



# NAMA MEMBERSHIP CODE OF CONDUCT FOR MANAGING AGENTS





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## 1. PRELIMINARY

This Code of Conduct for managing agents is applicable to all the managing agent (“corporate”) members of NAMA.

This Code sets out fundamental principles of ethics for managing agents, reflecting the profession’s recognition of managing high financial assets. These principles establish the standard of behaviour expected of a professional managing agent. The fundamental principles are integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

A contravention of, or failure to comply with any requirements of the Code, may be regarded as a Punishable Conduct or misconduct in terms of this Code, and as such may be investigated and if appropriate the member or associate may be found guilty and may be liable for penalties as described herein.

## 2. DEFINITIONS

In this Code of Conduct, unless the context indicates otherwise:

- 2.1 “Managing Agent” includes a Property Practitioner referred to in chapter 1, section 1.[c] of the definition of a Property Practitioner as contained in the Property Practitioners Act, Act 22 of 2019, assented to on 3 October 2019 and Chapter 1, section (1) (a) of the Sectional Titles Schemes Management Act and Regulations, Act 8 of 2011.
- 2.2 A “Managing Agent” is defined as any person, who for remuneration, manages a property on behalf of a community scheme which includes the rendering of administrative, financial, and secretarial services or offers to render any management service to a community scheme in his or her capacity as such.
- 2.3 “Management agreement”, a mandate or agreement whereby a Managing Agent undertakes to render services to a community scheme and where such an agreement is concluded following Prescribed Management Rule 28 of Annexure 1 to the Regulations of the Sectional Titles Schemes Management Act 8 of 2011, or the relevant governance documentation of the community scheme.
- 2.4 “Community scheme”, means a community scheme that includes a body corporate, share block company, management association, or homeowner’s association.
- 2.5 “NAMA” means the National Association of Managing Agents.
- 2.6 “Code of Conduct” means the rules and standards of behaviour and ethical principles applicable to all the managing agent (“corporate”) members of NAMA.



### 3. APPLICATION

- 3.1 Managing Agents, as members of NAMA, must comply with this Code of Conduct.
- 3.2 Managing Agents must also comply with any regulatory requirements as established by the Community Schemes Ombud Service [CSOS], as and when circulated and/or promulgated.
- 3.3 Managing Agents must also comply with any statutory requirements in terms of the Sectional Titles Schemes Management Act 8 of 2011 and its Regulations, any requirements as per the governance documentation of the community scheme, as well as any lawful mandate resolved by the trustees.
- 3.4 The duties and obligations imposed on Managing Agents by this Code of Conduct are imposed in favour of the community scheme with whom the Managing Agent has concluded, or is about to conclude, a management agreement, and the conduct of Managing Agents with respect to the industry as a whole.
- 3.5 Cognisance is given that the Code of Conduct does not contain details on all Acts and Regulations and that Regulatory requirements as stipulated must be considered and included.

### 4. DISCLOSURE BY MANAGING AGENTS

- 4.1 Before entering into a management agreement with a community scheme a Managing Agent is required, in writing, to disclose the following information to such community scheme:
  - 4.1.1 The Managing Agent's trade name and, in the case of a company, close corporation or trading trust, its registered name, and registration number;
  - 4.1.2 The Managing Agent's postal and business street address, telephone number, and e-mail address;
  - 4.1.3 The date when the Managing Agent was established and the date it commenced trading as a Managing Agent;
  - 4.1.4 Confirmation and proof that the Managing Agent has a current Professional Indemnity Insurance Policy in place and the amount of such cover;
  - 4.1.5 Confirmation and proof that the Managing Agent is registered as a Property Practitioner, with the relevant fidelity fund certificate (FFC), or is exempt from this requirement as per the Property Practitioner's Act, and that a copy of the FFC for the current period issued to such Managing Agent by the Property Practitioners Regulatory Authority (PPRA), with a letter confirming that the original FFC is available to be viewed at the offices of the Managing Agent;



