

## The Functions, Powers and Duties of Trustees,

### 25. General

25. The duties and powers of the body corporate shall, subject to the provisions of the Act and these rules and to any restriction imposed or direction given at a general meeting of the owners of sections, be performed or exercised by the trustees of the body corporate holding office in terms of these rules.

### 26. Powers

26. (1) Subject to any restriction imposed or direction given at a general meeting of the body corporate, the powers of the trustees shall include the following:

(a) to appoint for and on behalf of the body corporate such agents and employees as they deem fit in connection with-

(i) the control, management and administration of the common property; and

(ii) the exercise and performance of any or all of the powers and duties of the body corporate;

(b) to delegate to one or more of the trustees such of their powers and duties as they deem fit, and at any time to revoke such delegation.

(2) The trustees may not make loans on behalf of the body corporate to owners of units or to themselves.

### 27. Signing of Instruments

27. No document signed on behalf of this body corporate, shall be valid and binding unless it is signed by a trustee and the managing agent referred to in rule 46 or by two trustees or, in the case of a certificate issued in terms of section 15B (3) (i) (aa) of the Act, by two trustees or the managing agent.

### 28. Statutory and General Duties

28. (1) Without detracting from the scope of the additional duties specified in rules 29 to 45, inclusive, and subject to the provisions of such rules, the trustees shall perform the functions entrusted to them by sections 37 and 39 of the Act.

(2) The trustees shall do all things reasonably necessary for the control, management and administration of the common property in terms of the powers conferred upon the body corporate by section 38 of the Act.

(3) The trustees shall do all things reasonably necessary for the enforcement of the rules in force.

### 29. Insurance

29. (1) (a) At the first meeting of the trustees or so soon thereafter as is possible, and annually thereafter, the trustees shall take steps to insure the buildings, and all improvements to the common property, to the full replacement value thereof, subject to negotiation of such excess, premiums and insurance rates as in the opinion of the trustees are most beneficial to the owners, against-

(i) fire, lightning and explosion;

(ii) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organization;

(iii) storm, tempest and flood;

(iv) earthquake;

(v) aircraft and other aerial devices or articles dropped there from;

(vi) bursting or overflowing of water tanks, apparatus or pipes;

(vii) impact with any of the said buildings or improvements by any road vehicle, horses or cattle;

(viii) housebreaking or any attempt thereat;

(ix) loss of occupation or loss of rent in respect of any of the above risks;

(x) such other perils or dangers as the trustees or any holder of first mortgage bonds over not less than 25% in number of the units in the scheme, may deem appropriate.

(b) The trustees shall at all times ensure that in the policy of insurance referred to in paragraph (a) above-

(i) there is specified the replacement value of each unit (excluding the owner's interest in the land)-

(aa) initially [but subject to the provisions of subparagraph (cc)] in accordance with the trustees' estimate of such value;

(bb) after the first annual general meeting [but subject to the provisions of subparagraph (cc)] in accordance with the schedule of values as approved in terms of paragraph (c); or

(cc) as required at any time by any owner in terms of paragraph (d);

(ii) any 'average' clause is restricted in its effect to individual units and does not apply to the building as a whole.

(iii) there is included a clause in terms of which the policy is valid and enforceable by any mortgagee against the insurer notwithstanding any circumstances whatsoever 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 shall have terminated such insurance.

(c) Before every annual general meeting, the trustees shall cause to be prepared schedules reflecting their estimate of-

(i) the replacement value of the buildings and all improvements to the common property; and

(ii) the replacement value of each unit (excluding the owner's interest in the land), the aggregate of such values of all units being equal to the value referred to in subparagraph (i) above,

and such schedules shall be laid before the annual general meeting for consideration and approval in terms of rule 56.

(d) Any owner may at any time increase the replacement value as specified in the insurance policy in respect of his unit: Provided that such owner shall be liable for payment of the additional insurance premium and shall forthwith furnish the body corporate with proof thereof from the insurer.

(e) The trustees shall, on the written request of a mortgagee and satisfactory proof thereof, record the cession by any owner to such mortgagee of the owner's interest in the application of the proceeds of the policies of insurance effected in terms of rule 29 (1) (a).

(2) At the first meeting of the trustees or as soon thereafter as is possible, the trustees shall take all reasonable steps-

(a) to insure the owners and the trustees and to keep them insured against liability in respect of-

(i) death, bodily injury or illness; or

(ii) loss of, or damage to, property,

occurring in connection with the common property, for a sum of liability of not less than one hundred thousand rand, which sum may be increased from time to time as directed by the owners in general meeting; and

(b) to procure to the extent, if any, as determined by the members of the body corporate in a general meeting, a fidelity guarantee in terms of which shall be refunded any 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 and all trustees

and persons acting in the capacity of managing agents of the body corporate; and

(3) The owners may by special resolution direct the trustees to insure against such other risks as the owners may determine.

