

SECTIONAL TITLE RULES

THE HILLS BODY CORPORATE

SCHEDULE

PART 1 INTRODUCTORY PROVISIONS

1. Definitions

PART 2 MANAGEMENT RULES

2. *Domicilium citandi et executandi* of body corporate
3. Trustees
4. Qualifications of trustee
5. Election of trustees
6. Nomination of trustees
7. Vacancies
8. Alternate trustees
9. Remuneration of trustees
10. Validity of acts of trustees
11. Indemnity
12. Vacation of office of trustee
13. Replacement of trustee
14. Meetings of trustees
15. Quorum at meetings of trustees
16. Absence of quorum at meetings of trustees
17. Chairperson of trustees
18. Removal of chairperson of trustees from office
19. Vacation of office by chairperson of trustees
20. Vacation of office by chairperson of trustees during meeting
21. Voting at meetings of trustees
22. Interest of trustee in any matter
23. Resolution in writing
24. Powers of trustees
25. Signing of agreements or negotiable instruments
26. General functions and duties of trustees
27. Insurance
28. Collection of contributions in terms of section 39(1) of Act
29. Liabilities in terms of section 49 of Act
30. Record of rules and their availability
31. Improvements
32. Minutes of meetings of body corporate
33. Books of account and records
34. Annual financial estimate

35. Financial statements
36. Report
37. Delivery of schedules, estimates, audited statements and report to owners and mortgagees
38. Audit
39. Deposit of funds into banking accounts
40. Operation and administration of banking accounts
41. Investment of funds
42. Interest on investments
43. No refund or distribution of profits or assets
44. Appointment, powers and duties of management agent
45. Provisions of agreement of appointment
46. Keeping of records and furnishing of reports by management agent
47. Notice of meetings to management agent
48. First meeting of owners of sections
49. Annual general meeting of owners of sections
50. General meeting of owners of sections
51. Special general meeting of owners of sections
52. Notice of general meetings of owners of sections
53. Proceedings at general meetings of owners of sections, ordinary and special business
54. Annual general meeting of owners of sections
55. Quorum at general meeting of owners of sections
56. Absence of quorum at general meeting of owners of sections
57. Chairperson at general meetings of owners of sections
58. Voting at general meetings of owners of sections
59. Poll by means of secret ballot
60. Votes
61. Determination of value of votes
62. No vote in certain circumstances
63. Voting by trustee on behalf of beneficiary
64. Joint voters
65. Proxies
66. Duties of owners of sections
67. Rules binding on certain other persons
68. Failure of owner to maintain sections
69. Exclusive use areas
70. Parking areas
71. Determination of disputes by arbitration
72. Expropriation
73. Payment of legal costs
74. Payment of costs relating to clearance or building compliance certificate
75. Payment of charge in respect of supply of services to exclusive use area
76. Improvements

PART 3
CONDUCT RULES

- 77. Animals, reptiles, birds and other pets
- 78. Refuse disposal
- 79. Vehicles
- 80. Damage, alterations or additions to common property
- 81. Appearance of sections
- 82. Signs and notices
- 83. Littering
- 84. Laundry
- 85. Storage of combustible material or other dangerous acts
- 86. Eradication of pests
- 87. Noise

PART 1

INTRODUCTORY PROVISIONS

Definitions

1. In these rules a word or expression to which a meaning has been assigned in the Act bears that meaning, and unless the context otherwise indicates –

“accounting officer” means a person qualified to perform the duties of an accounting officer in terms of the Close Corporations Act, 1988 (Act No. 26 of 1988);

“auditor” means a person qualified to act as an auditor under the Public Accountants’ and Auditors’ Act, 1951 (Act No. 51 of 1951);

“*domicilium*” means the *domicilium citandi et executandi* of a body corporate referred to in section 39(1)(l) of the Act as being its address for service of any process;

“management agent” means an agent appointed by a body corporate in terms of rule 44(1);

“registered mortgagee” means any mortgagee of whom a body corporate has been notified in writing in terms of section 46(1)(f) of the Act;

“the Act” means the Sectional Titles Act, 2009; and

“trustee” means a trustee of a body corporate as contemplated in section 41(1) of the Act.

PART 2

MANAGEMENT RULES

***Domicilium citandi et executandi* of body corporate**

2.

(1) The trustees must from time to time determine the address constituting the *domicilium* of the body corporate as contemplated in section 39(1)(l) of the Act, subject that –

(a) the address must be in the magisterial district –

(i) in which the development scheme is situated and must be the address of the chairperson or other resident trustee duly appointed at a general meeting; or

- (ii) in which the offices of any duly appointed management agent are situated,
being the address of the management agent;
 - (b) no change of the address is effective until written notification has been received by the registrar and the local authority concerned; and
 - (c) the trustees must give notice to all owners of sections in writing of any change of the address.
- (2) Subject to subrule (3), the *domicilium* of each owner of a section is the section registered in his or her name, irrespective whether or not that section is occupied by the owner or by any other person, or is vacant.
- (3) Subject to subrule (4), an owner referred to in subrule (2) is entitled to change his or her *domicilium* referred to in that subrule from time to time, and any new *domicilium* so selected must be situated within Namibia.
- (4) A change of *domicilium* by an owner in terms of subrule (3) is only effective on receipt of written notice by the body corporate at its *domicilium* referred to in subrule (1).

Trustees

3.

- (1) Subject to subrule (2), the members of a body corporate must from time to time at a general meeting determine the number of trustees of the body corporate, which number may not be less than two.
- (2) With effect from the date of establishment of a body corporate all owners of sections are trustees and hold office until the first general meeting of the members of the body corporate as contemplated in rule 48(1), where they must retire, but they are eligible for re-election.
- (3) The chairperson of the trustees referred to in subrule (2) is the developer concerned or his or her nominee, who holds office until the general meeting referred to in that subrule, when he or she must retire as a trustee and as chairperson, but he or she is eligible for re-nomination or reelection, as the case may be, as a trustee in terms of that subrule and of rule 6, and as chairperson in terms of rule 17, respectively.

Qualifications of trustee

4.

- Subject to rule 3(2), in order to qualify for the office of trustee, a trustee or an alternate trustee does not have to be the owner of a section or the nominee of an owner which is a juristic person, but -
- (a) the majority of the trustees must be owners; and
 - (b) a management agent or any of his or her employees or any employee of the body corporate may not be a trustee.

Election of trustees

5.

- (1) Subject to rule 3(2), the trustees are elected at the first general meeting and at each subsequent annual general meeting.
- (2) The trustees elected in terms of subrule (1) hold office from the date of the meeting at which they are elected until the next succeeding annual general meeting.
- (3) The trustees referred to in subrule (2) are eligible for re-election.

Nomination of trustees

6.

- (1) Nominations by owners of sections for the election of trustees at any annual general meeting must -
 - (a) be in writing, contain the name of the person nominated and be signed by the person making the nomination;
 - (b) be accompanied by the written consent to the nomination of the person nominated;and
 - (c) be delivered at the *domicilium* of the body corporate not later than 48 hours before the meeting concerned.
- (2) Despite subrule (1), trustees may also be elected, with the approval of the nominee concerned, by way of nominations made at the meeting concerned if insufficient written nominations are received in order to comply with rule 3(1).

