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OCTOBER 2015

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## FESTIVE SEASON QUANDARIES?



**ARTICLE BY  
TERTIUS MAREE**  
Tertius Maree & Associates,  
Attorneys & Conveyancers

With the year coming to an end, and having been presented with news, both good and bad, to be “digested” by sectional title owners and trustees, the usual issues will once again have to be dealt with over the festive season. Let’s first look at the “good and bad” news.

Certainly a good news item is that our long overdue new legislation is due to take effect in the very near future. We know this because of the regulations for the new Sectional Title Schemes Management Act having been published for comment on 2<sup>nd</sup> October.

Another good news item is that the Ombud Service will then also swing fully into operation.

Perhaps bad news is that owners and trustees will then have to scale a considerable hill to acquaint themselves with new systems and rules.

Bad news, no doubt, is that such systems are inevitably going to cost money, which will certainly be reflected in higher levies.

But the festive season is at hand and how do we deal with it in a practical, even congenial way, yet exercise effective control to avoid nuisances that usually accompany an influx of short-term tenants, visitors, parking problems, overcrowding and partying.

Section 35 of the Sectional Titles Act (which still

governs the administration of sectional title schemes) determines that all sectional title schemes are controlled and managed according to the provisions of the Act and rules made in terms thereof. How must this be interpreted and applied?

The first and perhaps most important thing is that it is not possible to make rules, such as ‘house rules’ which have not been put in place according to the procedures prescribed in the Act. The trustees are accordingly not authorised to issue a set of rules which apply in respect of holiday-makers, or over a specific period, or for specific purposes.

Secondly, the rules made in terms of section 35 apply at all times and to all owners and also to all occupiers, irrespective of the time-span of their occupancy. This implies that holiday-makers who only reside for a brief period are also bound by the rules. The problem is not whether the rules apply, but how to hold visitors and short-term residents accountable.

Lastly (for current purposes), section 35 requires that all rules made by the developer or by the body corporate, must be reasonable and apply equally to all owners of sections used substantially for the same purpose.

Appropriate provisions exist in section 44 of the Act itself as well as in the prescribed Conduct Rules to regulate the aspects which could normally cause a nuisance or transgressions. Again, the problem is how to apply these provisions.

The answer lies in a combination of communication / information / notification and the threat of punishment, in the form of fines, legally imposed.

A number of issues need to be addressed in this regard. Firstly, in view of the transient presence of holiday-makers and visitors, it will always be difficult to impose and recover fines from them. Consequently, fines will have to be imposed against the owners concerned, passing the responsibility to them to control the conduct of their tenants / occupiers and visitors. Similarly, it will be difficult to

ensure that occupiers are made aware of the boundaries of their conduct and to notify them of the possibility of a penalty, necessitating such notification be primarily directed at the owners, leaving it to them to inform and control their tenants / occupiers and visitors.

Fines cannot be legally imposed unless it is done in terms of a rule which complies with the requirements of the Promotion of Administrative Justice Act (PAJA). In brief, this requires a procedure whereby the respondent is given an opportunity to hear the evidence upon which the penalty is based, to question witnesses, to present his own evidence and so to respond to and oppose the charges.

Such rule, once in place will not empower the trustees to impose penalties instantaneously, as the procedures will have to be followed meticulously in order to ensure that the penalties will be legally recoverable. However, at my firm a short-cut procedure and rule has been developed to enable trustees to expedite the process considerably.

The purpose of fines is not to collect money and not really even to punish anyone. My firm’s experience is that after fines have been successfully imposed a few times, owners will take the rules in question seriously, the problems will cease and no further fines will be required.

What is important, however, is that communication with the owners be maintained about these matters and that owners be required to inform and control their tenants / occupiers and visitors. Preferably conditions regarding parking, noise and similar provisions should also be included in rental agreements, with reference to the penalties which may be imposed.

