

INFORMATION AND KNOWLEDGE BASE

PROPERTY OWNERSHIP AND MANAGEMENT

- Chapter 8 -

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"In three words I can sum up everything I learned about life - It goes on" – Robert Frost

-Chapter 8-

PROPERTY OWNERSHIP AND MANAGEMENT

8.1 Introduction

The issues relating to the management of the property and all related matters is a very wide field and in this chapter an attempt is made to give a summary of all the areas that are of importance to the governing body.

Municipalities provide less and less reliable services to estates and complexes in the form of roads, streetlights, road signage, refuse removal and sewerage maintenance. In a lot of instances electricity and water is provided to the estate in bulk and it is expected of the estate or complex to provide individual utility services to residents. Residents, however, expect an uninterrupted supply of these services from the estate.

The management of these services is a responsibility on its own and the governing body should have systems and experienced management in place to provide these services. The governing body should investigate areas such as water usage reduction and alternative supplies, own electricity generation, ways to extend the life of roads, maintain and upgrade streetlights, develop and maintain parks and recreation areas, keep the sidewalks, internal and on the outside, in tip top condition, and investigate if and how sewerage systems can be maintained better.

8.2 Types of Property Ownership

It might be useful to refresh the reader's memory on the various types of property ownership that exist. They are:

Full Title Ownership

These are free-standing houses with the owner having full rights over the buildings and the land they are built on.

Sectional Title Ownership

This is an ownership of a unit within a complex and an undividable share of the common property. Please note that there are own areas (e.g., parking bays), exclusive areas (e.g., balconies) and

common areas (e.g., gardens) in such an ownership agreement and these concepts should be understood. Levies and utilities costs to be recovered are charged according to the participation quota, that is, the size of the property in relation to the full extent of the undivided property.

Share-Block Ownership

This is where a company is the owner of the land and buildings but each shareholder in the company has living rights to a unit in the development. The members of the governing body run and manage the company.

Leasehold

In this instance the tenant has the right to occupy the leased property.

Life Rights

Instead of buying the property, the right to live in the property for the rest of one's life is purchased. The right applies to both spouses.

Fractional Ownership

This way parties can share in and mitigate the risk of ownership in a specific property. The costs are shared, and the property enjoyed in proportion to the input.

Joint Ownership

In this case two people jointly own the property and the concept is mainly applied to married persons.

Usufruct

This is a temporary legal right accorded to a person or party to use the property to derive income or a benefit for the period granted.

Limited Real Rights

This is the right over a property but restricted to a specific use for a specific time. These rights must be registered against the title deed.

Habitation

This is a right a person must continue occupation of a property and is usually created by a will and registered at the deed's office.

8.3 Rules and Regulations

8.3.1 Conduct Rules

Members' living and conduct rules and regulations are designed to achieve orderly, peaceful and uniform living in the community and to nurture a mutual feeling of contentment, thereby ensuring that the common interests of residents are protected. The rules are part of the founding documents. Refer to **Chapter 2** of this guide for full details.

8.3.2 Aesthetics Rules

Aesthetic rules are designed to enhance the coherence of the estate but simultaneously not restrict creative and individual preferences in the design of a residence. The rules also serve as guidelines for planned alterations to existing houses. Refer to **Chapter 2** of guide for full details.

8.4 Maintenance

Maintenance of the governing body's property is of critical importance. The assets in which members and therefore the organization has invested consist, *inter alia*, of buildings, walls and fences, roads, transformers, street lighting, fire hydrants, meters and meter kiosks, equipment, vehicles, generators, gardens, and recreational areas. It is strongly recommended for the governing body to keep a detailed register of all assets. Please remember the proven rule that where the assets are looked after, protected, stored, and kept clean, the assets last longer.