Vacancies

7.

- (1) If a trustee vacates office, the body corporate must appoint any person to fill the vacancy in accordance with rule 13.
- (2) A trustee appointed under subrule (1) holds office until the next annual general meeting when his or her term expires, but he or she is eligible for election as a trustee.

Alternate trustees

8.

- (1) A trustee may appoint any person, whether or not the other person is the owner of a section, to act as an alternate trustee during his or her absence or inability to act as a trustee.
- (2) An alternate trustee may exercise the powers and must carry out the duties of a trustee.
- (3) An alternate trustee vacates office if -
 - (a) the trustee by whom he or she has been appointed, ceases to be a trustee; or
 - (b) his or her appointment is revoked by the trustee concerned.

Remuneration of trustees

9.

(1) Unless otherwise determined by a special resolution of the owners of sections, trustees who are owners are not entitled to any remuneration in respect of their services as trustees, but the body corporate must reimburse the trustees in respect of all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers as trustees.

(2) A body corporate -

(a) may remunerate trustees who are not owners of sections at the rate as may be agreed upon between the body corporate and the trustees; and

(b) must reimburse trustees referred to in paragraph (a) in respect of all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers as trustees.

(3) An alternate trustee appointed by a trustee who is not an owner of a section, must claim his or her remuneration and refund of disbursements and expenses, if any, from the trustee whom he or she represents and not from the body corporate.

Validity of acts of trustees

10.

An act performed by a trustee is valid, notwithstanding the fact that there is after the performance of the act discovered that there had been some defect in the appointment or continuance in office of any trustee, as if the trustee had been duly appointed or had duly continued in office.

Indemnity

11.

(1) Every trustee, agent or officer or servant of the body corporate, excluding a management agent, is considered to be indemnified by the body corporate against all costs, losses, expenses, claims or other liabilities which he or she may incur or become liable for by reason of any act done by him or her in the discharge of his or her duties as a trustee, agent, officer or servant, unless the costs, losses, expenses, claims or liabilities are caused by any intentional, reckless, unprofessional or negligent act by the trustee, agent or officer or servant.

(2) The trustees must pay any indemnity referred to in subrule (1) out of the funds of the body corporate.

Vacation of office of trustee

12.

A trustee vacates office, if the trustee -

(a) resigns as trustee by notice in writing to the body corporate;

(b) is or becomes of unsound mind;

(c) surrenders his or her estate as insolvent or his or her estate is sequestrated;

(d) is convicted of an offence which involves dishonesty;

(e) by resolution of a general meeting of the body corporate, is removed from office, subject that the intention to vote upon the removal from office of the trustee must have been specified in the notice convening the meeting; and
(f) is or becomes disqualified from being appointed or acting as a director of a company
in terms of section 225 or 226 of the Companies Act, 2004 (Act No. 28 of 2004).

Replacement of trustee

13.

A body corporate may appoint, subject to these rules, at a general meeting in the manner as it may determine, any person as a trustee in the place of any trustee who

-

- (a) has vacated office in terms of rule 12;
- (b) has died; or
- (c) has in any other manner vacated his or her office, for the unexpired part of the term of office of the trustee to be so replaced.

Meetings of trustees

14.

(1) Subject to subrules (2), (3), (4) and (5), the trustees may convene meetings and conduct or adjourn the meetings and regulate their meetings as they consider fit.

(2) It is not necessary to give notice of a meeting of trustees to any trustee for the time being absent from Namibia, but notice of a meeting must be given to the alternate of the trustee -

- (a) if one has been appointed; and
- (b) if the alternate is in Namibia at the time of giving notice of the meeting.

(3) A trustee may convene a meeting of the trustees at any time by giving written notice to the other trustees and to all holders of first mortgage bonds in the circumstances referred to in subrule (5).

(4) The notice referred to in subrule (3), not less than seven days' written notice of the meeting concerned, which notice must contain the complete agenda of the meeting so convened, but in a case of urgency or emergency, the trustee concerned may give any shorter notice as is considered reasonable in the circumstances by the majority of the trustees.

(5) Any mortgagee or his or her nominee holding a first mortgage bond over a section is entitled, if he or she so requires from the trustees in writing, to receive reasonable notice of all meetings of the trustees.

(6) A nominee referred to in subrule (4) is entitled to attend and participate in discussions at all meetings of the trustees, but is not in his or her capacity as such entitled to vote at a meeting.

(7) An owner of a section who is not a trustee is entitled to attend and participate in discussions at any meeting of the trustees, but is not in his or her capacity as such entitled to vote at a meeting.

Quorum at meetings of trustees

15.

(1) At a meeting of trustees 50% of the trustees, but not less than two of them, constitutes a quorum.

(2) If the number of trustees in office at any time is less than the number necessary to form a quorum at any meeting, the remaining trustee or trustees may continue to act, but only for the purpose of appointing or co-opting additional trustees to form a quorum at a meeting or for the purpose of convening a general meeting of owners of sections.

Absence of quorum at meetings of trustees

16.

If at a meeting of trustees a quorum is not present until 30 minutes of the commencement time of the meeting as determined in the notice convening the meeting, the meeting must stand adjourned to the next business day at the same time and venue and the trustees then present at such meeting, but not less than two of them, form a quorum for the purposes of the meeting.

Chairperson of trustees

17.

(1) At the commencement of the first meeting of trustees held after an annual general meeting at which trustees have been elected, the trustees must elect a chairperson from amongst their number who holds office until the end of the next annual general meeting of members of the body corporate.

(2) The chairperson referred to in subrule (1) has a deliberative vote as well as a casting vote at trustee meetings, except if there are only two trustees present at a meeting.

Removal of chairperson of trustees from office

18.

The -

(a) trustees, at a meeting of trustees; or

(b) the body corporate, at a special meeting, may remove the chairperson from office by a majority vote, if in respect of the meeting written notice of the intended removal from office of the chairperson had been given and the chairperson has been afforded an opportunity to be heard.

Vacation of office by chairperson of trustees

19.

If the chairperson elected in terms of rule 17 vacates office as chairperson or has been removed from office as contemplated in rule 18, the trustees must elect, subject to these rules, another trustee to serve as chairperson for the remainder of the period of office of the chairperson.

Vacation of office by chairperson of trustees during meeting

20.

- (1) If the chairperson at a meeting of trustees -
 - (a) vacates the chair during the course of a meeting;
 - (b) is not present at the meeting; or
 - (c) is for any other reason unable to preside at any meeting, the trustees present at the meeting must elect any trustee to act as chairperson at the meeting.
- (2) The acting chairperson referred to in subrule (1) has the same voting rights as the chairperson.

Voting at meetings of trustees

21.

- (1) All matters at meetings of the trustees must be determined by a majority vote of the trustees present and voting.
- (2) If there are only two trustees present at a trustee meeting there must be a unanimous resolution before the resolution concerned is valid.
- (3) Unless otherwise provided for in the Act, the regulations or these rules, the trustees determine the proceedings, including the proceedings relating to voting, at the meetings of trustees.

