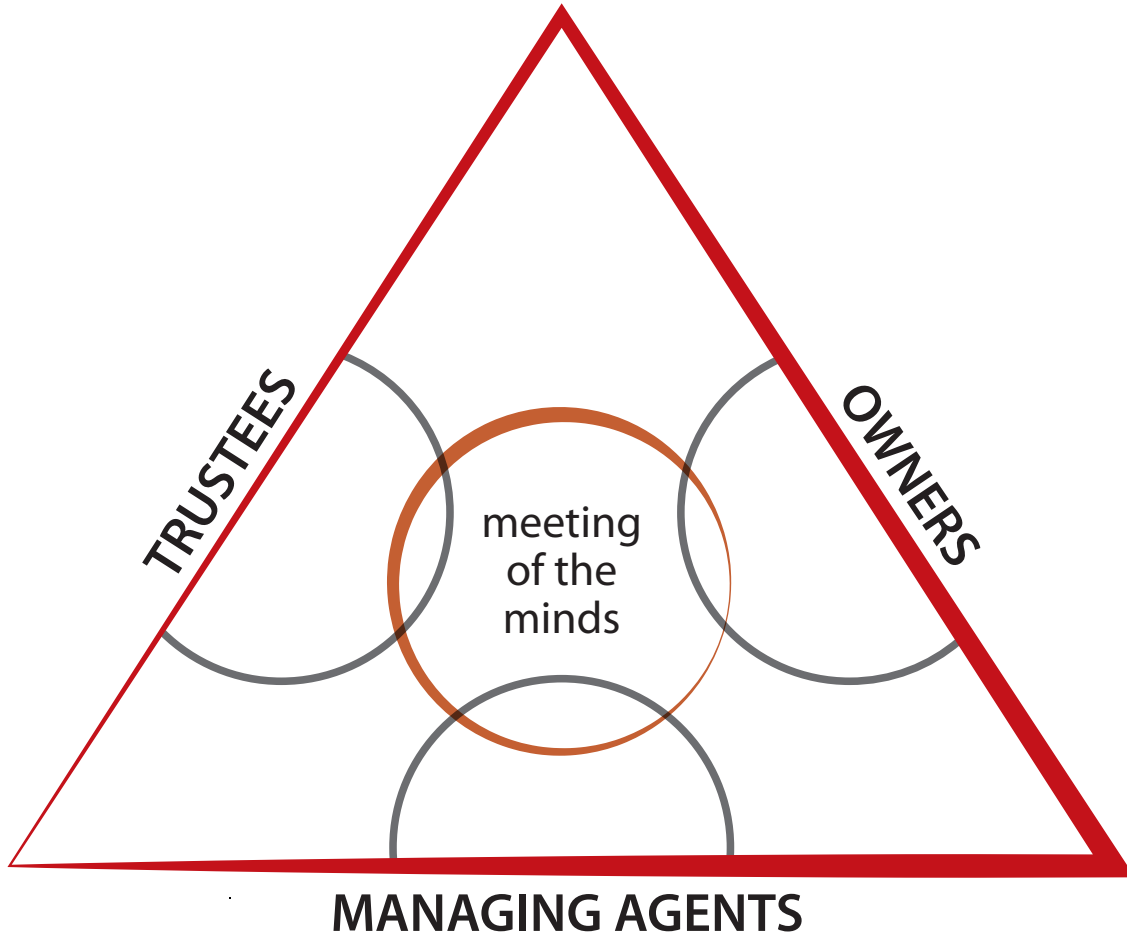


*Improving* **KEY RELATIONSHIPS**  
*in* **SECTIONAL TITLE**  
*for the benefit of all*

*Insightful information to assist the 3 parties (Owners, Trustees and Managing Agents) to bring about an improved relationship for the positive benefit of the Body Corporate.*



**MANAGING AGENTS**

*With compliments from*



**HARLEV**

**PROPERTY MANAGEMENT**

(PTY) Ltd

# ***Improving* KEY RELATIONSHIPS in SECTIONAL TITLE *for the benefit of all***

Compiled by Shirley Baillie of S Baillie and Associates, author and publisher of the manual Keyword Access to the Sectional Title Legislation. [www.keywordaccess.co.za](http://www.keywordaccess.co.za)

This publication is intended to be used as a basic introduction and information document only. It is not a legal document, nor does it encompass all that there is to know about Sectional Title. Whilst the greatest care has been taken in the compilation of this document, the editor/publisher cannot accept responsibility for errors or omissions contained herein.