- 4.1.6 Whether the Managing Agent (and/or its partners, members, shareholders, directors or trustees, as the case may be), directly or indirectly, has or is about to acquire, any proprietary or other personal interest in the community scheme concerned, or the immovable property managed, controlled or administered by such community scheme, and, if applicable, details of any such interest;
- 4.1.7 Details of any business activities, other than as a Managing Agent, in which the Managing Agent is materially engaged from the same premises where it renders services as a Managing Agent, using staff also employed by it in its capacity as a Managing Agent;
- 4.2 Before entering into a management agreement with a community scheme a Managing Agent must furnish the following documents to such community scheme:
  - 4.2.1 A copy of their standard management agreement used by the Managing Agent in respect of agreements concluded with community schemes, including a copy of the Managing Agent's additional fee schedule;
- 4.3 Before entering into a management agreement with a community scheme a Managing Agent must allow the community scheme, if requested, reasonable opportunity to:
  - 4.3.1 Study the information and documents furnished above;
  - 4.3.2 Contact other community schemes for whom the Managing Agent has rendered, or is rendering, management services to obtain independent information about the nature and history of the services, rendered by such Managing Agent. In this regard, a minimum of 2 (two) references of similar community schemes where the Managing Agent is currently employed must be provided to the potential community scheme.
- 4.4 If a management agreement has been concluded with a community scheme, a Managing Agent must, during the period of such agreement, notify the community scheme if any material change occurs in any of the information furnished to such community scheme under this clause.
- 4.5 A Managing Agent must, after the conclusion of a management agreement, furnish the community scheme with:
  - 4.5.1 The name of the Managing Agent's appointed Auditor, if applicable;
  - 4.5.2 The name, postal and business address, telephone number, and e-mail address of the person at the Managing Agent's office with whom the community scheme is to liaise during the period of the management agreement and all relevant documentation of all training completed by the person;



## 5. THE MANAGEMENT AGREEMENT

- 5.1 A management agreement and any renewal or extension thereof must:
- 5.1.1 Comply with PMR 28 of the STSMA, if applicable;
  - 5.1.2 Be confirmed in writing;
  - 5.1.3 Be signed by or on behalf of the Managing Agent and the community scheme and in the case of a body corporate the resolution of the trustees appointing the Managing Agent must be attached to the contract;
  - 5.1.4 State the date on which the Managing Agent will commence with the rendering of the services to the community scheme in its capacity as such;
  - 5.1.5 State the date on which the agreement will terminate and/ or the notice period required by either party to terminate the agreement;
  - 5.1.6 Contain all the material terms of the agreement, including all stipulations and disclosures prescribed by law;
  - 5.1.7 Contain a full and precise description of:
    - 5.1.7.1 The management service or services that the Managing Agent undertakes to render;
    - 5.1.7.2 The extent to which the Managing Agent is empowered by the community scheme to perform any management service on behalf of and/ or in the name of the community scheme;
    - 5.1.7.3 The Managing Agent's duty (if any) to invest trust money as contemplated in section 54 of the Property Practitioner's Act 22 of 2019;
    - 5.1.7.4 The person entitled to any interest earned on monies collected or received by the Managing Agent on the community scheme's behalf, while such monies are kept in trust in terms of section 54 (2) (a & b) of the Property Practitioner's Act 22 of 2019;
    - 5.1.7.5 The remuneration to be paid to the Managing Agent in respect of the management services provided to the community scheme, when such remuneration becomes payable and the manner in which it must be paid;
    - 5.1.7.6 Any charges that the Managing Agent may levy on the community scheme, or costs that it may recover from the community scheme, in respect of management services rendered to the community scheme, over and above the agreed remuneration in terms of the contract.



- 5.2 A Managing Agent may not be a party to any agreement with a community scheme or accept any stipulation in its favour whereby:
- 5.2.1 The community scheme's right to cancel the management agreement by reason of the Managing Agent's breach of the contract is wholly excluded;
  - 5.2.2 The community scheme waives any of its rights conferred by law or any protection afforded by this Code of Conduct;
  - 5.2.3 The community scheme is obliged to pay a fee or penalty when lawfully terminating the agreement;
  - 5.2.4 The community scheme may only amend, terminate or cancel the management agreement by a resolution requiring any majority or procedure other than what is prescribed by law or the community scheme's constitution for the passing of the relevant resolution;
  - 5.2.5 A Managing Agent is given an option or other right to renew the management agreement which, if exercised, will deprive the community scheme of the right it would otherwise have had not to renew the agreement at the expiry thereof;
  - 5.2.6 The Managing Agent may charge the community scheme a fee in an unspecified amount for any service rendered to the community scheme.
- 5.3 The Managing Agent may not at its discretion:
- 5.3.1 Deviate from any duty imposed on it by the management agreement;
  - 5.3.2 Assume any powers or functions not stated in the management agreement.
- 5.4 The Managing Agent may not without the community scheme's consent delegate any of the duties imposed on it in terms of the management agreement to any person other than an employee employed by the Managing Agent in the normal course of its business;
- 5.5 No Managing Agent may render or purport to render any management service to a community scheme unless it has entered into a written management agreement with such community scheme, which complies with the provisions of any relevant legislation and this Code of Conduct;
- 5.6 A Managing Agent must without undue delay, free of charge, furnish the community scheme concerned with a copy of the signed management agreement, or any extension or renewal thereof as the case may be, within 3 (three) days of signing thereof.