Interest of trustee in any matter

22.

A trustee is disqualified from voting in respect of any agreement or proposed agreement, or in respect of any litigation or proposed litigation, relating to the body corporate, if he or she has any interest of any kind in the agreement or litigation.

Resolution in writing

23.

A resolution in writing signed by at least two trustees holding office and who are within the borders of Namibia, at that point in time, is as valid and effective as a resolution passed at a duly convened meeting of the trustees.

Powers of trustees

24.

- (1) The trustees may -
 - (a) make house rules from time to time for the control, use, safety and cleanliness of the common property, which rules -
 - (i) may not conflict with the act or with these rules;
 - (ii) must be reasonable; and
 - (iii) apply equally to all owners;
 - (b) delegate or assign to any trustee any power, function and duty as they may consider fit and may at any time revoke the delegation or assignment.

(2) The trustees may not give loans on behalf of the body corporate to owners of sections or to any of the trustees.

Signing of agreements or negotiable instruments

25.

An agreement or negotiable instrument signed on behalf of a body corporate is not valid and binding unless it is signed by -

- (a) a trustee and the management agent; or
- (b) two trustees; or
- (c) in the case of a certificate issued to a conveyancer for the purposes of section 17 (3) (a)(i)(aa) of the Act, two trustees or the management agent.

General functions and duties of trustees

26.

The trustees must do all things reasonably necessary for -

- (a) the control, management and administration of the common property in terms of the powers conferred upon the body corporate by section 40 of the Act; and
- (b) the enforcement of these rules.

Insurance

27.

(1) At the first meeting of trustees, or as soon as practicable, and annually, the trustees must take all the steps necessary to insure the buildings, and all improvements on and to the common property, to the full replacement value, against any damages which may be caused by -

- (a) fire, lightning and explosion;
- (b) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
- (c) storm, tempest and floods;
- (d) earthquake;
- (e) aircraft and other aerial devices or articles dropped;
- (f) bursting or overflowing of water tanks, apparatus or pipes;
- (g) impact with any of the buildings or improvements by any vehicle or animal;
- (h) housebreaking or any attempt;
- (i) loss of occupation or loss of rent in respect of any of the above risks; and
- (j) the other risks, perils or dangers as the trustees or any holder of a first mortgage bond over not less than 25 per cent in number of the sections in the development scheme, may consider fit.

(2) The trustees must at all times ensure that in the policy of insurance referred to in subrule (1) -

- (a) the replacement value of each section is specified, excluding the owner's interest in the land, -

- (i) initially, but subject to subparagraph (iii), in accordance with the trustees' estimate of the value;
 - (ii) after the first annual general meeting, but subject to subparagraph (iii), in accordance with the schedule of values as approved in terms of subrule (3); or
 - (iii) as required at any time by any owner in terms of subrule (4).
 - (b) any "average" clause is restricted in its effect to individual sections and does not apply to the building as a whole;
 - (c) there is included a clause in terms of which the policy is valid and enforceable against the insurer by any holder of a mortgage bond, despite any circumstances which would otherwise entitle the insurer to refuse to make payment of the amount insured, unless and until the insurer on not less than 30 days' notice to the mortgagee may have terminated the insurance.
- (3) Before every annual general meeting the trustees must cause to be prepared schedules reflecting their estimate of -
- (a) the replacement value of the buildings and all improvements to the common property;
 - and
 - (b) the replacement value of each section (excluding the owner's interest in the land), the aggregate of the values of all sections being equal to the value referred to in subrule (1), and the schedules must be submitted to the annual general meeting held in terms of rule 54 for consideration and approval.
- (4) An owner of a section may at any time increase the replacement value as specified in the insurance policy in respect of the owner's section, but the owner is liable for payment of the additional insurance premium and must furnish the body corporate with proof of the payment made to the insurer.
- (5) The trustees must record the cession by an owner of a section to the holder of a mortgage bond of that owner's interest in the application of the proceeds of the policies of insurance effected in terms of subrule (1)(a) on the written request of that holder of a mortgage bond and on the furnishing of satisfactory proof of the cession.
- (6) At the first meeting of trustees or as soon as practicable, the trustees must take all reasonable steps -
- (a) to insure the owners of sections and the trustees and to keep them so insured against liability in respect of -
 - (i) death, bodily injury or illness; or
 - (ii) liability relating to the loss of, or damage to, property occurring in connection with the common property, in an amount of not less than two hundred thousand Namibia dollars, or in any other amount as the owners at a general meeting may direct from time to time; and
 - (b) to procure, to the extent as determined by the members of the body corporate at a general meeting, a fidelity guarantee in terms of which guarantee must be refunded any -

- (i) loss of moneys belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insured person, being any person in the service of the body corporate, any trustee or any person acting in the capacity of management agent of the body corporate;
 - (ii) loss of moneys in the course of business up to and including an amount equivalent to total levies due and payable in one month or any lesser amount as the trustees from time to time may determine; and
 - (iii) loss of, or damage to, any receptacle for which the body corporate is responsible, resulting from the theft or attempted theft of money.
- (7) The owners of sections may by special resolution direct the trustees to insure against any other risks as the owners may determine from time to time.

Collection of contributions

28.

The trustees must levy contributions on the owners of sections concerned and must collect the contributions from the owners in terms of section 39(1) of the Act.

Liabilities of owners to make contributions

29.

- (1) The liability of owners of sections to make contributions and the proportions in which the owners must make contributions for the purposes of section 39(2) of the Act or may in terms of section 49 of the Act be held liable for the payment of a judgment debt of the body corporate must be borne by the owners with effect from the date upon which the body corporate is considered to be established, in accordance with -
- (a) the participation quotas attaching to their respective sections; or
 - (b) a determination made by the members of the body corporate by unanimous decision in terms of section 24(3) of the Act.
- (2) At every annual general meeting the body corporate must -
- (a) approve, with or without amendment, the itemised estimate of the anticipated income and expenses referred to in rule 34; and
 - (b) determine the amount estimated to be levied upon the owners of sections during the ensuing financial year.
- (3) Within 14 days after the annual general meeting the trustees must advise each other in writing of the amount payable by every owner of a section in respect of the estimate referred to in subrule (2) and the amount becomes payable in instalments in the manner determined by the trustees.
- (4) The trustees may, from time to time and if necessary -
- (a) determine special levies payable by the owners of sections; or
 - (b) call upon the owners to make special contributions, in respect of all the expenses referred to in subrule (1) which are not included in any estimates made

- in terms of subrule (2) and the levies and contributions may be made payable in one sum or by the instalments and at any time as the trustees may consider fit.
- (5) An owner of a section is liable for and must pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the body corporate relating to the recovery of arrear levies or any other arrear amounts due and owing by the owner to the body corporate or in enforcing compliance with these rules or the Act.
- (6) The trustees are entitled to charge interest on arrear amounts at the rate determined by the trustees from time to time.

Record of rules and their availability

30.

- (1) The trustees must keep a complete record of all applicable rules, including amendments.
- (2) The trustees must on the written application of -
- (a) the owner of a section;
 - (b) the occupant of a section;
 - (c) a prospective purchaser of a section;
 - (d) the holder of any registered sectional mortgage bond;
 - (e) the management agent; or
 - (f) the auditor or the accounting officer, furnish the person with a copy of all rules in force and may require the person to pay a reasonable charge, as determined by the trustees, in respect of the furnishing of the copy.

