

**THE BODY CORPORATE OF THE
SOMERSET GARDENS SECTIONAL TITLE SCHEME
SS No. 390/2006**

MANAGEMENT RULES

in terms of section 10(2)(a) of the Sectional Title Schemes Management Act, 2011

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PART 1
INTRODUCTORY

1. Heading

Management rules prescribed in terms of section 10(2)(a) of the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011).

2. Interpretation

(1) In the interpretation of these rules, unless the context indicates otherwise —

- (a) "**adjudicator**" means an adjudicator acting in terms of the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011);
- (b) "**administrator**" means an administrator appointed in terms of section 16 of the Act;
- (c) "**auditor**" means a person accredited to perform an audit in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005);
- (d) "**Community Schemes Ombud Service**" means the service established in terms of the Community Scheme Ombud Service Act, 2011 (Act No. 9 of 2011);
- (e) "**estimated cost**", for the purposes of rule 22, means the estimated cost to maintain, repair or replace a major capital item;
- (f) "**expected life**", for the purposes of rule 22, means the estimated number of years before it is expected that the cost of maintenance, repair or replacement of a major capital item will be incurred;
- (g) "**executive managing agent**" means a managing agent appointed to carry out all the functions and powers of the trustees in terms of rule 28;
- (h) "**future development right**" means a right to extend the scheme in terms of section 25 of the Sectional Titles Act;
- (i) "**major capital item**", for the purposes of rule 22, means wiring, lighting and electrical systems, plumbing, drainage and storm-water systems, heating and cooling systems, any lifts, any carpeting and furnishings, roofing, interior and exterior painting and waterproofing, communication and service supply systems, parking facilities, roadways and paved areas, security systems and facilities and any other community and recreational facilities;
- (j) "**managing agent**" means any person who provides scheme management services to a body corporate for reward, whether monetary or otherwise, including any person who is employed to render such services;
- (k) "**member**" means a member of the body corporate;
- (l) "**past contribution**", for the purposes of rule 22, means the funds in the reserve fund of the body corporate in respect of the estimated cost;
- (m) "**primary section**" means a section designed to be used for human occupation as a residence, office, shop, factory or for any other type of use allowed in terms of local municipal by-laws, not being a utility section;
- (n) "**registered auditor**" means a person as defined in terms of the Auditing Professions Act, 2005 (Act No. 26 of 2005);

- (o) "**registered bondholder**" means the holder of a mortgage bond of whom the body corporate has been notified in terms of section 13(1)(f) of the Act;
- (p) "**reserve funds**" means an amount set aside by the body corporate to meet the unexpected costs that may arise in future, including future cost of maintenance;
- (q) "**Sectional Titles Act**" means the Sectional Titles Act, 1986, (Act No. 95 of 1986), as amended;
- (r) "**service address**" means the service address of a member or the body corporate in terms of rule 4; and
- (s) "**the Act**" means the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011);
- (t) "**utility section**" means a section which, in terms of local municipality bylaws, is designed to be used as an accessory to a primary section, such as a bathroom, toilet, storeroom, workshop, shed, servant's quarters, parking garage, parking bay or other utility area, not being a primary section.

(2) In the interpretation of these rules —

- (a) words and expressions to which a meaning has been assigned in the Act or its regulations, bear those meanings;
- (b) words importing—
 - (i) the singular must be interpreted to include the plural, and the plural to include the singular; and
 - (ii) any one gender must be interpreted to include all other genders; and
- (c) the headings of rules must not be taken into account.

3. Amendment and binding nature

- (1) The body corporate may substitute, amend, repeal, or add to the management rules subject to and in accordance with the provisions of section 10 of the Act.
- (2) A member must take all reasonable steps to ensure compliance with the conduct rules in force in terms of section 10(2)(b) of the Act by any tenant or other occupant of any section or exclusive use area, including the member's employees, guests, visitors, and family members.

4. Service addresses

- (1) The body corporate must, from time to time, determine the address that is its *domicilium citandi et executandi* in terms of section 3(1)(o) of the Act; provided that such service address must be—
 - (a) the physical address of a section in the scheme;
 - (b) the physical address of a duly appointed managing agent or administrator; or
 - (c) another physical address within the magisterial district in which the scheme is located.
- (2) The trustees may designate a fax, email, or other address as an alternate body corporate service address.

- (3) A change of a body corporate service address is effective when written notice of that address is lodged with the Community Schemes Ombud Service in the prescribed form.
- (4) The trustees must, when they give the Community Schemes Ombud Service notice of a change of the body corporate service address in terms of section 3(1)(o) of the Act, simultaneously give such written notice to all members and other occupiers of sections and to all registered bondholders.
- (5) The service address for any legal process or delivery of any other document to a member is the address of the primary section registered in that member's name; provided that a member is entitled by written notice to the body corporate to change that address for purposes as contemplated in subsections 6(3)(c) and 6(4) of the Act to another physical address, postal address or fax number in the Republic of South Africa or to an email address, and that the change in the service address of the member is effective when the body corporate receives notice of such a change.
- (6) The service address for any legal process or delivery of any other document to an occupier of a section, who is not a member, is the physical address of that section.

PART 2 **TRUSTEES**

5. Trustees

- (1) All the members are trustees from the establishment of the body corporate until the end of the first general meeting.
- (2) Subject to rules 6(4) and 28(1), if a body corporate consists of less than 4 members who are owners of primary sections, each member or his or her representative recognised by law is considered to be a trustee without election to office.
- (3) If a body corporate consists of more than 4 members who are owners of primary sections, they must from time to time determine the number of trustees to be elected in terms of these rules.

6. Requirements for office and disqualification

- (1) A trustee need not be a member or the legally recognised representative of a member who is a juristic person.
- (2) A person who is the managing agent or an employee of the managing agent or the body corporate may not be a trustee unless that person is a member.
- (3) A trustee who has any direct or indirect personal interest in any matter to be considered by the trustees must not be present at or play any part in the consideration or decision of the matter concerned.
- (4) A trustee ceases to hold office if that trustee—
 - (a) by written notice to the body corporate, resigns from office;
 - (b) is declared by a court to be of unsound mind;
 - (c) is or becomes insolvent and the insolvency results in the sequestration of that trustee's estate;

- (d) is convicted, or has been convicted in the Republic or elsewhere, of theft, fraud, forgery, perjury or any other offence involving dishonesty;
- (e) is sentenced to imprisonment without the option of a fine;
- (f) is removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money;
- (g) is removed from office by ordinary resolution of a general meeting; provided the intention to vote on the proposed removal was specified in the notice convening the meeting;
- (h) is or becomes disqualified to hold office as a director of a company in terms of the Companies Act, 2008 (Act No. 71 of 2008); or
- (i) fails or refuses to pay the body corporate any amount due by that trustee after a court or adjudicator has given a judgment or order for payment of that amount.