## **Abbreviations used**

Managing Agent (MA) = Portfolio Manager for the sake of this publication

Body Corporate = BC

Prescribed Management Rule = MR

CSOS = Community Schemes Ombud Service Act of 2011 effective 7 October 2016

STSMA = Sectional Title Schemes Management Act of 2011 effective 7 October 2016

## **Notes pertaining to the content below**

Trustees were re-named Scheme Executives per the legislation effective 7 October 2016.

He = She

Any words/sentences/paragraphs in italics means a direct quote from the relevant Act/Rules/Regulations which are referenced next to the extract.

Any underlining, in these sections, is put there by the Editor to make it easier to pick up the key aspects.

## **Objective of this publication**

- To improve inter-communication and understanding between *Managing Agents, Owners and Trustees* with the intention of improving the cohesion and minimising the frustrations.
- Work towards a better run BC with an increasing investment value and better living conditions.
- Become an informed, proactive owner and scheme executive/trustee.
- Reduce stress on trustees and MAs (one which does not get paid and the other who has a never-ending flow of work).
- Create awareness that all parties come with their own preconceptions; none of which may be wrong, but it is necessary to find common ground, through education and positive interaction.

## MANAGING AGENTS

### What gives a MA sleepless nights?

- Owners who complain about an issue relating to other resident/s but don't want their "name" used in the complaint.
- "Politics", in-house fighting and expecting the MA to become involved.
- Unacceptable language (swearing for example), not being allowed to complete a sentence or explain in full.
- Owners not knowing their responsibilities, the BC Conduct Rules, the basics of sectional title legislation.
- Being told "*that is what we pay you for*" or "*this is what we pay the levies for*"!
- Raising petty and non-agenda items at the AGM.
- The lack of understanding of the owners regarding the misconception that the MA is the BC. *The MA is a service contracted on behalf of the BC to carry out specific duties listed in the Management Contract only.*
- Asking questions about the content circulated in the AGM pack *at the meeting*, when these should have been asked and answered before the meeting, to leave time for key issues to be discussed.
- Being ambushed after the AGM or during a site visit and listening to a tirade about trivial aspects, when the correct procedure would be to lodge a *written complaint* at the correct time *to the right person*.
- Owners expecting "instant gratification" or an *immediate, comprehensive response*.
- Certain queries take time, consideration and often require checking against the recent amendments.
- Owners that e-mail and then phone 20 minutes later to check whether the email has been received– *use a read receipt option*.
- Being accused in meetings or in a circular email or newsletter for aspects incorrectly or not done, when it is the trustees who fail to make decisions, or act. *The trustees are in charge and not the MA. They cannot make decisions on behalf of the trustees.*
- Those owners/trustees who appear to view the MA as their "enemy" for some reason. Maybe they are newly elected and had heard rumours, or they had a fall out with the previous trustees and saw the MA as "on their side" and then tarred them with the same brush.
- Owners not knowing their boundaries (e.g. whether it is a matter between owners as opposed to the common property and an owner).

### Misconceptions about MAs

- MAs **do not** have a direct line "upstairs", so they do not have any control over contractors arriving or Council delivering, weather or power outages, lightning strikes, Telkom or DSTV signals. They can only follow-up regularly and advise accordingly.
- MAs **do** want to have a good relationship with their owners and provide good customer service. It is not easy when rude owners don't listen, do not have a basic understanding of sectional title and their own responsibilities and duties, but still insist on arguing.

- MAs are not robots – they have loved ones, homes to go to, feelings and “normal” blood in their veins. A respectful approach towards them will go a long way!
- MAs are **not the enemy** – they are people who provide a service, who need to earn a living, and endeavor to remain impartial in the face of emotional community living.