Improvements

31.

- (1) The trustees on their own initiative, or if the owners by unanimous resolution so decide, may effect improvements of a luxurious nature on the common property.
- (2) If the trustees wish to effect any improvements to the common property, other than luxurious improvements referred to in subrule (1), they must first give written notice to all owners of sections.
- (3) A notice in terms of subrule (2) must -
- (a) indicate the intention of the trustees to proceed with the improvements upon the expiry of a period of not less than 30 days from the date of posting the notice; and
 - (b) provide details of the improvements as to -
 - (i) the costs;
 - (ii) the manner in which it is to be financed and the effect upon levies paid by the owners; and
 - (iii) the need, desirability and effect of the improvements.
- (4) The trustees must at the written request of any owner convene a special general meeting in order to discuss and to deliberate upon the proposals contained in a notice referred to in paragraph (a) at which meeting the owners may veto, amend or approve the proposals by way of special resolution.

(5) If a special general meeting of owners of sections is convened as contemplated in subrule (4), the trustees may not proceed with their proposals until the holding of the meeting, where they are bound by any special resolution ensuing from the meeting.

(6) Despite subrule (1) and (2), the trustees must procure, if so required in writing by a majority of owners, the installation and maintenance in good working order, at the body corporate's cost, of separate meters to record the consumption of electricity, water and gas in respect of each individual section and the common property.

(7) If and as long as no separate meters have been installed in terms of subrule (6), the contribution payable by each owner in respect of electricity, water and gas are calculated in accordance with rule 29.

Minutes of meetings of body corporate

32.

(1) The trustees must -

(a) cause to be kept in a minute book of the body corporate minutes of the proceedings at all meetings of the body corporate; and

(b) include in the minute book a record of every unanimous resolution, special resolution and any other resolution of the body corporate.

(2) The trustees must cause all minute books referred to in subrule (1) to be kept for as long as the development scheme concerned remains registered.

(3) On the written application of any owner of a section or a registered mortgagee of a section, the trustees must make all minutes of the proceedings at meetings and minutes of the body corporate available for inspection by the owner or mortgagee at any reasonable time.

Books of account and records

33.

(1) The trustees must cause proper books of account and records to be kept so as to comprehensively set out and explain the transactions and financial position of the body corporate, including -

(a) a record of the assets and liabilities of the body corporate;

(b) a record of all moneys received and expended by the body corporate and the matters in respect of which the receipts and expenditures occurred;

(c) a register of owners of sections and of registered mortgagees of sections and of all other persons having real rights in that sections containing in each case the address of the person concerned;

(d) individual ledger accounts in respect of each owner; and

(e) bank statements and particulars of bank accounts.

(2) The trustees must cause all books of account and records to be retained for as long as the development scheme concerned remain registered.

(3) On the written application of any owner of a section, a registered mortgagee or a management agent, the trustees must make all of the books of account and records

available for inspection by the owner, mortgagee or management agent at any reasonable time.

Annual financial estimate

34.

- (1) Before every annual general meeting, the trustees must cause to be prepared an itemised estimate of the anticipated income and expenses of the body corporate to be incurred during the ensuing financial year.
- (2) The estimate referred to in subrule (1) must -
 - (a) include a reasonable provision for contingencies; and
 - (b) be tabled before the annual general meeting for consideration in terms of rule 54.

Financial statements

35.

- The trustees must -
- (a) cause to be prepared a financial statement conforming with generally accepted accounting practices and which statement must fairly represent the state of affairs of the body corporate and its finances and transactions as at the end of the financial year concerned; and
 - (b) table the financial statement referred to in paragraph (a) before every annual general meeting for consideration in terms of rule 54(b).

Report

36.

- The trustees must -
- (a) cause to be prepared a report, signed by the chairperson, setting out the affairs of the body corporate during the past financial year; and
 - (b) table the report referred to in paragraph (a) before every annual general meeting for consideration in terms of rule 54(b).

Delivery of schedules, estimates, audited statement and report to owners and mortgagees

37.

- (1) The trustees must cause copies of the applications for insurance policies, itemised estimate of the anticipated income and expenses, financial statement and report referred to in rules 27, 34, 35 and 36, respectively, to be delivered to each owner of a section and to any holder of a mortgage bond who or which has advised the body corporate of his or her or its interest, not less than 14 days before the date of the annual general meeting at which the documents concerned are to be considered.
- (2) Delivery under subrule (1) is considered to have been effected if the documents referred to are sent by prepaid registered post, addressed to the owner at his or her

domicilium referred to in rule 2(2), or to any holder of a mortgage bond at the address of the mortgagee as reflected in the records of the body corporate.

Audit

38.

(1) At the first general meeting of a body corporate and thereafter at every ensuing annual general meeting, the body corporate must appoint, subject to subrule (2), an auditor to hold office from the conclusion of the annual general meeting until the conclusion of the next annual general meeting.

(2) If a development scheme comprises less than 10 sections, an accounting officer may in terms of subrule (1) be appointed in the place of an auditor.

Deposit of funds into banking accounts

39.

(1) The trustees must cause all moneys received by the body corporate to be deposited to the credit of an account or accounts with a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998), or a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 82 of 1986), in the name of the body corporate.

(2) Subject to any restriction imposed or direction given at a general meeting of the body corporate, any moneys deposited in terms of subrule (1) may only be withdrawn from the accounts for the purpose of the payment of the expenses of the body corporate or for the purpose of the investment in terms of rule 41.

Operation and administration of banking accounts

40.

(1) The trustees may authorise a management agent to administer and operate any of the accounts referred to in rule 39 and 41.

(2) If a management agent is an estate agent as defined in the Estate Agents Act, 1976 (Act No. 112 of 1976), the trustees may authorise the management agent to deposit moneys contemplated in rule 39 in a trust account referred to in section 32(1) of that Act, to be conducted as contemplated in section 32(3), which moneys may only be withdrawn for the purposes contemplated in rule 39.

Investment of funds

41.

Any moneys referred to in rule 39 not immediately required for disbursement may be invested in a savings or similar account with any banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998) or a building society as defined in section 1 of the Building Societies Act, 1986 (Act No. 82 of 1986) approved by the trustees from time to time.

Interest on investments

42.

Interest on moneys invested in terms of rule 41 may be used by the body corporate for any purpose in terms of these rules.

No refunds or distribution of profits or assets

43.

(1) The owners of sections are not entitled to a refund of contributions lawfully levied upon them and duly paid by them.

(2) The profits or gains of a body corporate may not be distributed to any owner of a section or to any other person except -

- (a) upon the destruction or the deemed destruction of the building concerned;
- or
- (b) if the profit or gain is of a capital nature.

Appointment, powers and duties of management agent

44.