### **30. Collection of Contributions**

30. It shall be the duty of the trustees to levy and collect contributions from the owners in accordance with the provisions and in the proportions set forth in rule 31.

### **31. Liability in terms of section 37 (1) and 47 of the Act**

31. (1) The liability of owners to make contributions, and the proportions in which the owners shall make contributions for the purposes of section 37 (1) of the Act, or may in terms of section 47 of the Act be held liable for the payment of a judgment debt of the body corporate, shall with effect from the date upon which the body corporate comes into being, be borne by the owners in accordance with a determination made in terms of section 32 (4) of the Act, or in the absence of such determination, in accordance with the participation quotas attaching to their respective sections.

(2) At every annual general meeting the body corporate shall approve, with or without amendment, the estimate of income and expenditure referred to in rule 36, and shall determine the amount estimated to be required to be levied upon the owners during the ensuing financial year.

(3) Within fourteen days after each annual general meeting the trustees shall advise each owner in writing of the amount payable by him or her in respect of the estimate referred to in subrule (2), whereupon such amount shall become payable in instalments, as determined by the trustees.

(4) The trustees may from time to time, when necessary, make special levies upon the owners or call upon them to make special contributions in respect of all such expenses as are mentioned in rule 31 (1) above [which are not included in any estimates made in terms of rule 31 (2) above], and such levies and contributions may be made payable in one sum or by such instalments and at such time or times as the trustees shall think fit.

(5) An owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the body corporate in obtaining the recovery of arrear levies, or any other arrear amounts due and owing by such owner to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.

(6) The trustees shall be entitled to charge interest on arrear amounts at such rate as they may from time to time determine.

### **32. Record of Rules and their Availability**

32. (1) The trustees shall keep a complete record of all rules in force from time to time and shall ensure that any amendment, substitution, addition or repeal of such rules (as contemplated in section 35

(5) of the Act) is submitted forthwith to the Registrar of Deeds for filing as contemplated in section 35 (5)

(c) of the Act.

(2) The trustees shall on the application of-

(a) an owner of a unit;

(b) an occupant of a unit;

(c) the prospective purchaser of a unit;

(d) the holder of any registered sectional mortgage bond;

(e) the managing agent; and

(f) the auditor or the accounting officer,

supply to such person a copy of all rules in force, and may require them to pay a reasonable charge there for.

### **34. Minutes**

34. (1) The trustees shall-

(a) keep minutes of their proceedings;

(b) cause minutes to be kept of all meetings of the body corporate in a minute book of the body corporate kept for the purpose;

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

(2) The trustees shall keep all minute books in perpetuity.

(3) On the written application of any owner or registered mortgagee of a unit, the trustees shall make all minutes of their proceedings and the minutes of the body corporate available for inspection by such owner or mortgagee.

### **35. Books of Account and Records**

35. (1) The trustees shall cause proper books of account and records to be kept so as fairly to 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 sums of money received and expended by the body corporate and the matters in respect of which such receipt and expenditure occur;

(c) a register of owners and of registered mortgagees of units and of all other persons having real rights in such units (insofar as written notice shall have been given to the trustee by such owners, mortgagees or other persons) showing in each case their addresses; and

(d) individual ledger accounts in respect of each owner.

(2) On the application of any owner, registered mortgagee or of the managing agent the trustees shall make all or any of the books of account and records available for inspection by such owner, mortgagee or managing agent.

(3) The trustees shall cause all books of account and records to be retained for a period of six years after completion of the transactions, acts or operations to which they relate: Provided that minute books shall be retained for so long as the scheme remains registered.

### **36. Annual Financial Estimate**

36. (1) Before every annual general meeting, the trustees shall cause to be prepared an itemized estimate of the anticipated income and expenses of the body corporate during the ensuing financial year, which estimate shall be laid before the annual general meeting for consideration in terms of rule 56 hereof.

(2) The estimate of expenses referred to in sub-rule (1) shall include a reasonable provision for contingencies and the maintenance of the common property.

### **37. Annual Financial Statement**

37. (1) The trustees shall cause to be prepared, and shall lay before every annual general meeting, for consideration in terms of rule 56 (b), a financial statement in conformity with generally accepted accounting practice, which statement shall fairly present the state of affairs of the body corporate and its finances and transactions as at the end of the financial year concerned.

- (2) The financial statement shall include information and notes pertaining to the proper financial management by the body corporate, including:
- (a) the age analysis of debts in respect of levies, special levies and other contributions;
  - (b) the age analysis of amounts owing by the body corporate to the creditors and in particular to any public or local authority in respect of rates and taxes and charges for consumption or services, including but not limited to, water, electricity, gas, sewerage and refuse removal;
  - (c) the expiry dates of all insurance policies.

### **38. Annual Trustees' Report**

38. The trustees shall further cause to be prepared and shall lay before every annual general meeting a report signed by the chairman reviewing the affairs of the body corporate during the past year, for consideration in terms of rule 56 (b).