### Who is the MA and what is the role that they play?

- *“The managing agent means any person who provides management services to a community scheme for reward”* (money or otherwise). Refer CSOS 1 and also MR 2(1)(j). This usually includes secretarial, financial, administrative and management functions.
- MAs can be appointed by the trustees, or by the BC.
- General purpose of the MA is to assist the trustees to manage the complex in the best possible way, for the benefit of ALL the owners.
- There is little set out in the legislation regarding the duties of the MA. Therefore, the service which your MA will provide needs to be set out in the Management Contract:
- The contract (mandate) must be in writing upfront, to define boundaries, responsibilities, duties and areas of liability etc.
- Individual requirements of the complex in addition to what the MA offers in the standard contract should be minuted, and an addendum made to the contract or a new contract drawn up and signed by both parties, if agreed.

*Also refer MR 28*

### Requirements of the MA

- Having a current fidelity fund certificate from the Estate Agency Affairs Board (now known as the Property Practitioners’ Regulatory Authority) is mandatory.
- Having a contract between the MA and the BC is essential.
- Membership of Nama (National Association of Managing Agents) is **not obligatory**, but the association does keep their members up to date with what is happening in the industry, provides training and will provide a template contract for registered members, if required.  
[www.nama.org.za](http://www.nama.org.za)

### Appointment Period of the Managing Agent

Maximum length of a fixed term contract is 3 years but can be cancelled sooner, under certain conditions. Refer MR 28(7)&(8)

## TRUSTEES in the latest legislation are termed SCHEME EXECUTIVES

### What makes a good trustee?

- A person who is willing to serve his/her community with no reward, but the satisfaction of being part of a team that is aiming for a well-run building with the goal of growing one's investment and having a good quality place in which to live.
- A person who has done a course on Sectional Title, or at least understands the basics and is willing to learn more and listen.
- A person who recognises that each party has a role to play and be familiar with what each one is and take cognisance of the boundaries.
- A trustee who leaves behind his own agenda *and acts in the best interests of all*.
- Being prepared to put the necessary time and commitment into dealing with a portfolio in the best way possible e.g. dealing with his portfolio aspects arising from the meetings, preparing his monthly reports, doing walkabouts at the scheme to assess what needs attention; report it to the trustees or MA for action and being an active part of the team.
- A trustee who recognizes that he has a vested interest in the best outcomes of a BC which is run well.

### First requirements of the newly elected trustees

At the first meeting of the trustees, it is necessary to vote in with a majority vote, from amongst the elected trustees, a **Chairman** for the ensuing year.

### Role of the Chairman includes

- Conducting any BC or trustees' meeting in an orderly manner.
- Ensuring that all resolutions or amendments, tabled for members approval at a BC meeting fall within the scope of the notice and the powers of the BC. Similarly, at the trustee meetings, resolutions taken must be within the trustees' power.
- Ensuring that the scheme's rules, the minute books and any other documents relevant to the items of business on the agenda of the meeting are available at the meeting.
- Acting fairly, impartially, and courteously to attendees, and surrendering the chair to a temporary chairperson, elected by the members, should he wish to engage in a debate on an item of business.
- Not attempting to influence members' views on any items of business or dictate their vote on any item of business prior to the vote being passed.

**For more information** - Article by Zerlinda van der Merwe – Paddocks Article Reference: Paddocks Press: Volume 12, Issue 05, Page 01. Posted In: Paddocks Press Newsletter | 31/05/2017  
[www.paddocks.co.za](http://www.paddocks.co.za)

Also refer to Community Schemes Ombud Service Act-

Regulation 14 (1) A scheme executive must

- (a) take reasonable steps to inform and educate himself or herself about the community scheme, its affairs and activities and the legislation and governance documentation in terms of which the community scheme operates.
- (b) take reasonable steps to obtain sufficient information and advice about all matters to be decided by the scheme executives to enable him or her to make conscientious and informed decisions.
- (c) unless excused by the chairperson of the scheme executives on reasonable grounds –
  - (i) attend all meetings of the scheme executives; and
  - (ii) attend the community scheme's annual general meeting if it holds such a meeting.
- (d) exercise an active and independent opinion with respect to all matters to be decided by the scheme executives; and
- (e) exercise due diligence in relation to any business of, and necessary preparation for and attendance at meetings of the scheme executives or any committee to which such scheme executive is appointed.