(1) Despite anything to the contrary in rule 26 and subject to section 41(1) of the Act and subrule (2), the trustees -

(a) may appoint from time to time; and

(b) must appoint, if required by the holders of mortgage bonds of not less than 50 per cent of the sections or by the members of the body corporate at a general meeting, a management agent in terms of a written agreement -

(i) for the purpose of controlling, managing and administering the common property;

and

(ii) to exercise the powers and duties as may be entrusted to the management agent, including the power to collect levies and to appoint a supervisor or a caretaker.

(2) A management agent must be appointed for one year at a time.

(3) Unless a body corporate in writing notifies a management agent to the contrary not less than three months before the date of expiration of the appointment of the management agent, the appointment is automatically renewed from year to year.

(4) The trustees must ensure that there is included in an agreement of appointment a provision to the effect that if the management agent -

(a) is in breach of the agreement; or

(b) is guilty of conduct which at common law would justify the termination of an agreement between an employer and employee, the trustees may cancel an agreement without any prior notice and that in the event of the cancellation of the agreement as provided, the management agent does not have any claim whatsoever against the body corporate or any owner of a section as a result of the cancellation.

(5) If -

(a) a management agent is in breach of an agreement of appointment; or

- (b) is guilty of any conduct which at common law would justify the termination of an agreement between an employer and employee, any owner of a section or holder of a mortgage bond registered against any section in the buildings may in writing require the trustees to cancel an agreement concerned as provided for in subrule (4).
- (6) This rule does not detract from any other right of the trustees to cancel an agreement of appointment concerned or to provide therein for other grounds of cancellation by the trustees.
- (7) Any owner of a section or holder of a mortgage bond who requires, in terms of subrule (5), the trustees to cancel an agreement of appointment must furnish the trustees with security, as the trustees in their discretion may determine, for the payment of and indemnify the trustees and the body corporate against -
 - (a) all litigation costs which may be reasonably incurred by the trustees in enforcing the cancellation against the management agent; and
 - (b) all other costs and damages arising out of the cancellation, purported cancellation or litigation for which the trustees or the body corporate may be liable up to the time that the owner of a section or a holder of a mortgage bond in writing notifies the trustees that he or she no longer requires them to pursue the action concerned.
- (8) The trustees are not required to cancel an agreement of appointment unless and until the owner of a section or holder of a mortgage bond who requires the cancellation in terms of subrule (5) has furnished them with the security and indemnity referred to in subrule (7).

Contract of appointment

45.

- (1) A contract of appointment entered into with a management agent must provide, in addition to the other requirements of these rules, that the appointment is considered to have been revoked and that the management agent ceases to hold office -
 - (a) if, in the case where the management agent -
 - (i) is a juristic person, an order is made for its provisional or final liquidation or it is placed under judicial management; or
 - (ii) is a natural person, the management agent applies for the surrender of his or her estate as insolvent or his or her estate is sequestrated either provisionally or finally; or
 - (b) if the management agent is convicted of an offence involving an element of fraud or an element of dishonesty or, if the management agent is a juristic person, any of its directors, members or trustees are convicted of an offence involving an element of fraud or an element of dishonesty, or
 - (c) if a special resolution of the members of the body corporate is passed to that effect.

(2) If a management agent is removed from office in terms of subrule (1)(c), the management agent is not deprived of any right he or she may have to claim compensation or damages for breach of contract.

Keeping of records and furnishing of reports by management agent

46.

A management agent must -

(a) keep comprehensive records of his or her administration in terms of rule 44;
and

(b) report in writing to –

(i) the body corporate;

(ii) owners of sections; and

(iii) all holders of registered sectional mortgage bonds over sections referred to in rule 52(1)(b), all matters which in his or her opinion detrimentally affect the value or amenity of the common property and any of the sections.

Notice of meetings to management agent

47.

(1) The trustees must -

(a) give reasonable written notice to a management agent of all meetings of the trustees;
and

(b) furnish to a management agent copies of the minutes of all meetings of the trustees and of the body corporate.

(2) A management agent may, with the approval of the trustees, attend meetings of the trustees and may take part in deliberations but does not have a right to vote.

First meeting of owners of sections

48.

(1) The first meeting of owners of sections is held within 60 days after the date of establishment of the body corporate.

(2) Any owner of a section may convene the first meeting of owners of sections.

(3) Not less than seven days' notice of a meeting in terms of subrule (1) must be given in writing and the notice must be accompanied by -

(a) a copy of the agenda of the meeting; and

(b) details of the items referred to in subrule (4).

(4) The agenda for a meeting convened in terms of subrule (2) must comprise of at least -

(a) the consideration, confirmation or variation of the insurances effected by the developer or the body corporate;

(b) the consideration, confirmation or variation of the itemised estimate of the anticipated income and expenses of the body corporate for the ensuing financial year;

- (c) the consideration and approval, with or without amendment, of the financial statements relating to the management, control and administration of the building from the date of establishment of the body corporate to the date of the notice of the meeting referred to in subrule (1);
- (d) the accepting of the cession of the agreements relating to the management, control and administration of the building as may have been entered into by the developer for the continual management, control and administration of the building and the common property and in respect of which the developer is obliged to submit the agreements to the meeting;
- (e) the appointment of an auditor or accounting officer;
- (f) the election of trustees;
- (g) any restriction imposed or direction given in terms of section 41(1) of the Act; and
- (h) determination of the *domicilium* of the body corporate.

Annual general meetings of owners of sections

49.

- (1) An annual general meeting of owners of sections must be held within four months after the end of each financial year of the body corporate.
- (2) Unless otherwise decided at an annual general meeting of owners of sections or by the trustees, the financial year of a body corporate ends on the last day of February in each year.

General meetings of owners of sections

50.

All general meetings of owners of sections, other than the annual general meetings, are referred to as special general meetings of owners of sections.

Special general meeting of owners of sections

51.

- (1) The trustees -
 - (a) may convene, if they consider it necessary; and
 - (b) must convene, upon a request in writing made either by owners of sections entitled to 25 per cent of the total of the quotas of all sections or by any holder or holders of mortgage bonds over not less than 25 per cent in number of the sections, a special general meeting of owners of sections.
- (2) If the trustees fail to convene a meeting requested in terms of subrule (1)(b) within 14 days after receipt of the request concerned, the owners of sections or the holders of the mortgage bond or bonds concerned are entitled themselves to convene the meeting.

Notice of general meetings of owners of sections

52.

(1) Unless otherwise provided in the Act, not less than 14 days' notice of any general meeting of owners of sections, specifying the venue, date and time of the meeting must be given -

- (a) to all owners of sections;
- (b) to all holders of registered mortgage bonds over sections who have advised the body corporate of their interests; and
- (c) to the management agent.

(2) A -

- (a) venue referred to in subrule (1) must be within the magisterial district where the development scheme is situated or any other place determined by special resolution of members of the body corporate;
- (b) notice referred to in subrule (1) must include an agenda of the convened meeting and in the case of special business, particulars of the nature of the business.

(3) The holders of registered mortgage bonds and a management agent have the right to attend a meeting referred to in subrule (1) and to be heard at the meeting but do not have a right to vote.

(4) A notice referred to in subrule (1) is considered to have been given and delivered in accordance with rule 37(2) to the person referred to in paragraphs (a) and (b) of subrule (1).