7. Nomination, election, and replacement

- (1) A member may nominate any person for the office of trustee.
- (2) The nomination of a trustee must be in writing, accompanied by the written consent of the person nominated and delivered to the body corporate service address at least 48 hours before the annual general meeting is due to start.
- (3) If an insufficient number of nominations are received in terms of sub-rule (2), further nominations may be called for at the annual general meeting with the consent of the persons nominated.
- (4) Save for the provisions of rules 5(1) and (2), trustees must be elected at the first general meeting of the body corporate and then at each subsequent annual general meeting.
- (5) If a trustee ceases to hold office — (a) *the* remaining trustees; or
(b) the members in general meeting, may
appoint a replacement trustee.
- (6) An elected or replacement trustee holds office until the end of the next annual general meeting and is eligible for re-election, if properly nominated.
- (7) The trustees may appoint, for a specified period, a person qualified to serve as a trustee as a replacement for any trustee who is absent or otherwise unable to perform the duties of that office.

8. Payment and indemnity

- (1) The body corporate must reimburse trustees for all disbursements and expenses actually and reasonably incurred by them in carrying out their duties and exercising their powers.
- (2) Unless so determined by special resolution, trustees who are members are not entitled to any reward, whether monetary or otherwise, for their services as such.
- (3) Trustees who are not members may be rewarded for their services as such; provided that any reward, whether monetary or otherwise, must be approved by a resolution of the body corporate as part of the budget for the scheme's administrative fund.

(4) The body corporate must indemnify a trustee who is not a managing agent against all costs, losses and expenses arising as a result of any official act that is not in breach of the trustee's fiduciary obligations to the body corporate.

PART 3

TRUSTEE MEETINGS AND DECISIONS

9. General powers and duties

The trustees must—

- (a) meet to carry out the body corporate's business, adjourn and otherwise regulate their meetings as they think fit, subject to the provisions of the Act, these rules, and the common law of meetings;
- (b) exercise the body corporate's powers and functions assigned and delegated to them in terms of section 7(1) of the Act in accordance with resolutions taken at general meetings and at meetings of trustees;
- (c) apply the body corporate's funds in accordance with budgets approved by members in general meeting;
- (d) appoint any agent or employee in terms of section 4(a) of the Act in terms of a duly signed written contract; and
- (e) compile minutes of each trustee and general meeting in accordance with rule 27(2)(a) and distribute these to the persons entitled to notice of the meeting concerned as soon as reasonably possible, but not later than 7 days after the date of the meeting.

10. Validity of actions

- (1) No document signed on behalf of the body corporate is valid and binding unless it is signed on the authority of a trustee resolution by —
 - (a) two trustees or the managing agent, in the case of a clearance certificate issued by the body corporate in terms of section 15B(3)(a)(i) (aa) of the Sectional Titles Act; and
 - (b) two trustees or one trustee and the managing agent, in the case of any other document.
- (2) A resolution adopted or other act performed by the trustees remains valid and effective notwithstanding the later discovery of some defect in the appointment of a trustee or the disqualification of a trustee.

11. Calling and attendance at meetings

- (1) A trustee may at any time call a meeting of trustees by giving all other trustees not less than seven days written notice of the time and place of the meeting and by setting out an agenda for the meeting: Provided that —
 - (a) in cases of urgency a trustee may give such shorter notice as is reasonable in the circumstances; and
 - (b) notice need not be given to any trustee who is absent from the Republic unless the meeting is one referred to in sub-rule (5), but notice must be given to any replacement trustee appointed for that trustee.

- (2) The trustees may by written resolution set the dates of and a standard agenda for their future meetings and delivery of a copy of this resolution is considered adequate notice of all such future meetings.
- (3) Members, registered bondholders, holders of future development rights and the managing agent may attend trustee meetings and may speak on any matter on the agenda, but they are not entitled to propose any motion or to vote; provided that such persons are not entitled to attend those parts of trustee meetings that deal with —
 - (a) discussions of contraventions of the Act or rules; or
 - (b) any other matters in respect of which the trustees resolve that the presence of any such persons would unreasonably interfere with the interests of the body corporate or any person's privacy.
- (4) If a member, a registered mortgagee, or the holder of a future development right in writing requests notice of trustee meetings, the trustees must deliver to that person a copy of a notice of a meeting referred to in sub-rule (1), a resolution referred to in sub-rule (2) and a notice of any adjournment of such a meeting; provided that the body corporate may recover from the person concerned the costs of delivery of such documents.
- (5) The trustees may make arrangements for attendance at a trustee meeting by telephone or any other method, if the method —
 - (a) is accessible to all trustees and other persons entitled to attend the meeting;
 - (b) permits all persons participating in the meeting to communicate with each other during the meeting; and
 - (c) permits the chairperson to confirm, with reasonable certainty, the identity of the participants.
- (6) A person who attends a meeting as provided under sub-rule (5) is considered present in person at the meeting.

12. Chairperson

- (1) If a body corporate consists of only two members, the provisions in these rules in regard to the election and functions of a chairperson do not apply.
- (2) From the establishment of the body corporate until the end of the first general meeting, the developer or the developer's nominee is the chairperson of the trustees.
- (3) At the commencement of the first meeting of trustees after an annual general meeting at which trustees have been elected and whenever else necessary, the trustees must by majority vote elect a chairperson from among their number.
- (4) The chairperson of the trustees holds office as such until the end of the next annual general meeting.
- (5) The trustees at a trustees' meeting or the members at a general meeting may remove the chairperson from office if notice of the meeting contains a clear statement of the proposed removal; provided that such removal does not automatically remove the chairperson from the office of trustee.
- (6) If a chairperson is removed from office as such or ceases to hold office as a trustee, the remaining trustees must elect a replacement chairperson from among their

number who holds office as chairperson for the remainder of the period of office of his or her predecessor and has the same voting rights.

(7) If the elected chairperson vacates the chair during the course of a trustee meeting, is not present or is for any other reason unable or unwilling to preside, the trustees present must choose another chairperson from among their number and that replacement chairperson has all the powers and functions of the chairperson while acting as such.

13. Quorum

(1) At a trustee meeting, 50 per cent of the trustees by number, but not less than two, form a quorum.