(2) The obligations of a community scheme executive in terms of sub-regulation (1) are in addition to and do not derogate from the fiduciary obligations of a scheme executive in terms of the common law or any applicable statute.

### **Making the most of the first trustees meeting held after the AGM**

- irrespective of whether some, or all of the previous *trustees, have been re-elected.*

Apart from the matters brought forward from the previous trustees, the agenda could include the following so as to set ground rules and a plan from which the MA and trustees can start to establish successful communication and interaction:

- Election of the Chairman.
- Allocation of portfolios to the various trustees.
- Go through the current Management Contract, having provided each trustee with a copy of the Management Contract *before* the meeting. It will allow the trustees to know the role, duties and boundaries of the MA.
- Review any aspects which had become part of the process with the previous trustees and MA. Add anything new which may be required, pass a trustee resolution on these aspects, or additional work to be done and the applicable costs, and create an addendum to the contract, or draw up a new contract.
- Take a resolution as to when default payers will be handed over and to whom.
- Decide the rate of interest to be charged on overdue accounts and from which date.
- Trustees to take the resolution based on the budget approved at the AGM which gives rise to the revised levies for the ensuing year, so that the notification can be sent out to owners. *Refer MR 25 (1)*

- Highlight the fiduciary duties of the trustees. That person/s needs to declare any potential conflict of interest at this time. *Refer CSOS Regulation 15 and STSMA 8 (1-4).*
- Decide what the primary source of communication will be e.g. via email, WhatsApp, interactive website etc. and establish what the expected turnaround time will be.
- Decide who will get what communication e.g. does everyone want financial reports etc.?
- Deal with matters arising from the AGM, including directions and restrictions.
- What is the goal and focus area for the trustees this year?
- What training should be considered for the trustees. It is a legitimate BC expense and a necessity per the CSOS requirement for trustees to be knowledgeable.
- Set the meeting schedule for the year; decide with reference to the terms of the contract, which meetings the MA will attend. Agree who will take the minutes and circulate them.

### **The DOs of being a good trustee**

- By accepting nomination as a trustee, it is necessary to be proactive, responsive, knowledgeable and an active part of the committee.
- As the MA can only ACT ON the trustees' instructions, the trustees need to make informed and timeous decisions at a trustee meeting or via a Round Robin, by means of a majority vote.
- Run organised and well controlled meetings for which everyone is prepared, and decisions can be made easily.
- Refrain from making it a social event, with drinks at meetings, which then drag on.
- Emails are a good way to send a request and get feedback as it provides a paper trail. The MA can deal with the issue when he has a "gap" and can access the info needed.
- What is put in writing remains on file, so do it politely and with clarity.
- MAs are not regular site visitors and seldom run the scheme (unless it is part of the Management Contract). It therefore is important for the trustees to actively manage the scheme site themselves or appoint a building manager.
- In respect of non-compliance, sending letters via the MA (rather than from individual trustees) makes it more objective and ensures that there is a paper trail.
- Every effort should be made by the trustees to attend training and read the many informative newsletters and articles available on the internet. The lack of understanding of sectional title legislation is a challenge when dealing with trustees.
- If the MA gives advice on a point of legislation and it is not taken by the trustees, this should be recorded in writing. MAs then cannot later be accused of acting unprofessionally.

## The DON'Ts for trustees

- Don't think that you can run the complex in your *own* way – there is legislation to ensure that aspects are dealt with correctly and equably.
- Don't blame the MA for contractors not pitching up on time, or the Council not dealing with issues which are outstanding.
- Don't expect the MA to make decisions for the trustees - the MA can only *act on the instructions* of a majority decision taken by the trustees. Refer MR 14(4),
- Don't give the MA illegal instructions (e.g. only one trustee needs to sign a document).
- Rude, ignorant and bossy trustees are most upsetting.
- Don't swamp the MA with unnecessary phone calls, or all the backwards and forwards correspondence of the decision-making process and politics.