## 6. DUTY TO ACCOUNT AND REPORT

### 6.1 A Managing Agent must:

- 6.1.1 Keep full records in respect of the performance of the duties imposed on it in terms of a management agreement;
- 6.1.2 Allow access to the records referred to in clause 5.1.1 to any person entitled thereto by law or otherwise authorised by the community scheme concerned, it must be noted that such access will be regulated in terms of the Promotion of Access to Information Act 2 of 2000 and the Protection of Personal Information Act 4 of 2013;
- 6.1.3 Forthwith, in writing, report to the community scheme concerned all aspects about a management service undertaken by the Managing Agent, requiring the community scheme's special and urgent attention;
- 6.1.4 Submit a written report to the community scheme concerned as often as agreed to by the community scheme and the Managing Agent which:
  - 6.1.4.1 Sets out all actual income received, and actual expenditure incurred, relating to the community scheme's affairs, during the time period in question;
  - 6.1.4.2 Includes an analysis of variances (if requested) in the budget relating to the community scheme's affairs;
  - 6.1.4.3 Contains copies or a summary of all municipal and insurance accounts paid and not paid on the community scheme's behalf (if requested);
  - 6.1.4.4 States the credit/debit balance on hand in every bank account administered by the Managing Agent on the community scheme's behalf;
  - 6.1.4.5 Discloses to the community scheme concerned all information which may be relevant to the community scheme in respect of its functions and duties or its relationship with the Managing Agent. This may include details relating to the inability to pay the insurance premiums or municipal accounts, as well as any other issues considered by the Managing Agent to have been of importance during the month in question.

- 6.2 A Managing Agent may not conceal or withhold from a community scheme any information, document, or facts within its possession or knowledge which are or could reasonably be material to the community scheme relating to its management responsibilities or the property development scheme under its control.





## 7. PERFORMANCE OF MANAGEMENT SERVICES

- 7.1 A Managing Agent must perform the duties imposed on it in terms of the management agreement and any other duty mandated to them by the trustees with due care and skill, diligently, and without undue delay.
- 7.2 A Managing Agent may not render, or purport to render, or enter into a management agreement, whereby it undertakes to render any management service to a community scheme, if the rendering of such management service falls outside of its field of competence or expertise, unless it will, in the rendering of such service be assisted by the relevant professional person (legal or otherwise) having the required degree of skill and knowledge, and this fact is disclosed to the community scheme.
- 7.3 A Managing Agent must in the performance of any management service rendered to, or on behalf of, a community scheme, comply with all applicable statutory provisions, rules, regulations, and by-laws, in particular, all applicable provisions contained in, and rules and regulations made under the following legislation, please note that the below list is not exhaustive:
- 7.3.1 Sectional Titles Schemes Management Act 8 of 2011;
  - 7.3.2 Community Schemes Ombud Service Act 9 of 2011;
  - 7.3.3 Share Blocks Control Act 59 of 1980;
  - 7.3.4 Property Time-sharing Control Act 75 of 1983;
  - 7.3.5 Housing Development Schemes for Retired Persons Act 65 of 1988;
  - 7.3.6 Companies Act 71 of 2008;
  - 7.3.7 Constitution or Memorandum of Incorporation of the community scheme;
  - 7.3.8 The Property Practitioners Act 22 of 2019;
  - 7.3.9 The Promotion of Access to Information Act 2 of 2000;
  - 7.3.10 The Protection of Personal Information Act 4 of 2013;
  - 7.3.11 The Sectional Titles Act 95 of 1986;
  - 7.3.12 The terms of the relevant management agreement concluded between the Managing Agent and the community scheme.



- 7.4 A Managing Agent rendering management services to more than one community scheme:
- 7.4.1 Must properly keep separate accounting records in respect of the affairs of each community scheme for whom management services are rendered;
  - 7.4.2 May not transfer funds from the account of one community scheme to the other, whether by way of a loan or otherwise.
- 7.5 If a management agreement imposes a duty on a Managing Agent to:
- 7.5.1 Make available any document, the Managing Agent must furnish to the party concerned, a legible copy of the document in question within 14 (fourteen) days from receipt of the written request, except in the instance where someone requests body corporate records in terms of PMR 26 and 27;
  - 7.5.2 Keep the minutes of any meeting relating to the community scheme's affairs, and draft minutes of the meeting, and make them available to the chairperson and trustees of the meeting in a typed and properly worded format not later than 7 (seven) days after the meeting, in the case of a body corporate, and within the specified time limit for other types of community schemes.