Handled properly, these procedures have proved to be very effective in the longer term. Whilst there may not be sufficient time to incorporate the required rules for the season which is at hand, trustees should seriously consider getting their systems ready for 2016 and later years. 

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# THE OPTIONS WHEN AUDITING HOME OWNERS ASSOCIATIONS



**ARTICLE BY  
GUSTAV TAUTE**  
MG Taute Registered Auditors

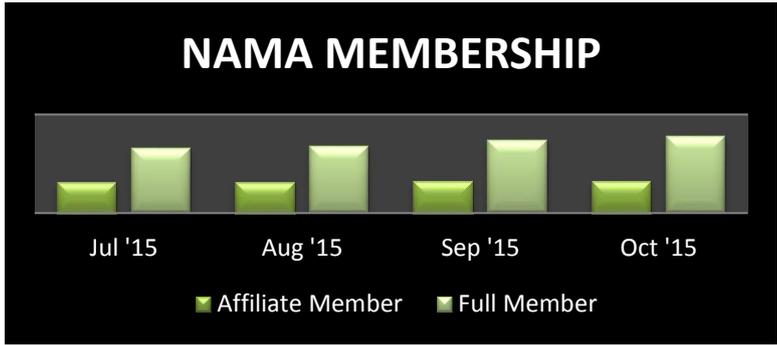
During 2011 the Companies Act 71 / 2008 came into power and there has been a dispute on Section 90 (2) regarding the preparation and compilations of financial statements. This section determines that a person or firm may not be appointed as the auditor of a company if it was involved in the maintenance or preparation of its financial statements during the current or previous five years. The dispute was resolved in court and this section is upheld. As stated in Section 90 (2) the compilation and auditing of the financial statements of a Home Owners Association may not be done by the same person or firm, thus the following two decisions should be made by every client.

Option 1: The Memorandum of Incorporation should be amended to note that the Directors may choose whether to be audited every year. The directors should choose to be

audited (as this is a trust managed company and is required to be audited). By selecting this option the company will not be upheld by Section 90 (2), and the audit will not be a statutory audit. With this option the company can remain with the current audit firm, and this firm can compile as well as audit the financial statements.

Option 2: If the company chooses not to amend the Memorandum of Incorporation, the directors will need to employ an external accounting firm to compile the financial statements. The current audit firm will continue the audit, after the compilation of the financial statement from the external accounting firm was done. This will result in extra costs to the company. 🏢

## STATISTICAL DATA



## NAMA EVENTS



**Gauteng West and East Golf Day**  
10/11/2015 – Killarney Country Club, Johannesburg  
Contact : [johan@namagolfday.co.za](mailto:johan@namagolfday.co.za) for more information

**KwaZulu-Natal Region**  
30/10/2015 – AGM & 120 Breakfast Seminar, Durban  
14/11/2015 – ST Training Seminar, Pietermaritzburg  
21/11/2015 – ST Training Seminar, Durban  
Contact : [namakzn@nama.org.za](mailto:namakzn@nama.org.za) for more information

**Gauteng West Region**  
18/11/2015 – AGM & 120 Breakfast Seminar, Johannesburg  
Contact : [namawest@nama.org.za](mailto:namawest@nama.org.za) for more information

**Free State Region**  
28/11/2015 – Community Schemes Seminar, Bloemfontein  
Contact : [namawest@nama.org.za](mailto:namawest@nama.org.za) for more information

**Gauteng North Region**  
31/10/2015 – ST Seminar, CSIR, Pretoria  
Contact : [namanorth@nama.org.za](mailto:namanorth@nama.org.za) for more information

**Western Cape Region**  
06/11/2015 – 120 Breakfast Seminar, Green Point, Cape Town  
Contact : [namawc@nama.org.za](mailto:namawc@nama.org.za) for more information

## MANAGING AGENT INFORMATION

The views expressed by the Managing Agent are not of the publisher, editor or author of the article or editorial

