

## Changing it up, by changing your rules

At TVDM Consultants, we are always getting complaints from our colleagues and clients about how poorly people behave in bodies corporate. Our immediate response is always, “What do the scheme rules say, and have you considered updating them?”

Now we know that this process can be extremely daunting, getting owners to agree on how they are to be governed is one thing, but to get them all to show up to the meeting and vote on the rules is a totally other thing.

That’s why we have set out the process to be followed each time a body corporate would like to amend their management or conduct rules. In this regard, section 10 of the Sectional Titles Schemes Management Act 8 of 2011 (“the STSMA”) must be complied with.

Section 10(2)(a) of the STSMA provides that a body corporate can remove, amend, substitute and add to the prescribed management rules. This is done by means of obtaining a unanimous resolution of the members of the body corporate. Any changes to the management rules will only be acceptable to the extent that it does not contradict any rule found in the Prescribed Management Rules (“the PMRs”), or any clause in the STSMA.

Section 10(2)(b) of the STSMA is extremely similar to the above, and provides that conduct rules may be removed, amended, or substituted and added to the prescribed conduct rules, provided that a special resolution of the members is first obtained. Any conduct rule cannot contradict a prescribed management rule, or clause found in the STSMA.

Furthermore, section 6(2) of the STSMA provides that the body corporate must, at least 30 days prior to a meeting of the body corporate where a special resolution or unanimous resolution will be taken, give all the members of the body corporate written notice specifying the proposed resolution, except where the rules provide for shorter notice. This means that the meeting where the unanimous or special resolution regarding the passing of the rules will be considered must be called on 30 days’ notice.

Should the body corporate wish to take the resolutions via round robin, the following must be considered:

- In the case of the management rules: 100% of all owners within the body corporate will need to consent to the management rules in writing, and
- In the case of the conduct rules: 75% of all owners within the body corporate will need to consent to the conduct rules in writing.

When a body corporate undertakes to amend their management rules, Regulation 6(3) of the STSMA provides that any management rules may be added to the PMRs found in Annexure 1 of the STSMA, as long as they are not contradictory to any of these PMRs.

In addition to the above, the management rules regulate just that, the management of the scheme. In this regard, a body corporate's management rules regulate how the trustees are appointed and removed, how general meetings are run, the financial particulars of the scheme, and maintenance obligations in the scheme. It is therefore, in our opinion, within the management rules that any delegation of maintenance from the body corporate to an individual owner must be concretised.

To amend the conduct rules is a bit more, dare we say, simple. Simple from a legal perspective, but to get all owners to agree is another thing. In this regard, a body corporate's conduct rules must also not be in conflict with the PMRs, the general law or any CSOS Practice Directives on amendment of rules.

Our suggestions of some questions to cover when updating your conduct rules would be:

- Pets: are you for it or against it? If for it, how many and what size?
- Parking: are all the body corporate's parking bays legally and correctly formalised and allocated?
- People: noise times in general and noise times for building works, minimum rental period, laundry etc.;
- Swimming pool and other common property facilities: are there clear rules outlining the provisions for usage thereof? Is there adequate liability signage in place in these areas?
- SOLAR: the conditions for installation and potential formalisation of common property areas.

The above are just a few of the conduct rules we recommend covering when undertaking to amend your scheme's conduct rules.

After amending your rules and successfully passing them at the relevant general meeting, you now need to submit these rules to the Community Schemes Ombud Service ("the CSOS") along with a few other documents.

The complete list of documents to be emailed to the CSOS are as follows:

- The consolidated set of management and/or conduct rules;
- The completed CSOS Form B, available on their website;
- A trustee signed copy/ies of the unanimous and/or special resolution confirming that the rules were passed at a general meeting, and
- The signed minutes of the meeting where the resolutions were passed, illustrating the quorum, or proof that the resolutions were successfully passed as per the round robin process.

The above documents need to be emailed to [governance@csos.org.za](mailto:governance@csos.org.za), and the turnaround time is up to 30 days for existing schemes.

It is very important to note that the effective date of the amended rules is the date that the CSOS issues the certificate approving the amendments. Only once this CSOS certificate is received can the body corporate begin implementing the amended rules.



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The body corporate must keep a copy of all the rules, have them available at meetings, deliver the rules to any new owner or occupier, deliver the new rules to all owners, and on request of an owner, deliver a copy of all the rules to such owner.

It is vital that you have management and conduct rules specific to your scheme, and as you can see from the above, it is a fairly simple process to follow, the most difficult part is deciding on which rules should be amended or added, as well as the correct wording of each rule.