

The responsibilities of a scheme's managing agent

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Most Sectional Title schemes, particularly as the Sectional Title Act 95 of 1986 is generally moot on this point, are in the dark as to what exactly the role of the managing agent of the scheme is. Here we aim to elucidate the responsibilities of the managing agent and clear up some of the confusion surrounding this role.

To start with, a sectional title community is a property community with prescribed management structures. The management of a sectional title scheme could therefore take place via several bodies. The most important bodies in the management of a sectional title scheme are firstly, the body corporate as the main management body, consisting of all the owners of the sectional title scheme; secondly, the trustees who are responsible for executing the statutory functions and powers of the body corporate; and thirdly, the managing agent.

Managing agent

The Act does not define a managing agent. Only in the management rules of the Act does one find some information regarding the managing agent. The Community Scheme Ombud Service Act 9 of 2011 better defines a managing agent, but this piece of legislation is unfortunately not yet operational. It is because of this lack of information regarding the managing agent that sectional owners and even managing agents themselves are somewhat in the dark as to the role of a managing agent.

Appointment of the managing agent

Management Rule 46(1)(a) of the Act states that the trustees of the scheme may appoint a managing agent, but that the trustees must appoint a managing agent when requested by a registered mortgagee of 25% of the units or by members of the body corporate in a general meeting.

A managing agent must be appointed in terms of a written agreement and the duration of the appointment will usually be for one year, after which it can be automatically renewed from year to year - unless the body corporate notifies the managing agent to the contrary and it may be terminated by notice.

Responsibilities of the managing agent

Before one can truly understand the responsibilities of the managing agent, however, one must understand the responsibilities of the body corporate and the trustees. The reason for this is that the powers and functions of the body corporate and the trustees contained in section 37, 38 and 39 of the Act, are merely entrusted to a managing agent.

The body corporate and trustees are therefore not absolved of their responsibilities. Their responsibilities, as specifically provided for in the Act, are thus carried out by the managing agent as delegated powers.

Management Rule 46(1)(a) states that the managing agent should "control, manage and administer the common property and the obligations to any public or local authority by the body corporate on behalf of the unit owners, and to exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor or caretaker". This creates a very broad mandate and adds to the confusion. If one however looks at section 37-39 of the Act the managing agent's responsibilities can include any of the following, namely to collect levies and contributions from the owners, manage the bank accounts of the body corporate, to pay the expenses of the body corporate, fulfil any obligation towards public or local authorities, assist the trustees in enforcing the rules, arrange for suitable insurance policies and to pay the premiums, provide administrative services such as arranging meetings, etc.

Managing agent agreement

One of the aspects of a managing agent that is generally overlooked is the fact that the managing agent must be appointed by way of a written contract. The responsibilities of the managing agent must thus be agreed upon between the parties as part of the appointment process. This agreement should contain the specific rights and responsibilities, whether of a limited or extensive nature, in order to avoid any disputes.

Conclusion

From the above it is clear that there are a hierarchy of functions and powers in a sectional title scheme. You have your body corporate at the top, followed by the trustees and then lastly the managing agent. The one cannot function without the other and powers are delegated from the top to those below.

Due to lack of legislative guidance it is generally advisable that a proper managing agent agreement be drafted which incorporates the specific obligations of the managing agent. This will ensure the ability to monitor the performance of the managing agent and provide clarity to all as to the mandate of the managing agent.

Additionally, it may be advisable to ensure that a managing agent register with the National Association of Managing Agents (NAMA), a non-profit company, specifically established to increase the efficiency of managing agents and to bind them to a code of conduct and good practice.