(2) If the number of trustees falls below the number necessary to form a quorum, the remaining trustee or trustees may continue to act, but only to— (a) *appoint* replacement trustees to make up a quorum; or (b) *call* a general meeting.

(3) If at any trustee meeting a quorum is not present within 30 minutes of the appointed time for the meeting, the trustees present, but not less than two, must adopt interim resolutions in respect of each item on the agenda.

(4) An interim resolution adopted by trustees in terms of sub-rule (3) does not take effect unless it is confirmed—
(a) at the next trustee meeting at which a quorum is present; or (b) *by* written resolution signed by all the trustees.

14. Voting

(1) A motion at a trustee meeting —
(a) does not have to be seconded; and
(b) must be determined by resolution adopted by the majority of the trustees present and voting.

(2) Each trustee is entitled to one vote; provided that if the deliberative votes of the trustees, including that of the chairperson, are tied, the chairperson has a casting vote, unless there are only two trustees.

(3) A trustee is disqualified from voting in respect of —
(a) any proposed or current contract or dispute with the body corporate to which the trustee is a party; and
(b) any other matter in which the trustee has any direct or indirect personal interest.

(4) Trustees must adopt decisions by resolutions adopted by majority vote: Provided that resolutions may be put to the vote — (a) *at* trustee meetings; or
(b) by a notice sent to each trustee which contains the text of any proposed resolutions and instructs the trustees to indicate their agreement to the resolution by their signature, which signatures must be received by the body corporate before expiry of the closing date specified in the notice.

PART 4
OWNER MEETINGS

15. Notice

- (1) Subject to sub-rule (7), at least 14 days' written notice of a general meeting specifying the place, date and hour of the meeting must be given to— (a) *all* members; (b) all registered bondholders; (c) all holders of future development rights; and (d) *the* managing agent.
- (2) A person who has a right to be notified under this rule may waive that right by notice in writing delivered to the body corporate and may, at any time and in the same way, revoke that waiver; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to notice and any of them may revoke that waiver.
- (3) The notice of a general meeting must be accompanied by at least— (a) *an* agenda, as required in terms of these rules; (b) a copy or comprehensive summary of any document that is to be considered or approved by members at the meeting; and (c) a proxy appointment form in the prescribed format.
- (4) A general meeting must be held in the local municipal area where the scheme is situated unless the members have by special resolution decided otherwise.
- (5) Registered bondholders, holders of future development rights and the managing agent may attend general meetings and may speak on any matter on the agenda, but they are not, in those capacities, entitled to propose any motion or to vote; provided that such persons are not entitled to attend any part of a general meeting if the members resolve that their presence would unreasonably interfere with the interests of the body corporate or any person's privacy.
- (6) Notice of a general meeting must be delivered to— (a) members at their service addresses in terms of rule 4(5), and (b) other persons at the most recent physical, postal, fax or email address of which they have notified the body corporate in writing.
- (7) A general meeting may be called— (a) on 7 days' notice if the trustees have resolved that short notice is necessary due to the urgency of the matter and set out their reasons for this resolution; provided that the trustees must not take such a resolution in regard to a meeting referred to in rule 29(2) or (4); (b) on less than 14 days' notice, if this is agreed to in writing by all persons entitled to attend.
- (8) Failure to give proper notice of a general meeting to a person entitled to receive notice does not invalidate a vote taken at the meeting, as long as the body corporate made a reasonable attempt to give the notice.
- (9) Voting at a general meeting may proceed despite the lack of notice as required by this rule, if all persons entitled to receive notice in writing waive their right to notice.

16. First general meeting

- (1) The developer must include with the notice of the first general meeting held in terms of section 2(8) of the Act —
 - (a) an agenda in accordance with sub-rule (2);
 - (b) the documents referred to in sub-rule (2); and
 - (c) a comprehensive summary of the rights and obligations of the body corporate under the policies and contracts referred to in sub-rule (2)(d).
- (2) The agenda for the first general meeting of members must include at least the following —
 - (a) a motion to confirm or vary the terms of the policies of insurance effected by the developer or the body corporate;
 - (b) a motion to confirm or vary an itemised estimate of the body corporate's anticipated income and expenses for its first financial year;
 - (c) a motion to approve, with or without amendment, the developer's —
 - (i) evidence of revenue and expenditure concerning the management of the scheme from the date of the first occupation of any unit until the date of the establishment of the body corporate, as required in terms of section 2(8)(c)(iii) of the Act; and
 - (ii) financial statements relating to the management and administration of the scheme from the date of establishment of the body corporate to the date of notice of the first general meeting referred to in sub-rule (1);
 - (d) subject to section 15(2) of the Act, a motion to ratify or not to ratify the terms of any contract entered into by the developer on behalf of the body corporate;
 - (e) a motion confirming that the developer has —
 - (i) furnished the meeting with copies of the documents referred to in section 2(8) of the Act and in this rule; and
 - (ii) paid over any residue referred to in section 2(9) of the Act;
 - (f) a motion appointing an auditor to audit the evidence and financial statements referred to in sub-rule (2)(c);
 - (g) motions determining the number of trustees and electing trustees;
 - (h) a motion detailing any restrictions to be imposed or directions to be given in terms of section 7(1) of the Act or confirming that there are no such restrictions or directions.
- (3) For the purposes of voting on the items of business referred to in sub-rule (2)(c), (d) and (e), any vote held or controlled by the developer is suspended.
- (4) In addition to the documents referred to in section 2(8) of the Act, the developer must at or before the first general meeting furnish the body corporate with copies of —
 - (a) all building plans approved by the local municipality;
 - (b) any encroachment permit or other document issued by the local municipality in regard to the improvements in the scheme;
 - (c) plans showing the location of all pipes, wires, cables, and ducts referred to in section (3)(1)(r) of the Act;

- (d) names and addresses of all contractors, subcontractors, and any other persons whom the developer has employed to render services or supply materials relating to the development of the scheme;
- (e) all warranties, manuals, schematic drawings, operating instructions, service guides, documentation from manufacturers and other similar information in respect of the construction, installation, operation, maintenance, repair and servicing of any common property or body corporate assets, occupation certificate, including any guarantee or warranty provided to the developer by a person referred to in sub-rule (4) (d); and
- (f) all records the body corporate is required to prepare or retain in terms of rule 27.

(5) If the developer fails to provide the body corporate with any document referred to in section 2(8) of the Act or in this rule, the body corporate must do all things reasonably necessary to obtain or have the specific document prepared and may recover the reasonable costs incurred in doing so from the developer.