(5) A notice referred to in subrule (1) is accompanied by the documents referred to in rule 37(1) except in the case of a meeting in terms of rule 48(1) or a special general meeting.

(6) Any inadvertent omission to give the notice referred to in subrule (1) to any person entitled or the non-receipt by the person does not invalidate, except in the case of a person referred to in subrule (1)(b), any proceedings at the meeting concerned.

(7) If all persons entitled to attend the meeting agree, a general meeting of owners of sections may be convened on shorter notice than specified in subrule (1).

(8) Subject to subrule (9), a special general meeting of owners of sections may be convened on 14 days' notice for the purposes of passing a unanimous or special resolution.

(9) If, due to the urgency or the specific nature of a matter, the trustees are of the opinion that a meeting referred to in subrule (8) must be convened on a shorter period of notice than specified, the meeting may be convened on less than 14 days' notice if notice of the meeting has been given to all the members of the body corporate.

Proceedings at general meetings of owners of sections, ordinary and special business

53.

All business at any general meeting of owners of sections other than business referred to in rule 54(a), (b), (c) and (d) is considered to be special business.

Annual general meeting of owners of sections

54.

The business to be transacted at an annual general meeting of owners of sections are -

- (a) the consideration of the financial statement and report referred to in rule 35 and 36 respectively;
- (b) the approval with or without amendment of -
 - (i) the schedules of replacement values referred to in rule 37(1); and
 - (ii) the estimate of income and expenditure referred to in rule 34;
- (c) the appointment of an auditor or an accounting officer;
- (d) the determination of the number of trustees for the ensuing year;
- (e) the election of trustees for the ensuing year;
- (f) any special business of which due notice has been given in terms of rule 52;
- (g) the imposing of restrictions or the giving of directions referred to in section 41(1) of the Act; and
- (h) the determination of the *domicilium* of the body corporate.

Quorum at general meeting of owners of sections

55.

(1) Business may not be transacted and matters may not be discussed at any general meeting of owners of sections, unless a quorum is present, in person or by proxy, at the time when the meeting commences and at the time when the business concerned is transacted or the matter concerned is discussed.

(2) A quorum at a general meeting referred to in subrule (1) is -

- (a) the number of owners of sections holding not less than 50 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote, in a development scheme consisting of 10 sections or less;
- (b) the number of owners of sections holding not less than 35 per cents of the votes, present in person or by proxy or by representative recognised by law and entitled to vote, in a development scheme consisting of more than 10 sections but less than 50 sections; and
- (c) the number of owners of sections holding not less than 20 per cent of the votes, present in person or by proxy or by representative recognised by law and entitled to vote, in a development scheme consisting of 50 sections or more.

Absence of quorum at general meeting of owners of sections

56.

(1) If within half an hour after the time determined for the commencement of a general meeting of owners of sections, a quorum required for the meeting is not present, the meeting stands adjourned to the same day in the next week at the same venue and time.

(2) If at the venue, date and time to which a meeting was adjourned in terms of subrule (1), a quorum is not present at the venue concerned within half an hour of the time of which the meeting had been adjourned, the owners of sections present

at the venue in person or represented by proxy and entitled to vote, despite any provision to the contrary in these rules, form a quorum for the purpose of the meeting.

Chairperson at general meeting of owners of sections

57.

(1) The chairperson of the trustees presides as chairperson at every general meeting of owners of sections the body corporate, unless otherwise resolved at the meeting by the owners.

(2) If -

(a) chairperson of the trustees has not been elected;

(b) at any meeting of owners of sections the chairperson of the trustees is not present within 15 minutes after the time determined for the commencement of the meeting;

or

(c) the chairperson is unwilling or unable to act as chairperson, the members present must elect one of their number to act as chairperson at the meeting.

Voting at general meetings of owners of sections

58.

(1) At any general meeting of owners of sections a resolution put to the vote of the meeting must be decided by a show of hands by the persons present and entitled to vote at the meeting, unless either prior to or on the declaration by the chairperson of the result of the show of hands, a poll by means of a secret ballot is demanded by any person entitled to vote at the meeting.

(2) Unless a poll is demanded in terms of subrule (1), a declaration by the chairperson that a resolution has been carried by means of the show of hands is conclusive proof of that fact without proof of the number or the proportion of the votes recorded in favour of or against the proposal concerned.

(3) A demand for a poll by secret ballot may be withdrawn at any time before the poll is held.

Poll by means of secret ballot

59.

A poll by secret ballot in terms of rule 58 must be held in the manner as the chairperson may determine and the result of the poll is considered to be the decision of the meeting at which the poll by secret ballot was demanded.

Votes

60.

(1) In a vote by means of a show of hands, an owner of a section or if the owner is a juristic person, its proxy, has one vote per section.

(2) The chairperson may, at any time, change the manner of voting from a show of hands to a poll by means of a secret ballot.

Determination of value of votes

61.

For the purpose of -

- (a) a unanimous resolution or a special resolution; or
- (b) a poll by secret ballot, the value of the vote of an owner of a section must be calculated in accordance with the applicable participation quotas.

No vote in certain circumstances

62.

(1) Except in cases where a special resolution or unanimous resolution is required under the Act, an owner of a section is not entitled to vote at any general meeting if -

- (a) all contributions payable by the owner in respect of his or her section and his or her undivided share in the common property have not been duly paid; or
- (b) the owner persists in the contravention of any conduct rule referred to in section 37(3)(b) of the Act, despite written warning by the trustees or management agent to refrain from contravening the rule.

(2) The holder of a mortgage bond registered against a section is entitled to vote at a general meeting as the proxy of an owner of a section, even though subrule (1) applies to the owner.

Voting by trustee on behalf of beneficiary

63.

(1) If the owner of a section is a trustee or a beneficiary of a trust, the owner must exercise the voting rights in respect of the section.

(2) The beneficiary of a trust does not have the right to vote at a general meeting of owners, except the beneficiary referred to in subrule (1).

Joint voters

64.

If two or more persons are entitled to exercise one vote jointly -

- (a) the vote may be exercised by any one of those persons or by any other person, appointed jointly by the persons as their proxy; and
- (b) any one of them, or their proxy, may demand a poll by secret ballot in terms of these rules.

Proxies

65.

(1) Votes at a general meeting of owners of sections may be cast either personally or by proxy, whether by means of a poll by secret ballot or by means of a show of hands.

(2) A proxy must -

- (a) be appointed, subject to subrule (3), in writing under the signature of the appointer or his or her agent duly appointed in writing; and
- (b) be handed to the chairperson prior to the commencement of the meeting.
- (3) Subrule (2) does not apply in the case of any proxy created and contained in any registered mortgage bond if the mortgage bond is produced at the meeting.
- (4) A proxy does not have to be an owner of a section, but may not be -
 - (a) the management agent or any of his or her employees; or
 - (b) an employee of the body corporate.

Duties of owners of sections

66.