## What can trustees reasonably expect from their Managing Agent?

- Guidance coming from a background of knowledge, experience, and objectivity.
- Timeous, efficient service in line with the management contract.
- Not to be charged with items that are not in their contract. Should additional costs arise, the MA needs to get clearance from the trustees, in the same way that any other quote will be considered, (e.g. preparing for, and attending a CSOS hearing; dealing with a staff problem which involves the CCMA; having to attend an extraordinary meeting, updating Conduct Rules).
- That the insurance renewal with its advice and comparison quotes from the insurance brokers is received and *passed along timeously* to the trustees to enable them to make an informed decision.
- Encouragement to improve their knowledge, support and honest, direct, informative answers to their questions.
- To be proactive in encouraging owners to attend BC meetings, especially the AGM, and to ensure a quorum.
- Keeping tight control of the payment of levies.
- Ensuring the management accounts are published shortly after month-end.
- Ensuring the minutes are an accurate reflection of any meeting and circulated within the legislated time period of a maximum of 7 days.
- To sign a Management Contract with specific duties and areas of responsibilities listed therein, to ensure that the boundaries are clear-cut.
- That the AGM will be held within the 4-month time period laid down by legislation.



## OWNERS

### Duties *Refer to STSMA13 (1)*

- Allow the BC to access the section or EUA on written reasonable notice. Notice not required if an emergency.
- Carry out any work that a specific authority deems necessary and keep his section in a good state of repair.
- Keep his EUA clean and neat; defray any costs. *Refer to STSMA 3(1)(c)*.
- Make use of the common property so as not to interfere with anyone else's enjoyment.
- Not use his section or EUA in such a way as to be a nuisance to anyone else.
- Advise the BC of any change of occupancy.
- Only use the section in the way it was intended to be used (refer plan). e.g. do not change a garage to a staff room.
- Pay levies on time.

*Also refer Management Rule 3(2). A member must take all reasonable steps to ensure compliance with the conduct rules in force in terms of section 10(2)(b) of the Act by any tenant or other occupant of any section or exclusive use area, including the member's employees, guests, visitors and family members.*

### What makes an ideal owner?

- On purchasing a flat, the owner becomes a member of the BC and recognises that with this comes the responsibilities and duties that are part of the ownership. *Refer STSMA 2(1), prescribed conduct rule 7.*
- Accepts that he is one of *many owners* under the management of the MA and does not have a monopoly on the time of the MA.
- One who educates himself with at least the basic understanding of sectional title e.g. register for newsletters with [www.paddocks](http://www.paddocks) or [The Sectional Title Insurance Guide](#) and [www.keywordaccess.co.za](http://www.keywordaccess.co.za).
- One who empowers himself with regard to his own BC information, which is available from the MA. e.g. trustee minutes. You can also attend the meetings (subject to certain conditions) and speak but cannot vote; Monthly management accounts; Details of the insurance policy; Plans; Conduct Rules. *Refer MR 27.*
- Volunteering to be a trustee or contribute to a subcommittee.
- A respectful approach towards the MA and trustees will positively affect the outcome of the service.
- One that when there is an issue, sends a polite, to the point email, to the correct person with dates and facts, with the issue, the complex name and unit number in the subject line (less frustrating than phone calls and you have a paper trail).
- Knows, respects and acts within the confines of the conduct rules.

- Being considerate e.g. use the EMERGENCY number for exactly that purpose and avoid saving up problems during the week and then only reporting them after hours or on the weekend or in a “Monday morning rant” to the MA.
- If you wish to meet with the MA, book an appointment and don’t just pop in.

### **What owners can expect from Managing Agents**

- A response to questions or queries within 48 hours (excluding weekends and Public Holidays) – even if it is an automated one, acknowledging receipt. Then, within 5 days maximum, the complete answer.
- When a request is sent in writing for certain records or documentation, this needs to be provided within 10 days, and a copy of the conduct rules within 5 days. *Refer MR 27(5)*,
- You may be asked to pay a fee, but it needs to be reasonable.
- Notices of trustee meetings to be held and a copy of the minutes, if requested in writing.
- To rely on the professional knowledge of the MA.
- To return calls, if a message is left, within 24 hours.
- To be treated with courtesy and respect.