(6) If the developer fails to call the first general meeting in compliance with the requirements of section 2(8) of the Act, any member or the body corporate may do so and the body corporate must recover from the developer all costs reasonably incurred in ensuring compliance with the developer's obligations.

17. Annual and special general meetings

- (1) Subject to sub-rule (2), the body corporate must hold an annual general meeting within four months of the end of each financial year.
- (2) The body corporate is not obliged to hold an annual general meeting if, before or within one month of the end of a financial year, all members in writing waive the right to the meeting and consent in writing to motions that deal with all the items of business that must be transacted at the annual general meeting; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to the meeting and consent to the resolutions in writing.
- (3) All general meetings other than the annual general meeting are special general meetings.
- (4) The trustees may by resolution call a general meeting whenever they think fit and must do so if either—
 - (a) members entitled to 25 per cent of the total quotas of all sections; or
 - (b) the holder of mortgage bonds over not less than 25 per cent in number of all the primary sections,deliver to the body corporate a written and signed request for a special general meeting; provided that if the trustees fail to call a meeting thus requested within 14 days of delivery of the request, the members or bondholder concerned are entitled to call the meeting.
- (5) Members or a bondholder who request a meeting in terms of sub-rule (4) must include one or more motions or matters for discussion with their request and these motions or matters must be included, without amendment, in the agenda for the meeting.

(6) The order of business at general meetings is as follows:

- (a) confirm proxies, nominees and other persons representing members and issue voting cards;
- (b) determine that there is a quorum;
- (c) elect a person to chair the meeting, if necessary;
- (d) present to the meeting proof of notice of the meeting or waivers of notice;
- (e) approve the agenda;
- (f) approve minutes from the previous general meeting, if any;
- (g) deal with unfinished business, if any;
- (h) deal with any business referred to in sub-rule (5);
- (i) if the meeting is the first general meeting referred to in section 2(8) of the Act, deal with the business set out in rule 16(2);
- (j) if the meeting is an annual general meeting —
 - (i) receive reports of the activities and decisions of trustees since the previous general meeting, including reports of committees;
 - (ii) approve the schedules of insurance replacement values referred to in rule 23(3), with or without amendment;
 - (iii) determine the extent of the insurance cover by the body corporate in terms of rules 23(6), (7) and (8);
 - (iv) approve the budgets for the administrative and reserve funds for the next financial year;
 - (v) consider the annual financial statements;
 - (vi) appoint an auditor to audit the annual financial statements, unless all the sections in the scheme are registered in the name of one person;
 - (vii) if the body corporate has more than four members who are owners of primary sections and is not managed by an executive managing agent in terms of rule 28, determine the number of trustees to be elected to serve during the next financial year; and
 - (viii) elect the trustees;
- (k) report on the lodgement of any amendments to the scheme's rules adopted by the body corporate under section 10 of the Act and, if applicable, table a consolidated set of scheme rules;
- (l) deal with any new or further business;
- (m) give directions or impose restrictions referred to in section 7(1) of the Act; and
- (n) dissolve the meeting.

(7) Subject to sub-rules (5) and (6), the trustees determine the agenda for an annual or special general meeting; provided that the agenda must contain—

- (a) a description of the general nature of all business, and
- (b) a description of the matters that will be voted on at the meeting, including the proposed wording of any special or unanimous resolution.

(8) If any of the items of business that require member approval are not approved at an annual general meeting or any adjournment of the meeting; the resolution not to approve the relevant document must include the reasons for non-approval and the

body corporate must have the document revised and submitted to another general meeting for approval as soon as reasonably possible, until it is approved.

- (9) The body corporate does not have to hold a special general meeting to consider a resolution if all members waive the right to the meeting and consent to the resolution in writing; provided that if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to the meeting and consent to the resolution in writing.
- (10) A body corporate may make arrangements for attendance at an annual or special general meeting by telephone or any other method, if the method—
 - (a) is accessible to all members and other persons entitled to attend the meeting;
 - (b) permits all persons participating in the meeting to communicate with each other during the meeting; and
 - (c) permits the chairperson to confirm, with reasonable certainty, the identity of the participants.
- (11) A person who attends a meeting as provided under sub-rule (10) is considered present in person at the meeting.

18. Chairperson

- (1) The chairperson of the trustees must preside as chairperson at every general meeting of the body corporate, unless otherwise resolved by members at the meeting.
- (2) If there is no chairperson or the chairperson of the trustees is not present within 15 minutes after the time appointed for the meeting, or is unwilling or unable to act as chairperson, the members present must elect a chairperson for such meeting.
- (3) A chairperson must—
 - (a) maintain order, regulate the orderly expression of views, and guide the members and other participants through the business of the meeting in accordance with the common law of meetings;
 - (b) ensure that all motions and amendments proposed are within the scope of the notice and powers of the meeting;
 - (c) ensure that the scheme's rules, the minute books and any other documents relevant to the items of business on the agenda are available at the meeting;
 - (d) act fairly, impartially, and courteously to all members and others entitled to attend the meeting;
 - (e) ensure that all members and other persons entitled to speak are able to express their views without unnecessary disturbance or interruption;
 - (f) adjourn the meeting when it is not able to complete or continue with its business;
 - (g) make decisions on points of procedure;
 - (h) settle disputes by giving rulings on points of order; and
 - (i) surrender the chair to a temporary chairperson elected by the members for any period during which the chairperson wishes to engage in the debate of any item of business.
- (4) A chairperson at a general meeting must not—

- (a) from the chair, attempt to influence members' views on any item of business; or
- (b) disclose in advance of a vote how the chairperson intends to vote on any item of business.

19. Quorum

- (1) Business must not be transacted at any general meeting unless a quorum is present or represented.
- (2) A quorum for a general meeting is constituted—
 - (a) for a scheme with less than 4 primary sections or a body corporate with less than four members, by members entitled to vote and holding two thirds of the total votes of members in value;
 - (b) for any other scheme, by members entitled to vote and holding one third of the total votes of members in value,provided that at least two persons must be present unless all the sections in the scheme are registered in the name of one person and provided further that in calculating the value of votes required to constitute a quorum, the value of votes of the developer must not be taken into account.
- (3) For the purpose of establishing a quorum and for the purposes of section 6 of the Act, the value of votes of any sections registered in the name of the body corporate must not be taken into account and the body corporate must not be considered to be a member.
- (4) If within 30 minutes from the time appointed for a general meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time; provided that if on the day to which the meeting is adjourned a quorum as described in sub-rule (2) is not present within 30 minutes from the time appointed for the meeting, the members entitled to vote and present in person or by proxy constitute a quorum.

