COMPEG
SECTIONAL TITLE & PROPERTY MANAGEMENT

PROPERTYMATTERS

Trustees Article 101

Managing property properly

The tale of two bank accounts

One of the functions performed by the trustees of a body corporate, in terms of section 3 of the Sectional Titles Schemes Management Act 8 of 2011 ("the STSMA"), is that they must open and operate an account with any registered bank or financial institution.

Although the term "financial institution" is not defined in the STSMA, Prescribed Management Rule ("PMR") 21 of Annexure 1 of the Regulations to the STSMA, provides that the trustees may resolve to invest the reserve funds of the body corporate in a secure investment with any institution referred to in the Financial Services Board Act, which includes registered banks, short and long-term insurers, pension funds and stock exchanges, etc. The Financial Advisory and Intermediary Services Act further refers to authorised financial services providers or representatives.

However, any investments of the reserve funds of the body corporate is limited to secure investments. Therefore, the trustees cannot take any unreasonable risks when investing the funds of the body corporate, and must ensure that any investment serves the long-term interests of the current, and future, members of the body corporate.

In terms of PMR 21, the trustees must further ensure that all money received by the body corporate is deposited to the credit of an interest-bearing bank account in the name of the body corporate or a trust account opened in terms of either the Estate Agency Affairs Act 112 of 1976 ("EAAA") or the Attorneys Act 53 of 1979.

Therefore, a scheme's managing agent may operate a centralised trust account or "bucket account", into which individual members, of each managed sectional title scheme, deposits their levy and other contributions.

In this regard, section 1(a) of the EAAA defines an **estate agent** as *any person who for the acquisition of gain on his own account or in partnership, in any manner holds himself out as a person who, or directly or indirectly advertises that he, on the instructions of or on behalf of any other person … iv) renders any such other service as the Minister on the recommendation of the board may specify from time to time by notice in the Gazette.*

On 17 July 1981, **managing agents** were included in the definition of an estate agent in terms of section 1(a)(iv) of the EAAA. Section 2 of the **Government Notice Regulation 1485/1981** published in Government Gazette 7663 RG 3233 ("GNR 1485"), included the services of **collecting and receiving** (a) *money payable by any person to or on behalf of developer or body corporate in terms of the Sectional Titles Act 95 of 1986, in respect of a unit or proposed unit*, to the definition of an estate agent in terms of section 1(a) of the EAAA.

In terms of section 32(1) of the EAAA, an estate agent shall ("must") open and keep **one or more** separate trust accounts with a bank, and deposit trust money held or received by or on behalf of an estate agent. The EAAA further provides that the trust money held in these trust accounts, shall be retained by an estate agent, in such accounts until the estate agent becomes **lawfully entitled** to the trust money, or is **instructed** to make payment of the money to another party. In terms of the EAAA, an estate agent may administer these accounts, however, the money held in credit in the trust accounts shall not form part of the assets of the estate agent.

Despite reference to a single bank account in the abovementioned provisions of the STSMA, PMR 26 provides that the trustees must keep separate bank accounts for its administrative and reserve funds.

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Zerlinda van der Merwe is an admitted Attorney of the High Court, specialist Sectional Title Attorney (BA, LLB, LLM),