

Managing property properly

Scheme management solely by an executive managing agent

The Regulations to the Sectional Titles Schemes Management Act 8 of 2011 (“the STSMA”), and the Prescribed Management Rules (“PMR’s”), defines a managing agent as any person who provides scheme management services to a body corporate for reward, whether monetary or otherwise, including any person who is employed to render such services.

Appointment of an executive managing agent

An executive managing agent is appointed, in terms of a management agreement, to perform the functions, and to exercise the powers, that would, in the normal course of events, be performed and exercised by the trustees, duly nominated and elected by the members of the body corporate. PMR 28 deals with the appointment, duties, obligations, and termination of an executive managing agent.

It is important to note that the appointment of an executive managing agent does not replace the requirement for there to be trustees. However, due to the fact that the executive managing agent takes on the role and responsibilities of the trustees, it may not be necessary to have a trustee committee, or more than the minimum required number of trustees, namely two.

For the purposes of this article, we will focus on the administration and management of a scheme in the absence of trustees, in other words Scheme Management solely by an executive managing agent.

Duties of an executive managing agent

Once appointed, the executive managing agent is subject to all the duties and obligations of a trustee, and is obliged to manage the scheme with the required professional level of skill and care. Failing which, the executive managing agent will be liable for any loss suffered by the body corporate due to their failure to exercise the required skill and care, in its administration and management of the scheme.

As is the case with trustees, the executive managing agent has a fiduciary obligation to every member of the body corporate.

In addition to the duties of trustees, the executive managing agent must arrange for the inspection of the common property of the managed scheme at least every 6 months, and report at least every 4 months to every member of the body corporate relating to the administration of the scheme.

The executive managing agent must report on:

- The proposed repairs to, and the maintenance of, the common property;
- The matters it considers relevant to the condition of the common property;
- The balance of each of the administrative and reserve funds of the body corporate, and provide a reconciliation statement for each fund;
- The expenses of the body corporate, including the repair, maintenance and replacement costs; and
- A brief description of the date and nature of all the decisions made by it.
- The report is similar in nature to the report that must be prepared and submitted by a Court appointed Administrator of a scheme.

To summarize, the appointed executive managing agent, will hold office in the place of the trustees, and will be the administrative and executive arm of the body corporate, being involved in the day-to-day running of the body corporate, by exercising and performing the duties and powers of the body corporate, subject to any provision of the STSMA, the body corporate rules, or any directions and restrictions imposed by the members.

Article reference: Paddocks Press: Volume 13, Issue 4.