20. Voting and representatives

- (1) A motion at a general meeting — (a) does not need to be seconded; and (b) except for a special or unanimous resolution, must be adopted by resolution of the majority of the votes, calculated in value, of the members present and voting.
- (2) Except for special and unanimous resolutions, a member is not entitled to vote if—
 - (a) a member fails or refuses to pay the body corporate any amount due by that member after a court or adjudicator has given a judgment or order for payment of that amount; or
 - (b) that member persists in the breach of any of the conduct rules of the scheme referred to in section 10(2)(b) of the Act after a court or an adjudicator has ordered that member to refrain from breaching such rule.
- (3) For the purposes of any vote, the values of votes of any sections registered in the name of the body corporate are considered abstentions.

- (4) Where a member is as such a trustee for a beneficiary, that member exercises voting rights to the exclusion of persons beneficially interested in the trust and such persons are not entitled to vote.
- (5) A member's appointment of a proxy in terms of section 6(5) of the Act and the proxy's acceptance of the mandate must, except in the case of an appointment in a mortgage bond, be substantially in the prescribed form and must be—
 - (a) delivered to the body corporate 48 hours before the time of the meeting; or (b) handed to the chairperson before or at the start of the meeting.
- (6) A proxy need not be a member but must not be the managing agent or an employee of the managing agent or the body corporate.
- (7) When two or more persons are entitled to exercise one vote jointly, that vote may be exercised only by one person, who may or may not be one of them, jointly appointed by them as their proxy.
- (8) The outcome of each vote, including the number of votes for and against the resolution, must be announced by the chairperson and recorded in the minutes of the meeting.
- (9) If a special resolution is passed at a general meeting by members holding less than 50 per cent of the total value of all members' votes—
 - (a) the body corporate must not take any action to implement that resolution for one week after the meeting, unless the trustees resolve that there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage to the scheme; and
 - (b) within seven days from a resolution referred to in sub-rule 9 (a), members holding at least 25 per cent of the total votes of all members in value may, by written and signed request delivered to the body corporate, require that the body corporate hold a special general meeting to reconsider the resolution.
- (10) If a demand referred to in sub-rule (9)(b) is delivered to the body corporate, the trustees must not implement the resolution unless—
 - (a) it is again passed by special resolution; or
 - (b) a quorum is not present within 30 minutes of the time set for the meeting.

PART 5

FINANCIAL MANAGEMENT

21. Financial year, functions, and powers

- (1) The financial year of a body corporate established after the Act comes into operation must run from the first day of October of each year to the last day of September of the following year unless otherwise resolved by the body corporate in general meeting.
- (2) The body corporate must not—
 - (a) make loans from body corporate funds without the authority of a unanimous resolution;
 - (b) refund to any member a contribution lawfully levied and paid;
 - (c) distribute to a member or any other person any portion of the body corporate's profits or gains except—

- (i) upon destruction or deemed destruction of the buildings, or (ii) where such profit or gain is of a capital nature.
- (3) The body corporate may, on the authority of a written trustee resolution—
 - (a) levy members with a special contribution if additional income is required to meet a necessary expense that cannot reasonably be delayed until provided for in the budget for the next financial year;
 - (b) increase the contributions due by the members by a maximum of 10 per cent at the end of a financial year to take account of the anticipated increased liabilities of the body corporate, which increase will remain effective until members receive notice of the contributions due by them for the next financial year; provided that the trustees must give members notice of such increased contributions by notice in terms of rule 25, with such changes as are required by the context;
 - (c) charge interest on any overdue amount payable by a member to the body corporate; provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005), compounded monthly in arrear;
 - (d) invest any moneys in the reserve fund referred to in sections 3(1)(b) of the Act in a secure investment with any institution referred to in the definition of "financial institution" in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);
 - (e) enter into written and signed contracts in respect of its powers and duties under the Act and these rules;
 - (f) join organisations and subscribe to services to further its purposes under the Act and these rules;
 - (g) delegate to one or more of the trustees, to a member, agent, or an employee such of their powers and duties as they deem fit, and at any time to revoke such delegation; provided that when they delegate any power or duty they must specify in writing—
 - (i) the power or duty concerned;
 - (ii) a maximum amount of the body corporate's funds that may be spent for a particular purpose; and
 - (iii) any conditions that may be applicable; and
 - (h) approach the Community Scheme Ombud Service for relief.
- (4) The body corporate must ensure that all money received by the body corporate is deposited to the credit of an interest-bearing bank account— (a) *in the name of the body corporate; or*
 - (b) *that is a trust account opened in terms of either the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), or the Attorneys Act, 1979 (Act No. 53 of 1979).*

22. Maintenance, repair, and replacement plan

- (1) A body corporate or trustees must prepare a written maintenance, repair, and replacement plan for the common property, setting out—

- (a) the major capital items expected to require maintenance, repair, and replacement within the next 10 years;
- (b) the present condition or state of repair of those items;
- (c) the time when those items or components of those items will need to be maintained, repaired, or replaced;
- (d) the estimated cost of the maintenance, repair and replacement of those items or components;
- (e) the expected life of those items or components once maintained, repaired, or replaced; and
- (f) any other information the body corporate considers relevant.

(2) The annual contribution to the reserve fund for the maintenance, repair, or replacement of each of the major capital items must be determined according to the following formula: [(estimated cost minus past contribution) divided by expected life].

(3) A maintenance, repair and replacement plan takes effect on its approval by the members in general meeting; provided that on approval of such a plan, members may lay down conditions for the payment of money from the reserve fund.

(4) The trustees must report the extent to which the approved maintenance, repair and replacement plan has been implemented to each annual general meeting.

23. Insurance

(1) The insurance policies of the body corporate in terms of sections 3(1)(h) and (i) of the Act —

- (a) must provide cover against —
 - (i) risks referred to in regulation 3;
 - (ii) risks that members resolve must be covered by insurance; and
 - (iii) risks that holders of registered first mortgage bonds over not less than 25 per cent in number of the primary sections by written notice to the body corporate may require to be covered by insurance;
- (b) must specify a replacement value for each unit and exclusive use area, excluding the member's interest in the land included in the scheme; provided that any member may at any time by written notice to the body corporate require that the replacement value specified for that member's unit or exclusive use area be increased;
- (c) must restrict the application of any "average" clause to individual units and exclusive use areas, so that no such clause applies to the buildings as a whole;
- (d) must include a clause in terms of which the policy is valid and enforceable by any holder of a registered mortgage bond over a section or exclusive use area 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 terminates the insurance on at least 30 days' notice to the bondholder; and
- (e) may include provision for "excess" amounts.