8.4.1 Normal and Preventative Maintenance

Maintenance is split into normal planned or unplanned maintenance and preventative maintenance. These two categories require their own budgets. Preventative maintenance is maintenance which takes place in advance and in accordance with a pre-determined schedule to avoid more expensive unnecessary damage later. A schedule should be drawn up for each item and using the suppliers' conditions and warranties, the governing body and management's own experience as well as specialists in the fields, to establish the replacement date and cost of the item. Please refer to section 6.8 of this guide for the maintenance reserve calculation.

Unexpected breakdowns and damages occur from time to time. The most effective way of addressing the repair should be established at that point in time and please remember that a quick fix is not necessarily the right decision.

The budget must provide for a realistic number of repairs to be conducted during the year. The governing body should also be careful in cutting back on these expenses at both budget preparation time and during the year when the budgeted numbers are not achieved.

8.4.2 Gardens

Gardens must be well planned. In a water-scarce country like South Africa, the right layout, using other garden materials and the plants chosen, are of critical importance.

Where the gardens have not been fully developed or a revamp is required, it is advisable that a main plan for the garden is developed. This plan is then used to improve certain areas as and when money becomes available. The plan will also prevent redoing the gardens in future.

8.5 Construction Process

The governing body must ensure that adequate procedures are in place to control the construction of a dwelling on the premises. However, the execution of the controls and checks needs to be delegated to management. The construction process will be explained under the various headings:

8.5.1 Approval of Plans

Plans are drawn up by the owner and his professional team. The aesthetic rules (see the section on aesthetics rules), are made available to the owner to ensure that the rules are followed in the

drafting of the plans. Where owners are unsure about certain parts of the plan, a concept plan may first be submitted.

The plans are submitted to the governing body with the *Architectural Compliance Questionnaire* accompanied by the application form for the *Approval of Building Plans*. The said questionnaire is designed to simplify and speed up the approval process of the plan and to ensure that the owner and his team have designed the construction and considered all critical conditions, as set out in the Aesthetic Rules 8.3.2 of this document.

The governing body's aesthetics committee or those responsible review the plan, and either approves or returns the plan for modification. A plan approval fee is then paid, and the approved plans are submitted to the local council after which a signed and stamped copy is received by the governing body for safekeeping.

8.5.2 Clearance to Commence Construction

On the receipt of certain key certificates, the owner is given a clearance certificate to commence the building process. The clearance certificate also gives approval to the security function to register the contractor, sub-contractors, and their employees.

The following must be in place before the clearance certificate is issued:

- Title deed that includes the condition that the owner is a member of the governing body.
- Approved plans by the governing body.
- Approved plans by your local council.
- National Home Builders Registration Council (NHBRC) certificate.
- Geological certificate.
- Plan approval fee is paid.
- Construction fee is paid.
- Construction deposit is paid.

The clearance certificate is only issued after the owner and contractor have both signed for the receipt of the *Building Rules and Regulations* and have signed the *Standard Indemnity Form* committing to the conditions of *Occupational and Safety Act (OHSACT)*. They also accept responsibility for any possible damages that might be caused by the contractor whilst on site.

8.5.3 Control over Building Activities

The first control check is on the setting out of the foundations. A quantity surveyor certification

is obtained to ensure that no boundaries and servitudes are exceeded.

The adherence to the general building rules and regulations by owner and contractors are monitored on a daily and weekly basis by management.

During building activities, monthly quality control checks are done on the construction. This inspection fee is paid by the owner and the inspection is carried out by the qualified person appointed by the governing body who then does the inspection. Deviations should immediately be corrected by the owner or, in exceptional cases, presented to obtain governing body approval to deviate from the approved plans. A building progress report on all the construction sites with issues to be looked at is tabled at each governing body meeting.

A deviation and dispute resolution process must exist for cases where the owner is displeased with the decisions made by either the aesthetics committee or the governing body.

8.5.4 Connection of Utility Services

Water and electricity supplied by the governing body are connected on request, but only after the necessary forms have been completed, the installation contract (including the installation conditions) signed, the deposits and connection fees paid, and the *Supply of Utilities Contract* is signed.