### **39. Delivery of Estimate, Statement & Report**

39. (1) The trustees shall cause copies of the schedules, estimate, audited statement and report referred to in rules 29 (1) (c), 36, 37 and 38 to be delivered to each owner, and to any mortgagee which has advised the body corporate of its interest, at least fourteen days before the date of the annual general meeting at which they are to be considered.
- (2) Delivery under the last preceding sub-rule shall be deemed to have been effected if the documents referred to are sent by prepaid post addressed to the owner at his *domicilium* referred to in rule 3 (2), and to any mortgagee as aforesaid at the address of such mortgagee as reflected in the records of the body corporate.

### **40 Audit**

40. At the first general meeting and thereafter at every ensuing annual general meeting, the body corporate shall appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting: Provided that where a scheme comprises less than 10 units, an accounting officer may be appointed for that purpose and the auditor or accounting officer, as the case may be, must sign the financial statements.

### **41. Deposit of Funds**

41. The trustees shall cause all moneys received by the body corporate to be deposited to the credit of an account or accounts with a registered commercial bank or building society in the name of the body corporate and, subject to any direction given or restriction imposed at a general meeting of the body corporate, such moneys shall only be withdrawn for the purpose of payment of the expenses of the body corporate or investment in terms of rule 43.

### **42. Managing Agent's control of funds**

42. The trustees may authorize the managing agent to administer and operate the account referred to in rule 41 and 43: Provided that where the managing agent is an estate agent as defined in the Estate Agents' Act, 1976 (Act 112 of 1976), the trustees may authorize such managing agent to deposit moneys contemplated in rule 41 in a trust account as contemplated in section 32 (3) of the Estate Agents' Act, 1976, which moneys shall only be withdrawn for the purposes contemplated in rule 41.

### **43. Investment of funds**

43. Any funds not immediately required for disbursement may be invested in a savings or similar account with any registered building society or bank approved by the trustees from time to time.

### **44. Use of interest**

44. Interest on moneys invested shall be used by the body corporate for any lawful purpose.

### **45. No Refunds or Distribution of Profits or Assets**

45. (1) The owners shall not be entitled to a refund of contributions lawfully levied upon them and duly paid by them.
- (2) No portion of the profits or gains of the body corporate shall be distributed to any owner or any other person except upon destruction or deemed destruction of the building, or where such profit or gain is of a capital nature.

### **39 Functions and powers of bodies corporate to be performed or exercised by trustees**

- (1) The functions and powers of the body corporate shall, subject to the provisions of this Act, the rules and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the body corporate holding office in terms of the rules.
- (2) For the purposes of an agreement in respect of the beacons and boundaries of the common property required in terms of the Land Survey Act, 1997 (Act 8 of 1997), the trustees shall be deemed to be the owner of the land.

#### **40 Fiduciary position of trustees**

- (1) Each trustee of a body corporate shall stand in a fiduciary relationship to the body corporate.
- (2) Without prejudice to the generality of the expression 'fiduciary relationship', the provisions of subsection (1) shall imply that a trustee-
- (a) shall in relation to the body corporate act honestly and in good faith, and in particular-
    - (i) shall exercise such powers as he may have to manage or represent the body corporate in the interest and for the benefit of the body corporate; and
    - (ii) shall not act without or exceed the powers aforesaid; and
  - (b) shall avoid any material conflict between his own interests and those of the body corporate, and in particular-
    - (i) shall not derive any personal economic benefit to which he is not entitled by reason of his office as trustee of the body corporate, from the body corporate or from any other person in circumstances in which that benefit is obtained in conflict with the interests of the body corporate;
    - (ii) shall notify every other trustee, at the earliest opportunity practicable in the circumstances, of the nature and extent of any direct or indirect material interest which he may have in any contract of the body corporate.
- (3) (a) A trustee of a body corporate whose mala fide or grossly negligent act or omission has breached any duty arising from his fiduciary relationship, shall be liable to the body corporate for-
- (i) any loss suffered as a result thereof by the body corporate; or
  - (ii) any economic benefit derived by the trustee by reason thereof.
- (b) Where a trustee fails to comply with the provisions of subsection (2) (b) (ii) and it becomes known to the body corporate that the trustee has an interest referred to in that subsection in any contract of the body corporate, the contract in question shall, at the option of the body corporate, be voidable: Provided that where the body corporate chooses not to be bound, a Court may on application by any interested person, if the Court is of the opinion that in the circumstances it is fair to order that such contract shall nevertheless be binding on the parties, give an order to that effect, and may make any further order in respect thereof which it may deem fit.
- (4) Except as regards his duty referred to in subsection (2) (a) (i), any particular conduct of a trustee shall not constitute a breach of a duty arising from his fiduciary relationship to the body corporate, if such conduct was preceded or followed by the written approval of all the members of the body corporate where such members were or are cognizant of all the material facts.