(2) A member is responsible —

- (a) for payment of any additional premium payable on account of an increase in the replacement value referred to in sub-rule (1)(b);
- (b) for any excess amount that relates to damage to any part of the buildings that member is obliged to repair and maintain in terms of the Act or these rules, and must furnish the body corporate with written proof from the insurer of payment of that amount within seven days of written request.

(3) A body corporate must obtain a replacement valuation of all buildings and improvements that it must insure at least every three years and present such replacement valuation to the annual general meeting.

(4) A body corporate must prepare for each annual general meeting schedules showing estimates of —

- (a) the replacement value of the buildings and all improvements to the common property; and
- (b) the replacement value of each unit, excluding the member's interest in the land included in the scheme, the total of such values of all units being equal to the value referred to in sub-rule 4(a).

(5) On written request by any registered bondholder and the furnishing of satisfactory proof, the body corporate must record the cession to that bondholder of that member's interest in any of the proceeds of the insurance policies of the body corporate.

(6) A body corporate must take out public liability insurance to cover the risk of any liability it may incur to pay compensation in respect of—

- (a) any bodily injury to or death or illness of a person on or in connection with the common property; and
- (b) any damage to or loss of property that is sustained as a result of an occurrence or happening in connection with the common property, for an amount determined by members in general meeting, but not less than 10 million rand or any such higher amount as may be prescribed by the Minister in any one claim and in total for any one period of insurance.

(7) A body corporate must take out insurance for an amount determined by members in general meeting to cover the risk of loss of funds belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by a trustee, managing agent, employee, or other agent of the body corporate.

(8) A body corporate, authorised by a special resolution of members, may insure any additional insurable interest the body corporate has — (a) *in the land and buildings included in the scheme; and*

- (b) *relating to the performance of its functions, for an amount determined in that resolution.*

24. Administrative and reserve funds

(1) The administrative fund referred to in section 3(1)(a) of the Act must be used to fund the operating expenses of the body corporate for a particular financial year.

- (2) The reserve fund maintained in terms of section 3(1)(b) of the Act must be used for the implementation of the maintenance, repair and replacement plan of the body corporate referred to in rule 22.
- (3) The following amounts must be paid into the reserve fund —
 - (a) any part of the annual levies designated as being for the purpose of reserves or the maintenance, repair, and replacement plan;
 - (b) any amounts received under an insurance policy in respect of damage or destruction of property for which the body corporate is responsible;
 - (c) any interest earned on the investment of the money in the reserve fund;
 - (d) any other amounts determined by the body corporate, and all other body corporate income must be paid into the administrative fund.
- (4) Money may be paid out of the administrative fund in accordance with trustee resolutions and the approved budget for the administrative fund.
- (5) Money may be paid out of the reserve fund —
 - (a) at any time in accordance with trustee resolutions and the approved maintenance, repair, and replacement plan; or
 - (b) if the trustees resolve that such a payment is necessary for the purpose of an urgent maintenance, repair, or replacement expense, which purpose includes, without limitation —
 - (i) to comply with an order of a court or an adjudicator;
 - (ii) to repair, maintain or replace any property for which the body corporate is responsible where there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property;
 - (iii) to repair any property for which the body corporate is responsible where the need for the repairs could not have been reasonably foreseen in preparing the maintenance, repair, and replacement plan; or
 - (iv) to enable the body corporate to obtain adequate insurance for property that the body corporate is required to insure;provided that the trustees must report to the members on any such expenditure as soon as possible after it is made.
- (6) Expenditure under sub-rule (5)(b) —
 - (a) must not exceed —
 - (i) the amount necessary for the purpose for which it is expended; or
 - (ii) any limitation imposed by the body corporate on expenditure; and
 - (b) must comply with any restrictions imposed or directions given by members.

25. Contributions and charges

- (1) The body corporate must, as soon as possible but not later than 14 days after the approval of the budgets referred to in rule 17(6)(j)/(iv) by a general meeting, give each member written notice of the contributions and charges due and payable by that member to the body corporate, which notice must —
 - (a) state that the member has an obligation to pay the specified contributions and charges; and

- (b) specify the due date for each payment; and
- (c) if applicable, state that interest at a rate specified in the notice will be payable on any overdue contributions and charges; and
- (d) include details of the dispute resolution process that applies in respect of disputed contributions and charges.

(2) If money owing is not paid on the dates specified in the notice referred to in sub-rule (1), the body corporate must send a final notice to the member, which notice must state—

- (a) that the member has an obligation to pay the overdue contributions and charges and any applicable interest immediately; and
- (b) if applicable—
 - (i) the interest that is payable in respect of the overdue contributions and charges at the date of the final notice; and
 - (ii) the amount of interest that will accrue daily until the payment of the overdue contributions and charges; and
- (c) that the body corporate intends to take action to recover the amount due if the overdue contributions and charges and interest owing are not paid within 14 days after the date the final notice is given.

(3) Subject to rules 21(3) (a) and (b), after the expiry of a financial year and until they become liable for contributions in respect of the next financial year, members are liable for contributions in the same amounts and payable in the same instalments as were due and payable by them during the past financial year.

(4) A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules, or the Act.

(5) The body corporate must not debit a member's account with any amount that is not a contribution, or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator, or arbitrator.

(6) The body corporate must in its annual financial statements account for all contributions and any other charges debited to members' accounts.

(7) On request in writing by a member the body corporate must make available a full and detailed account of all amounts debited and credited to the member's account with the body corporate.

26. Financial records, budgets, reports, and audit

(1) A body corporate must—

- (a) keep proper books of accounts that—
 - (i) record all its income, expenditure, assets, and liabilities;

- (ii) disclose all amounts recovered from members by the body corporate or any managing agent or other service provider acting on its behalf;
- (iii) include individual accounts for each member; and
- (iv) contain all other information necessary to allow members to assess the body corporate's financial situation and their financial situation in regard to the body corporate.

(b) keep separate books of account and bank accounts for its administrative and reserve funds referred to in sections 3(1)(a) and (b) of the Act;

(c) prepare annual financial statements for presentation at the annual general meeting, which statements must include analyses of the —

- (i) amounts due to the body corporate in respect of contributions, special contributions, and other charges, classified by member and the periods for which such amounts were owed;
- (ii) amounts due by the body corporate to its creditors generally and prominently disclosing amounts due to any public authority, local municipality or other entity for services including, without limitation, water, electricity, gas, sewerage and refuse removal, classified by creditor and the periods for which such amounts were owed;
- (iii) amounts advanced to the body corporate by way of levy finance, a loan, in terms of a guarantee insurance policy or otherwise, setting out the actual or contingent liability of the body corporate and the amounts paid by the body corporate and by any member in terms of such arrangement;
- (iv) amounts in the reserve fund showing the amount available for maintenance, repair, and replacement of each major capital item as a percentage of the accrued estimated cost and the rand value of any shortfall;
- (v) premiums and other amounts paid, and payments received by the body corporate and any member in terms of the insurance policies of the body corporate and the expiry date of each policy; and
- (vi) amounts due and payable to the Community Schemes Ombud Service.