For the water connection, a meter needs to be installed before the connection is made. Please note that the governing body may charge the maximum water tariff during construction. Once the residence has been occupied, the standard rates apply.

For the electricity connection, an *Electricity Compliance Certificate (COC)* is required immediately after the connection has been made. 24 hours may be granted to the owner to submit the COC from an accredited electrician.

Two connections are possible, namely a temporary builder's connection, soon to be followed by a permanent connection. In both instances the COC must be obtained. Where homeowners apply for a 3-phase connection the availability on the grid must be checked before the necessary cabling is done to make this connection possible. The municipal-related fee for making a 3-phase connection should be charged to the owner.

8.5.6 Compliance Certifications

To ensure compliance with all rules, regulations and laws, the following compliance certificates must be submitted to the governing body before occupation by the owner can be granted. These are:

- Roof design and construction.
- Gas installation.
- Sewerage installation.
- Glass fitting.
- Electrical installation.

8.5.7 Occupational Certificate and Owner Occupation

A final inspection by the governing body takes place and all outstanding matters are addressed by the owner. The council issues an *Occupational Certificate (OC)* and together with the governing body's own final inspection, the owner is allowed to move in.

8.6 Building Plans Management

The governing body's own building plans should be filed for easy reference and the following must be available:

- Site plans (folded to an easy-to-read A4 format) for the water layout, electricity network, sewerage, roads, storm water, irrigation ducts, telecom network.
- CCTV cabling, fence electrification and electricity points and boom ducting for buildings.
- Stand information including numbering and street names.
- Compliance certificates such as glass, sewerage, gas and roof certification and electricity compliance. The latter applies not only to buildings, but to CCTV cameras, boom systems and electric fences as well.
- The occupational certificates of all buildings.

8.7 Transfer of Property

Properties within the governing body are continuously changing hands. The following procedure should be followed, and the governing body will do well to ensure that standard operating procedures (SOP) are in place:

- On receipt of the request to transfer a property from the transferring attorneys, the unpaid balances must be established, and an estimate made of the amounts that will become due before the transfer is completed. The amount owing will include interest on overdue accounts.
- The governing body's clearance letter is sent, and this includes the instructions and conditions of the transfer as well as the amount to be paid before the final consent for the transfer is given.
- The consent by owner is a very important document that must be signed by the new owner. In this document the new owner accepts all the conditions applicable to the property and living at the estate as well other additional obligations that the governing body has introduced and may have to introduce from time to time. The time within which the owner of an empty stand must complete the building is a sensitive item and the new owner's attention must be specifically drawn to it.
- Once the transfer attorney has made full payment of the amounts requested and has submitted the signed documents, the governing body can release the final consent to transfer letter.
- The transfer needs to be followed up until the notification of a transfer is received.
- The governing body's records are updated with the new owner's detail and the new owner is requested to come and complete the security access forms, the utility supply contacts, and any other applicable forms.
- The financial adjustments in levies and utilities between the seller and the buyer are made.

8.8 Property Information Management

The following minimum information of each residence needs to be on file:

- Copies of approved plans (folded in an easy-to-read A4 format).
- Transfer of documents. Signed acceptance of rules and regulation of the governing body, acceptance of issues relating to the construction and any other commitments the residence has, for example, the rules of the country club, etc.
- Copies of certificates of compliance for electrical installation, roof, gas, sewerage, and glass.
- The occupational certificate from local authorities.
- Copy of title deed.
- Geoscience report of land grading.
- Important and recent correspondence.

8.9 Property Practitioners

8.9.1 Introduction

One of the governing body's objectives should be to market the governing body and enhance residence value. Good property practitioners may be brought in for the governing body to achieve this objective.

The management of property practitioners for both sales and rentals entail *inter alia* control over the access to the estate by the right people. The way to do this is to establish a policy on all related matters and to ensure the policy is adhered to.

