# Out with the old, in with the new - body corporate rules

Many owners of a unit in sectional title schemes, especially those schemes opened before 7 October 2016, remain confused as to which body corporate rules apply to their scheme. This confusion arose with the introduction amidst much fanfare of the so-called new sectional title legislation in 2016.

By Lisa Tonini 19 Apr 2021

Lisa Tonini, director at Fluxmans

The Sectional Title Schemes Management Act 8 of 2016 (the STSM Act) and the interrelated Community Schemes Ombuc Service Act 9 of 2011 (the CSOS Act) came into operation on 7 October 2016; the so-called third generation sectional title legislation both supplemented by regulations.

Section 10 (12) of the STSM Act prescribes that, “Any rules made under the Sectional Titles Act (the 1986 Act being the s called second generation sectional title legislation) are deemed to be made under this Act.”

The transitional arrangement in Section 21 of the STSM Act does provide that, “Rules prescribed under the Sectional Title Act must continue to apply to new and existing schemes until the minister has made regulations prescribing management rules and conduct rules.”

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## Existing special management rules

New regulations were indeed promulgated on 7 October 2016 and consequently on that date the “old” prescribed rules lapsed and the new 2016 rules became applicable to all schemes, old and new, except special rules “made” by the body corporate prior to that date (and which rules are retained). It is understood by the Community Scheme Ombud Service tha rules made by the body corporate referred to amended rules applicable to a scheme as opposed to legislated rules.

There is, however, one proviso and that is that any existing special management rule cannot be irreconcilable with the Prescribed Management Rules. The problem with the transitional arrangements contained in the STSM Act relates to the

proviso and the potential irreconcilability of the so-called old rules and the Prescribed Management Rules. CG van der Merwe, renowned academic and specialist, is of the view that the criterion of irreconcilability is difficult to apply in practise "Rules that merely differ in minor respects from the standard rules or merely change certain specifics are not irreconcilab Thus an amendment that changed the number of trustees from two to four would not be considered irreconcilable with the new rule on the number of trustees."

In general it should, therefore, be understood that the rules prescribed under the STSM Act apply to all sectional title schemes.

The CSOS Act, in short, introduces a new sectional title dispute resolution mechanism for sectional title schemes and othe community schemes. It also places the regulation monitoring and control of the quality of sectional title rules under the control of the Community Schemes Ombud Service, it being recognised that the operation and management of sectional ti schemes under the second generation sectional title legislation was fraught with difficulties and suffered some serious shortcomings.

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## The main characteristics of the STSM Act are threefold:

**1. In order to ensure that sectional title schemes are properly maintained, the Act places great emphasis on a bo corporate's obligation to maintain the buildings in the schemes** through the mechanism of a reserve or sinking fund t cover the cost of future maintenance and repair of the common property in a scheme.

Section 3 of the STSM Act requires a body corporate to collect contributions (levies) from all members of the body corpor to cover the common expenses and operating costs that the scheme will incur during the forthcoming financial year. The levies thus collected are to be paid into two funds managed by the body corporate:

- The administrative fund – from which the day-to-day maintenance and running costs are paid (and as shown in the approved budget); and
- The reserve fund from which long term repairs and maintenance costs are paid in terms of the Maintenance, Repair and Replacement Plan "the MRR Plan".

The Prescribed Management Rules requires a body corporate or trustees to prepare a 10-year MRR Plan in respect of ma capital items for the maintenance, repair and replacement of common property of a scheme (on a proper interpretation thi would include repainting, reroofing, repaving of common areas).

It should therefore be accepted that the 2016 rules prescribed under the STSM Act apply to all schemes and similarly the necessity for the establishment of a MRR Plan.

The MRR plan is to be tabled at every AGM and will also contain a formula as to the determination of annual contributions t such a fund and this will be reflected in the annual budget of a scheme. At an AGM, owners are required to approve the budget for the forthcoming year. Accordingly, the cost of maintenance and repairs to the common property should be provided for in all sectional title scheme's 10-year MRR Plan and included in the scheme's reserve fund budget.

**2. Stricter control over the financial affairs of a body corporate.** In addition to the creation of an obligation to establisl the funds referred to above, the Act imposes an objective criterion for the determination of the contributions to the said fur by requiring that the contributions must be determined as being reasonably sufficient as opposed to being sufficient in the opinion of the body corporate. Furthermore, the Act requires the passing of special resolutions by the body corporate with regard to the acquisition, sale, mortgage, etc., of units in the scheme (especially with regard to a commercial unit in a scheme), the borrowing of money and, lastly, with regard to the letting of common property.

**3. The promotion of openness and transparency.** Thus body corporates are required to keep proper books of account details of all income and expenditure, assets and liabilities, in other words to retain all such information as may be necessa for all members to gain meaningful insight to the financial position of the body corporate.

There are further innovations contained in the CSOS and STSM Acts, namely the higher duty of care placed onto trustees the option of appointing an executive managing agent and the use of electronic media in trustee and general meetings. However, it is recommended that advice be sought from an attorney well versed in all aspects of this field should it be necessary.

## ABOUT THE AUTHOR

Lisa Tonini, director at Fluxmans