- (1) In addition to the duties referred to in section 46 of the Act, an owner of a section -
 - (a) may not use his or her section, exclusive use area or any part of the common property, or permit it to be used, in a manner or for a purpose as may be detrimental to the prestige of the building;
 - (b) may not contravene, or permit the contravention of any law, by-law, ordinance, Government notice, proclamation, regulation or rule, or the conditions of any licence applicable or relating to or affecting the occupation of the building or the common property, or the conducting of business in the building, or the conditions of title applicable to his or her section or to any other section, or to his or her exclusive use area or any other exclusive use area;
 - (c) may not make alterations to the section concerned which are likely to impair the stability of the building or the use and enjoyment of other sections, the common property or any exclusive use area;
 - (d) may not do anything to his or her section or exclusive use area which may be detrimental to the appearance of the buildings;
 - (e) may not use nor permit an exclusive use area to be used for any purpose other than the purpose for which the exclusive use area is intended to be used, as indicated expressly or by implication on or by a registered sectional plan, unless with the written approval of all the owners of sections, which approval may not be withheld unreasonably;
 - (f) may not construct or place any structure or any improvement to a building on his or her exclusive use area, without the prior written approval of the trustees, which approval may not be withheld unreasonably; and
 - (g) must maintain the hot water installation which serves his or her section or if the installation serves more than one section, the owners concerned must maintain the installation pro-rata, notwithstanding that the appliance is situated in a part of the common property and is insured in terms of the insurance policy effected by the body corporate.
- (2) Any owner of a section who exercises his or her rights in terms of section 61(3) of the Act must bear all the costs.

Rules binding on certain other persons

67.

(1) These rules, the conduct rules and the duties of the owner of a section in relation to the use and occupation of sections and common property in terms of the Act are binding on the owner of any section and on any lessee or other occupant of any section.

(2) Every owner of a section must ensure compliance with these rules and the conduct rules by any lessee or other occupant of a section, including any employee, guest or member of the family of the lessee or of the occupant.

Failure of owner to maintain sections

68.

If an owner of a section -

(a) fails to repair or maintain his or her section in a state of good repair as required by section 46(1)(c) of the Act; or

(b) fails to maintain adequately any area of the common property allocated to him or her for his or her exclusive use and enjoyment, and if the failure persists for 30 days after written notice to the owner by the trustees or the management agent on their behalf, the body corporate is entitled to -

(i) remedy, for and on behalf of the owner, the failure of the owner to so repair or maintain the section or area of the common property; and

(ii) to recover the reasonable cost of repair or maintenance from the owner.

Exclusive use areas

69.

(1) Subject to subrule (6) and despite the fact that exclusive use areas are part of the common property in terms of a sectional plan relating to the sectional title scheme as filed with the Registrar of Deeds, the owner of each section comprised in the scheme is entitled, subject to subrules (2), (3), (4) and (5), to the exclusive use, occupation and enjoyment to the exclusion of the rights of all other owners and all other persons of the area numbered and corresponding to the number of his or her section marked on the plan of exclusive use areas, to be used by him or her for the purposes indicated on the schedule to the plan concerned.

(2) A body corporate must take all necessary steps in its power to ensure that the exclusive use areas are reserved for the exclusive use of the owners entitled to such use in terms of subrule (1).

(3) An owner may not place any structure or building improvement on his or her exclusive use area without the prior written approval of the trustees, which approval may not be withheld unreasonably.

(4) An owner is obliged to -

(a) maintain the exclusive use area of which he or she has the exclusive use as if it were part of his or her section, and

- (b) take all reasonable and necessary steps to keep the area in a clean, hygienic, neat and attractive condition.
- (5) An owner may not use his or her exclusive use area or permit it to be used in a manner or for purposes as are likely to impair the safety, appearance or amenity of other sections or other parts of the common property.
- (6) An owner of a section must -
 - (a) permit the body corporate and other owners access across his or her exclusive use area for any purpose reasonably required for the maintenance of the garden areas of the other owners; and
 - (b) allow the body corporate access to and across his or her exclusive use area -
 - (i) for any purpose reasonably required for the maintenance of the common property and any local authority related service; and
 - (ii) for the purpose of implementing rule 68 if the body corporate so require.

Parking areas

70.

- (1) Subject to subrule (6) and despite the fact that parking areas, if so provided on the common property, are in terms of a sectional plan relating to the sectional title scheme as filed with the Registrar of Deeds, part of the common property, the owner of each section comprised in the scheme is entitled, subject to subrules (2), (3), (4), (5), (6) and (7), to the exclusive use, occupation and enjoyment, to the exclusion of the rights of all other owners and all other persons, of the area numbered and corresponding to the number of the section marked on the plan of exclusive use areas, specifically relating to parking areas, to be used by him or her as a parking area.
- (2) Subject to subrule (1), the body corporate must take all necessary steps in its power to ensure that a parking area is reserved for the exclusive use of the owners entitled to parking.
- (3) An owner may not place any structure or building improvement on his or her parking areas without the prior written approval of the trustees, which approval may not be withheld unreasonably.
- (4) An owner is obliged to -
 - (a) maintain the parking area of which he or she has the exclusive use as if it were part of his or her section, and
 - (b) take all reasonable and necessary steps to keep it in a clean, hygienic, neat and attractive condition.
- (5) An owner may not use his or her parking area or permit it to be used in a manner or for purposes as are likely to impair the safety, appearance or amenity of other sections or other parts of the common property.
- (6) An owner of a section must -
 - (a) permit the body corporate and other owners access to his or her parking area for any purpose reasonably required for the maintenance of the parking area of the other owners; and
 - (b) allow the body corporate access to and across his or her parking area -

- (i) for any purpose reasonably required for the maintenance of the common property; and
 - (ii) for the purpose of implementing rule 68, if the body corporate so require.
- (7) Except where a section is let, owners of sections may not let parking areas allocated to them in terms of this rule without the prior written approval of the trustees, which approval may not be withheld unreasonably.

Determination of disputes by arbitration

71.

- (1) Any dispute between the body corporate and an owner of a section or between owners of sections, arising out of or in connection with or relating to the Act or these rules must be determined in accordance with these rules, except if an interdict or any form of urgent or other relief may be required or obtained from the Court.
- (2) If a dispute referred to in subrule (1) arises, the aggrieved party must -
 - (a) notify the other interested party or parties in writing; and
 - (b) serve or cause to be served copies of the notification on the trustees and on the management agent, if any.
- (3) If a dispute referred to in subrule (1) cannot be resolved within 14 days after the service of a notice, either of the parties may demand that the dispute be referred to arbitration.
- (4) Having regard to -
 - (a) the nature and complexity of a dispute; and
 - (b) the costs which may be involved in the adjudication, as may be agreed between the parties to the dispute.
- (5) If the parties cannot agree on the arbitrator to be appointed in terms of subrule (4) within three days after the arbitration had been demanded, the body corporate must -
 - (a) on the written application of the parties; and
 - (b) on payment of the prescribed fee, if any, appoint an arbitrator in writing within seven days after receipt of the written application, for the purpose of finalising the arbitration as provided for in subrule (8).
- (6) Arbitration in terms of this rule must be held informally and in the manner determined by the arbitrator.
- (7) The arbitrator may demand that the party who applied for the arbitration must furnish the arbitrator with security for payment of the costs of the arbitration in the amount and form as the arbitrator may determine, failing which the arbitrator may refuse to proceed with the arbitration.
- (8) If practicable, the arbitration is concluded within 21 days after the matter has been referred to arbitration in terms of subrule (3) or after security for costs has been furnished in terms of subrule (7).
- (9) The arbitrator -
 - (a) must have regard, in the conducting of the arbitration, to the principles laid down by these rules;

- (b) must deliver his or her decision within seven days after the date of the completion of the arbitration; and
 - (c) may determine that the costs pertaining to the arbitration be paid by any one of the disputing parties or by them jointly in the shares as he or she may determine.
- (10) The decision of the arbitrator made in terms of subrule (9) is final and binding and may be made an order of Court upon the application of any of the parties to the arbitration.