(d) prepare a maintenance, repair, and replacement plan in accordance with rule 22 for presentation at the annual general meeting;

(e) prepare budgets for the administrative and reserve funds comprising itemised estimates of the anticipated income and expenses during the next financial year for presentation at the annual general meeting; provided that such budgets may include discounts not exceeding 10 per cent of a members' annual contributions applicable if all those contributions are paid on or before the due dates;

- (f) prepare a report adopted by the trustees reviewing the affairs of the body corporate during the financial year for presentation at the annual general meeting.
- (2) On the application of any member, registered bondholder or of the managing agent, the body corporate must make all or any of the books of account and records available for inspection and copying.
- (3) The body corporate must ensure that all the body corporate's books of account and financial records are retained for a period of six years after completion of the transactions, acts or operations to which they relate.
- (4) Unless all the sections in the scheme are registered in the name of one person, the body corporate must present audited financial statements to a general meeting for consideration within four months after the end of the financial year.
- (5) The audit of a body corporate's annual financial statements—
 - (a) must be carried out by an independent auditor who has not participated in the preparation of the annual financial statements or advised on any aspect of the accounts of the body corporate during the period being reported on;
 - (b) need not be carried out in accordance with any recognized financial reporting framework or guidelines for financial accounting;
 - (c) must include opinions as to whether or not—
 - (i) the annual financial statements accurately reflect the financial position of the body corporate for the financial year under review, with such qualifications and reservations as the auditor considers necessary;
 - (ii) the body corporate has complied with the accounting requirements set out in rules 21, 24 and this rule 26, with a specific description of any failure to comply with such requirements;
 - (iii) the books of account of the body corporate have been kept and its funds have been managed so as to provide a reasonable level of protection against theft or fraud; and
 - (iv) the financial affairs of the body corporate appear to be effectively managed;
 - (d) must be completed within four months of the end of the body corporate's financial year.

PART 6

ADMINISTRATIVE MANAGEMENT

27. Governance documents and records

- (1) The body corporate must—
 - (a) lodge a notification of an amendment to the scheme's rules referred to in section 10(5) of the Act as soon as reasonably possible, but not later than 10 days after the date of the relevant resolution of the body corporate; and
 - (b) compile and keep a complete set of all management and conduct rules including—
 - (i) an index; and

- (ii) a prominent reference to any rules that confer exclusive use rights, vary the effects of the participation quotas in regard to the value of votes or the liability for contributions, or impose either a financial or a maintenance obligation on members;
- (c) prepare a consolidated set of rules whenever they are amended.

(2) The body corporate must prepare and update the following records —

- (a) minutes of general and trustee meetings, including the following information—
 - (i) the date, time, and place of the meeting;
 - (ii) the names and role of the persons present, including details of the authorisation of proxies or other representative;
 - (iii) the text of all resolutions; and
 - (iv) the results of the voting on all motions;
- (b) lists of trustees, members, and tenants with their— (i) full names;
 - (ii) identity numbers or, in the case of non-South African citizens, their passport numbers; and
 - (iii) section addresses and mailing addresses, if different;
 - (iv) telephone numbers; and
 - (v) email or other electronic addresses, if any;
- (c) lists of—
 - (i) sections shown on the sectional plan, indicating in each case whether it is a primary or a utility section, its participation quota, and the name of the member in whose name it is registered;
 - (ii) exclusive use areas with descriptions of purposes and numbers, if any, indicating whether the rights to each area are conferred in terms of section 27 of the Sectional Titles Act or in terms of a rule, and a reference to the relevant rule where applicable; and
 - (iii) registered bondholders with their names and addresses;
- (d) details of all future development rights including —
 - (i) names and addresses of all registered holders of such rights; and
 - (ii) copies of all documentation prepared in terms of section 25(2) of the Sectional Titles Act for any such right; and (e) any other records required by the regulations.

(3) The body corporate may obtain and keep copies of all of the following:

- (a) The registered sectional plan and any registered amending sectional plan; (b) the Act and the regulations;
- (c) resolutions that deal with changes to the common property, including the conferring of exclusive use rights on members;
- (d) consents and approvals given by the body corporate to members;
- (e) waivers and consents given by members;
- (f) written contracts to which the body corporate is a party;
- (g) any decision of an adjudicator, arbitrator, magistrate, or judge in a proceeding in which the body corporate is a party, and any legal opinions obtained by the body corporate;

- (h) the budget and financial statement for the current year and previous years; (i) income tax returns;
- (j) insurance policies, endorsement, and claim forms;
- (k) correspondence sent or received by the body corporate and trustees; and (l) any other records required by the regulations.

(4) On receiving a written request, the body corporate must make the records and documents referred to in this rule available for inspection by, and provide copies of them to —

- (a) a member;
- (b) a registered bondholder; or
- (c) a person authorised in writing by a member or registered bondholder.

(5) The body corporate must comply with a request for inspection or copying under this rule within 10 days unless the request is in respect of the rules, in which case the body corporate must comply with the request within five days.

(6) The body corporate may charge a fee for a copy of a record or document other than the rules, provided that the fee is not more than the reasonable cost associated with the process of making the copy, and the body corporate may refuse to supply the copy until the fee is paid.

(7) If the body corporate terminates its contract with an employee or a managing agent, that person must within 10 days deliver to the body corporate all records referred to in this rule that are in the person's possession or under the person's control.

(8) The records referred to in this rule must be in writing or in a form that can be easily converted to writing.

28. Executive Managing Agent and Managing Agents

(1) The body corporate may, by special resolution, appoint an executive managing agent to perform the functions and exercise the powers that would otherwise be performed and exercised by the trustees.

(2) Members entitled to 25 per cent of the total quotas of all sections may apply to the Community Scheme Ombud Service for the appointment of an executive managing agent.

