

## *Managing property properly*

### Short-term letting in sectional title schemes

Many people own property in sectional title schemes for investment purposes, and they let their units out to tenants for rental income. With accommodation reservation websites such as [Booking.com](https://www.booking.com) and [Airbnb.com](https://www.airbnb.com), it has never been easier to find short-term tenants. In schemes that are located in holiday destination hotspots, city centre condominiums and seaside apartments, the landlord can collect a higher rental fee per night on a short-term basis compared to longer lease agreements.

Many bodies corporate complain that short-term tenants can be trouble-makers who breach the conduct rules, jeopardise the reputation, security and property value of the sectional title scheme. The trustees are tasked with the duty to control, manage, and administer the common property, and do all things reasonably necessary for the enforcement of the rules of the scheme. However, the trustees should not unreasonably restrict or regulate the manner in which owners use their section, and should not limit the proprietary rights of investment owners to obtain the highest rental return for their property, in the rules.

An investment owner could be adversely affected where the scheme rules restricts short-term letting of the sections in a seaside scheme. This would limit the rental pool of tenants that the owner could let the unit to, and make it difficult for owners to obtain the maximum rental for their section over the summer holidays.

The concept “short-term letting” is not defined in the Sectional Titles Act 95 of 1986 (“the STA”) or the Sectional Titles Schemes Management Act 8 of 2011 (“the STSMA”). Various provisions of the STSMA, Prescribed Management Rules (“PMRs”), and Prescribed Conduct Rules (“PCRs”) refer to and bind owners and occupiers. “Occupiers” is also not a defined term, but would include short-term tenants.

Ultimately, PMR 3(2) states that a member must take all reasonable steps to ensure compliance with the conduct rules by any tenant or other occupant of any section or exclusive use area, including the member’s employees, tenants, guests, visitors and family members. It is the duty of an owner to ensure that his or her tenants and other occupiers, including employees, guests and their family members, comply with the rules. This is a partial re-statement of section 10(4) of the STSMA, which provides that a scheme’s rules “bind the body corporate and the owners of the sections and any person occupying a section”. PCR 7(4) states that: “The owner or occupier of a section is obliged to comply with these conduct rules, notwithstanding any provision to the contrary contained in any lease or any other grant of rights of occupancy.”

The STSMA gives the owners certain duties when letting their unit, for example, section 13(1) (f) of the STSMA imposes an obligation on the owner of a unit to notify the body corporate when they let out their units. Furthermore, the Rental Housing Act 50 of 1999 states that a copy of the schemes conduct rules *must be attached as an annexure to the lease*. Furthermore, the landlord must ensure that the tenant receives a set of these rules. A conduct rule could be adopted, that states that owners are entitled to continue letting their units on a short-term basis, subject to certain conditions, for example:

- The owner must keep proper and accurate records of the full identities, addresses and contact details of all tenants leasing their units.
- The owner must ensure that a copy of the scheme's conduct rules is made available to each and every tenant that lets their units.
- The owner must ensure that each tenant sign an undertaking to comply with the scheme's conduct rules.

The scheme rules should address the specific actions or behaviour of the short-term tenants, rather than to target the investment owners with blanket bans or overly restrictive rules. If the only problem the trustees see, in this situation, is a threat to scheme security, I suggest that they motivate the making of a new conduct rule that addresses access control and security. The body corporate should identify the undesirable activities that result from the short-term letting, and establish whether this high-turnover occupancy process unreasonably interferes with the use and enjoyment of the common property or sections by other owners or occupiers, and whether the activity causes a nuisance.

If there is consistent, persistent and serious nuisance due to the holiday letting, the body corporate should adopt a penalty rule. The trustees can then fine, and otherwise act against, an owner on account of the actions of his or her short-term tenant, when they act in a manner alleged to be a breach of the rules.

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