Expropriation

72.

- (1) If at any time, the whole or any part of or any rights in a common property are expropriated, every owner of a section is considered to have appointed the trustees as his or her duly authorised agents -
- (a) to negotiate and settle the compensation payable to the owner and to that end, to employ legal practitioners and experts; and
 - (b) to, on behalf of the owner, receive and give valid quittance for any compensation moneys paid.
- (2) Any compensation moneys received by the trustees on behalf of owners in terms of subrule (1) must be paid to the owners in accordance with their participation quotas, unless any owner notifies the trustees before the moneys are so distributed that he or she considers that distribution to be inequitable, in which event the compensation moneys must be distributed either –
- (a) in accordance with a scheme approved by unanimous resolution of the owners; or
 - (b) in accordance with a scheme approved by an arbitrator.
- (3) If the whole or any part of or any rights in a common property are expropriated, any owner of a section may refer, subject to this rule, the formulation of a scheme as contemplated in subrule (2) to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).
- (4) Subject to subrule (5), in formulating a scheme as contemplated in subrule (2), the owner of a section and the arbitrator must have due regard to the quantum of damages suffered by each owner as a result of the expropriation.
- (5) If the exclusive rights of any particular owner of a section to use the common property have been affected by an expropriation, the scheme must provide, if reasonably practicable, for the election to the owner of the exclusive use of another part of the common property for the same purpose.

Payment of legal costs

73.

An owner of a section is liable for and must pay all legal costs, including costs between attorney and client and collection commission, expenses and charges incurred by a body corporate in obtaining compliance with any of the owners obligations in terms of the Act, these rules or any house rules.

Payment of costs relating to clearance certificate or building compliance certificate

74.

If a body corporate incurs any expense in connection with the furnishing of a clearance certificate or a building compliance certificate the costs are recoverable from the owner of the section concerned.

Payment of charge in respect of supply of services to exclusive use area

75.

Despite anything to the contrary in these rules, the owner of any exclusive use area in which a servant is accommodated is liable to pay to the body corporate a charge, as determined by the trustees from time to time, in respect of the supply of services such as water and electricity to the area concerned.

PART 3

CONDUCT RULES

Animals, reptiles, birds and other pets

76.

- (1) Subject to subrule (3), an owner of a section may not keep any animal, reptile, bird or other pet in a section or on the common property without the approval in writing of the trustees, which approval may not unreasonably be withheld.
- (2) When granting approval in terms of subrule (1) the trustees may impose reasonable conditions.
- (3) The keeping of any animal, reptile, bird or other pet in terms of this rule may not be in conflict with any other law.
- (4) The trustees may withdraw approval given in terms of subrule (1) if the owner concerned is in breach of any condition imposed in terms of subrule (2).

Refuse disposal

77.

An owner of a section must -

- (a) maintain, within his or her section, his or her exclusive use area or on the part of the common property as approved by the trustees in writing, a receptacle for refuse, which receptacle must be kept in an hygienic and a dry condition to the satisfaction of the trustees;
- (b) ensure that before refuse is placed in the receptacle, it is securely wrapped or in the case of tins or other containers, completely drained and dry;
- (c) for the purpose of having the refuse collected, place the receptacle within the area and at the times designated by the trustees in writing; and
- (d) when the refuse has been collected, promptly return the receptacle to any of the areas referred to in paragraph (a).

Vehicles

78.

- (1) An owner of a section may only park a vehicle upon the common property or allow any vehicle to be so parked with the approval of the trustees in writing.
- (2) The trustees may remove or cause to be removed or towed away, at the risk and expense of the owner of the vehicle concerned, any vehicle parked on the common property in contravention of subrule (1).
- (3) An owner of a section must ensure that his or her vehicle and any vehicle of his or her visitors do not spill oil, brake fluid or any other fluid on to the common property, or in any other way deface or soil the common property.
- (4) An owner of a section may not dismantle or effect major repairs to any vehicle on any portion of the common property, an exclusive use area or in a section.

Damage, alterations or additions to common property

79.

(1) Subject to subrule (2), an owner of a section may not mark, paint, drive nails or screws or the like into, or otherwise damage or alter, any part of the common property without first obtaining the written approval of the trustees, which approval may not be withheld unreasonably.

(2) An owner of a section or a person authorised by him or her may install, with the written approval of the trustees, which approval may not be withheld unreasonably

(a) a locking device, safety gate, burglar bars or other safety device for the protection of

his or her section; or

(b) a screen or other device to prevent the entry of animals or insects, on the common property.

Appearance of sections

80.

An owner of a section may not place or do anything on any part of the common property, including the balconies, patios, verandas or gardens which, in the discretion of the trustees, are aesthetically displeasing or undesirable.

Signs and notices

81.

An owner of a section may only with the prior written approval of the trustees, which approval may not be withheld unreasonably, place any sign, notice, billboard or advertisement or any kind whatsoever on any part of the common property or of a section, so as to be visible from outside the section.

Littering

82.

An owner of a section may not deposit or throw, or allow to be deposited or thrown, on or onto the common property any litter whatsoever.

Laundry

83.

An owner of a section may only with the prior written approval of the trustees, which approval may not be withheld unreasonably, erect his or her own washing lines or hang any washing or laundry or any other items on the washing lines or on any part of the building or the common property so as to be visible from outside the buildings or from any other section.

Storage of combustible material or other dangerous acts

84.

An owner of a section may not –

- (a) store any combustible or flammable material;
- (b) perform any dangerous act; or
- (c) allow the storing of combustible or flammable material or the performance of a dangerous act to be done, in the building or on the common property, which increases or may increase the rate of the premium payable by the body corporate in respect of any insurance policy.

Eradication of pests

85.

- (1) An owner of a section must -
 - (a) keep his or her section free of white ants, wood-worms, wood-mites and any other wood destroying insects; and
 - (b) permit the trustees, the management agent or their duly authorised agents or employees, to enter upon his or her section from time to time for the purpose of –
 - (i) inspecting the section; and
 - (ii) taking the action as may be reasonably necessary to eradicate any of the pests referred to in paragraph (a) which may be found in or on his or her section.
- (2) The costs of -
 - (a) an inspection referred to in subrule (1)(b);
 - (b) the eradicating of any pests found in or on the section as a result of the inspection; or
 - (c) the replacement of any woodwork or other material forming part of the section which may be damaged by any pests, are borne by the owner of the section concerned.

Noise

86.

An owner of a section may not create or cause to be emitted from any source any noise which causes or results in a nuisance or disturbance to others.