama.org.za for more information.





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for NAMA Affiliate Members

Advertise your
company's logo
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of **70 000 readers** every
month!

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2018

Please contact Lizbe (namanorth@nama.org.za) or
Coenie (coenie@nama.org.za) for further information.



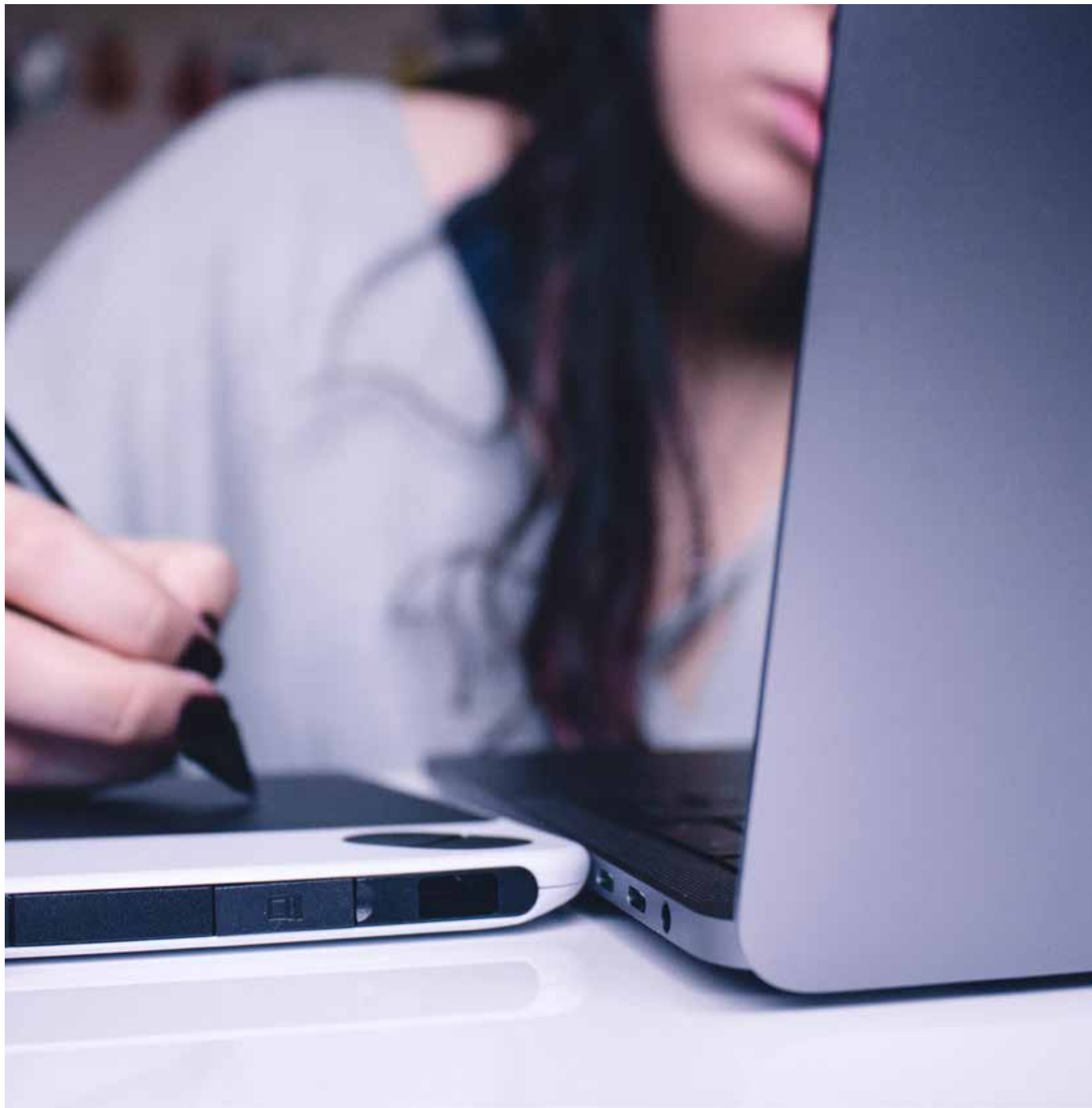
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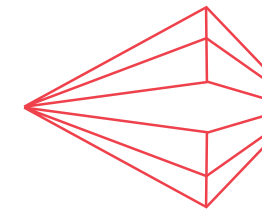
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