8.9.2 The Sales and Rental Property Practitioner's Policy

The following aspects must be covered by the policy:

- Only principals and their practitioners who meet the set of criteria are allowed to conduct sales and rentals. The criteria are *inter alia*:
 - . Possession of a current fidelity fund certificate from the *Property Practitioners Regulation Authorities* (PPRA).
 - . Registration with the PPRA and members of the Institute of Property Practitioners.
 - . Attend an orientation meeting with the management of the governing body and pass a verbal examination on the governing body's rules and regulations.
 - . Completion of his/her NQF4 qualification.
 - . A valid identity document.
 - . No criminal record.
- The fact that the approval to do business in the estate or complex can be revoked upon transgression of any rules or policies.
- The number of principals and property practitioners that will be allowed to operate in the estate and the criteria for revoking the approval.
- The marketing of properties in the estate or complex, signage to be used, the rules around show days, rules for auctions, sponsorship opportunities, advertising, etc.
- The access and exit control protocols to the premises by the property practitioners and of potential buyers at regular intervals.
- The minimum yearly sales to be achieved for the continuation of the agreement with the principal.
- The rules to be followed by both owners and property practitioners who are not registered with the governing body.

- The application form with a commitment to the rules, to be completed by applicants when registering with the governing body permanently or with the marketing of a once-off property.
- The contract to be entered into once the principal has been approved.
- The yearly registration fee payable for approved principals and the fees payable for once-off marketing efforts by non-registered principals.
- The basis of the above fee calculation. The fact that the income is ring fenced and used for directly related marketing cost and for the enhancement of the values of the properties only.
- The fact that *Financial Intelligence Centre Act (FICA)* and maybe a criminal background test needs to be carried out by the agent on buyers and or tenants.
- The rental rules need to be spelt out. The rental agreement must include the occupancy limits, specifically exclusion and the specific rules and procedures to be followed by tenants.
- Dispute resolution procedures.

8.10 Municipal Charges

There are different municipal charges that need to be managed:

8.10.1 Electricity

This charge is based on the usage in kilowatt hour (kWh) and in some cases a charge for peak usage called kVA. The charge should be understood, and one must ensure that the governing body is charged the right tariff, that the meters are correct, and that the opening and closing readings are accurate, by physically inspecting the meters. Also, one must ensure that plans are made to lower the electricity consumption.

8.10.2 Water

This charge is based on the usage of water by the governing body measured in kilolitres. The governing body must ensure it is charged the correct tariff, the meters are measuring consumption correctly, the opening and closing meter readings are correct and that steps are taken to reduce consumption and prevent waste and leaks.

8.10.3 Property Rates and Taxes

Property rates and taxes might be a small part of the total cost of running the governing body, but they are nevertheless important and must thus be given proper attention. All the different

roads on the premises need to be listed and the rates accounts compared to the list before a payment is made. Any roads on the list not receiving accounts should be followed up on. Lastly ensure that the tariffs paid are correct.

8.10.4 Waste Management and Cleaning Charges

These charges could be significant, and it is worthwhile checking the detail. The cost is based on the number of rubbish drums being collected weekly or on the units themselves. The first check should be the number of drums in use and whether this is correctly reflected on the account. Secondly, the reduction in the number of drums must be considered.

8.11 Tenant and Landlord Rights

The *Rental Housing Act* protects both the tenants' and property owners' rights. The property owner must ensure that the conditions of the Act are complied with. The following are only a few tenants' rights enforceable by the Act:

- Prospective tenants, the tenants and their visitors and family may not be discriminated against.
- The right to privacy is protected.
- The right to receive a written lease and receipts for all payments.
- The right to an inspection of the property before moving in.
- Direct complaints and disputes to the tribunal.