## 8. CONFLICT OF INTEREST AND DISCLOSURE OF BENEFITS

- 8.1 A Managing Agent who has concluded a management agreement with a community scheme must avoid any material conflict between its own interests and those of the community scheme concerned;
- 8.2 Before entering into any contract with a third party on the community scheme's behalf, notify the community scheme in writing of any personal interest which the Managing Agent (or any of its employees, directors, members, trustees or partners) directly or indirectly has in respect of the contract or such third party;
- 8.3 Forthwith disclose to the community scheme any material gifts or benefits directly or indirectly received by or accruing to the Managing Agent from third parties on account of the services rendered by the Managing Agent to the community scheme.



## 9. DUTY TO ASSIGN SKILLED STAFF

- 9.1 A Managing Agent must ensure that all employees assigned by it to render management services to a community scheme are sufficiently trained and skilled to render such services, and if they are not trained or skilled, that such employees:
- 9.1.1 Undergo the necessary training to acquire the required skills, as may be required by relevant community scheme industry legislation;
  - 9.1.2 Are adequately supported by skilled and trained persons until they acquire the necessary skills and knowledge themselves.

## 10. DUTIES ON TERMINATION OF A MANAGEMENT AGREEMENT

- 10.1 A Managing Agent must, after the termination of a management agreement to which it is a party, hand over to the community scheme or its nominee under the prescribed management rules, the relevant governance documentation of the scheme, within 10 days from date of termination:
- 10.1.1 All books, documents, records, financial statements, bank statements, invoices, statements of account, correspondence and minute books relating to the community scheme's affairs;
  - 10.1.2 A payment of all funds under the control of the Managing Agent relating to the community scheme concerned. This must be done within 30 days, unless other mutually agreed arrangements have been made between the Managing Agent and the community scheme for the control of such funds to be taken over by the community scheme or its nominee. Funds required for delayed expenses including but not limited to, insurance premiums, audit fees or municipal charges may be withheld until settlement of all monies due has been completed.

## 11. BREACH OF CODE OF CONDUCT

- 11.1 In the event of any alleged contravention by a NAMA member of the provisions contained within this Code of Conduct, an elected Review Panel ("the Panel") will investigate said alleged contravention, and if a majority of the Panel present at the meeting, agree that a provision/s of this Code of Conduct has/have been contravened the Panel may, by majority resolution, impose on the offender a penalty, taking into consideration the nature and effect of the offence.
- 11.2 The aforementioned Panel will consist of:
- 11.2.1 The Chairperson of NAMA;
  - 11.2.2 The Director of the region in which the alleged contravention took place;
  - 11.2.3 The General Manager of NAMA, and



- 11.2.4 Three other non-managing agent NAMA members, elected by the Chairperson and General Manager, who have expertise in the matter at hand.
- 11.3 A Complainant must lodge a signed and motivated complaint within 30 days of the alleged contravention with the General Manager, detailing the nature of the contravention and any supporting evidence and/or documentation.
- 11.4 The General Manager must then evaluate the credibility of all alleged contraventions brought to their attention, and should they deem it appropriate and reliable, the General Manager will then convene a suitable Panel to review the matter at a meeting.
- 11.5 A written notice, by which the alleged offender, is informed of the purpose of the aforementioned meeting and invited to attend, either in person or virtually, must be sent to the member at least 7 (seven) days before the meeting is held. At the meeting, the member must be given the opportunity to present their case, but except insofar as they will be permitted by the Chairperson, they may not participate in the outcome of the meeting.
- 11.6 Should the Panel by majority resolution resolve that the conduct of the accused does warrant a contravention of this Code of Conduct, the Panel, while taking into account the nature and effect of the contravention, may by majority resolution elect to revoke the membership of the accused without any refund of membership fees, or issue a warning in this regard.
- 11.7 Should a warning be issued, and the contravening behaviour persist within a 6 (six) month period, the Panel may convene a meeting to discuss the matter, either virtually or in person, and may resolve in the absence of the accused to revoke their membership without any refund of membership fees, and without any further warning to the accused.
- 11.8 If the contravention alleged is of such a serious nature that it could attract criminal or civil liability, then the Panel can elect to refer the matter to the Property Practitioners Regulatory Authority, or any other competent court and/or tribunal.
- 11.9 The Panel must record the outcome of the meeting, and may elect to:
- 11.9.1 Revoke the membership;
  - 11.9.2 Issue a warning, and or fine not exceeding R5000.00; or
  - 11.9.3 Withdraw the complaint against the accused.