The following are only a few rights of the property owner provided for in the Act:

- Prompt payment of the rental.
- Recover unpaid rental through the tribunal.
- Terminate the lease without being unfair.
- Demand a deposit.
- Increase the rental with two months' notice.
- Keep the property in good order and fit for human habitation.
- Set house rules and expect adherence thereto by all tenants.
- Inspect the property on termination of the lease and claim any damage caused.
- Serve the tenant with a court order of the court, if necessary.

Disputes and complaints can be directed to the Rental Housing Tribunal (RHT) by either party for arbitration. The primary function of the RHT is to mediate between tenants and landlords where

disputes arise. The purpose is to try and ensure some stability and harmony in the housing rental sector. In the mediation process the *Rental Housing Act* forms the basis on these negotiations.

The objectives of the tribunal are to inform tenants and property owners of their rights, to administer any residential disputes anywhere in the country, to investigate reported cases and to resolve any disputes. The process is informal, impartial, and confidential and takes place in the presence of a qualified negotiator from the tribunal.

The service is free and any person with an interest in a rented property can approach the tribunal.

Issues like unpaid or not refunded deposits, rent not being paid, damage of property, unpaid utility services and eviction are a few examples of reasons to ask the tribunal for help.

8.12 Incorporation of New Developments

New developments may be incorporated into the existing property from time to time. This could be beneficial as the income from such incorporation could be very favorable to the governing body and all its members. The incorporation of a new development must be subjected to a well-managed process to ensure that all the commitments made by the developer are fulfilled.

The following points, *inter alia*, should be considered when a potential incorporation is planned:

- Determine the financial benefit of the incorporation.
- Evaluate the risk associated with the incorporation such as taking over an established infrastructure, security implications and other maintenance work.
- See what the memorandum of incorporation (MOI) and constitution states about such incorporation and the rules that need to be followed.
- The rules to be followed for the approval of the incorporation must be obtained from the local municipality.

The following professionals may have to be brought on to the governing body to assist with the process:

- Land claim authorities.
- Town planner for the size of land and the layout of it.
- The civil engineer for water, sewerage, roads, and storm water plans.
- Electrical engineer for electrical design and supply.
- Geological engineer for land quality and land grading.
- Architect for design and design rules.
- Form a committee to oversee the incorporation process.

- Once the governing body makes the decision to go ahead with the incorporation an agreement must be prepared together with the developer of the incorporated development.

The contract should cover, *inter alia*, the following matters to ensure a successful incorporation:

- The entity responsible for the supply of all infrastructure which will include water, electricity, sewerage, roads, storm water, security facilities and telecom services.
- Provision of guarantees as required by the local authority and proof thereof.
- Repayment of the guarantees after the maintenance period expires.
- Plans of the development to be incorporated.
- Zoning of the stands to be incorporated need to be understood and agreed upon. Remember that there are four residential and four business zoning categories. The categories are mainly created to control the building density of a particular piece of land.
- Rights of the governing body to have the infrastructure independently inspected for quality of workmanship and compliance with the original specifications determined.
- Building of walls, installation of CCTV cameras and electric fences to link into the governing body's existing security system.
- Obligation by the new members to become part of the governing body, that all the members will be bound by the MOI or constitution of the governing body, the conditions for future construction on stands and the selling of the stands.
- The payment of levies and commencement. A monthly contribution by the developer during the development period must be considered as the governing body will incur additional costs during this period.
- Submission of title deeds for access roads and other communal land.
- Zoning classifications of stands to be incorporated must be agreed on.
- Servitudes on incorporated land and changes to existing plans with new servitudes must be dealt with.
- Security arrangements during the incorporation period are to be agreed on.
- A list of all final certificates and professional reports to be submitted by the developer. These are: geotechnical, construction, conditions of township establishment, certificates of compliance (COCs) for all the utilities and bulk services, dolomite risk management plans, etc.
- Types of ownership.
- Owner rights vs resident rights.
- Construction, sale, and rental of properties.
 - . Maintenance: general, preventative, and reserves
- Municipal rates and taxes.