(3) An executive managing agent —

- (a) is subject to all the duties and obligations of a trustee under the Act and the rules of the scheme;
- (b) is obliged to manage the scheme with the required professional level of skill and care;
- (c) is liable for any loss suffered by the body corporate as a result of not applying such skill and care;
- (d) has a fiduciary obligation to every member of the body corporate;
- (e) must arrange for the inspection of the common property at least every six months; and
- (f) must report at least every four months to every member of the body corporate on the administration of the scheme.

(4) The reports of an executive managing agent referred to in sub-rule (3)(f) must include at least the following details —

- (a) proposed repairs to and maintenance of the common property and assets of the body corporate within the next four months;
- (b) matters the executive managing agent considers relevant to the condition of the common property and the assets of the body corporate;
- (c) the balance of each of the administrative and reserve funds of the body corporate on the date of the report and a reconciliation statement for each fund; and
- (d) for the period since the appointment of the executive managing agent or from the date of the last report —
 - (i) the expenses of the body corporate, including repair, maintenance, and replacement costs; and
 - (ii) a brief description of the date and nature of all decisions made by the executive managing agent.

(5) The body corporate may, if trustees so resolve, and must if required by — (a) a registered mortgagee of 25 per cent in number of the primary sections; or (b) a resolution of members, appoint a managing agent to perform specified financial, secretarial, administrative, or other management services under the supervision of the trustees.

(6) A management agreement for any managing agent must comply with the requirements as may be set out in the regulations.

(7) A management agreement may not endure for a period longer than three years and may be cancelled, without liability or penalty, despite any provision of the management agreement or other agreement to the contrary —

- (a) by the body corporate on two months notice, if the cancellation is first approved by a special resolution passed at a general meeting, or (b) by the managing agent on two months notice.

(8) The body corporate or trustees may by ordinary resolution cancel the management agreement in accordance with its terms or refuse to renew the management agreement when it expires.

PART 7

PHYSICAL MANAGEMENT

29. Improvements to common property

(1) The body corporate may on the authority of a unanimous resolution make alterations or improvements to the common property that is not reasonably necessary.

(2) The body corporate may propose to make alterations or improvements to the common property that are reasonably necessary; provided that no such proposal may be implemented until all members are given at least 30 days written notice with details of —

- (a) the estimated costs associated with the proposed alterations or improvements;

- (b) details of how the body corporate intends to meet the costs, including details of any special contributions or loans by the body corporate that will be required for this purpose; and
- (c) a motivation for the proposal including drawings of the proposed alterations or improvements showing their effect and a motivation of the need for them; and if during this notice period any member in writing to the body corporate requests a general meeting to discuss the proposal, the proposal must not be implemented unless it is approved, with or without amendment, by a special resolution adopted at a general meeting.

(3) A body corporate must, if so, directed by a resolution of members —

- (a) install and maintain separate meters to measure the supply of electricity, water, gas, or the supply of any other service to each member's sections and exclusive use areas and to the common property; and
- (b) recover from members the cost of such supplies to sections and exclusive use areas based on the metered supply.

(4) A body corporate may on the authority of a special resolution install separate prepayment meters on the common property to control the supply of water or electricity to a section or exclusive use area; provided that all members and occupiers of sections must be given at least 60 days notice of the proposed resolution with details of all costs associated with the installation of the pre-payment system and its estimated effect on the cost of the services over the next three years.

(5) If a pre-payment system referred to in sub-rule (4) is installed —

- (a) the body corporate is responsible to ensure that the system does not infringe on the constitutional rights of section occupiers to access basic services; and
- (b) any member who leases a unit to a tenant is responsible to ensure that the system does not infringe the rights of the tenant in terms of the Rental Housing Act, 1999 (Act No. 50 of 1999), or any other law.

30. Use of sections and common property

The body corporate must take all reasonable steps to ensure that a member or any other occupier of a section or exclusive use area does not—

- (a) use the common property so as to unreasonably interfere with other persons lawfully on the premises, in breach of section 13(1)(d) of the Act;
- (b) use a section or exclusive use area so as to cause a nuisance, in breach of section 13(1)(e) of the Act;
- (c) contravene the provisions of any —
 - (i) law or by-law relating to the use of a section or an exclusive use area; or
 - (ii) conditions of a license relating to use of the building or the common property, or the carrying on of a business in the building; or
 - (iii) conditions of title applicable to sections or exclusive use areas;
- (d) make alterations to a section or an exclusive use area that are likely to impair the stability of the building or interfere with the use and enjoyment of other sections, the common property, or any exclusive use area;

- (e) do anything to a section or exclusive use area that has a material negative affect on the value or utility of any other section or exclusive use area;
- (f) subject to the provisions of section 13(1)(g) of the Act, use a section or exclusive use area for a purpose other than for its intended use as —
 - (i) shown expressly or by implication on a registered sectional plan or an approved building plan;
 - (ii) can reasonably be inferred from the provisions of the applicable town planning by-laws or the rules of the body corporate; or
 - (iii) is obvious from its construction, layout, and available amenities;
- (g) construct or place any structure or building improvement on an exclusive use area which in practice constitutes a section or an extension of the boundaries or floor area of a section without complying with the requirements of the Act and the Sectional Titles Act; provided that the body corporate may by ordinary resolution —
 - (i) give consent for such a structure or building improvement, if they are satisfied that it does not require compliance with such requirements;
 - (ii) prescribe any reasonable condition in regard to the use or appearance of the structure or building improvement; and
 - (iii) withdraw any consent if the member or other occupier of a section breaches any such condition.

31. Obligation to maintain

- (1) Notwithstanding that a water-heating installation forms part of the common property and is insured by the body corporate, a member must maintain, repair and, when necessary, replace such an installation which serves that member's section or exclusive use area; provided that where such an installation serves sections owned or exclusive use areas held by more than one member, the members concerned must share the maintenance, repair, and replacement costs on a pro-rata basis.
- (2) If despite written demand by the body corporate, a member refuses or fails to —
 - (a) carry out work in respect of that member's section ordered by a competent authority as required by section 13(1)(b) of the Act; or
 - (b) repair or maintain a section owned by that member in a state of good repair as required by section 13(1)(c) of the Act;and that failure threatens the stability of the common property, the safety of the building or otherwise materially prejudices the interests of the body corporate, its members, or the occupiers of sections generally, the body corporate must remedy the member's failure and recover the reasonable cost of doing so from that member; provided that in the case of an emergency, no demand or notice need be given to the member concerned.

PART 8
ADDITIONAL RULES MADE BY THE BODY CORPORATE

Interpretation

(1) In the interpretation of part 8 of these rules, unless the context indicates otherwise any gender includes the others, the singular includes the plural and vice versa, and the words and terms defined shall include cognate forms, and —

- (a) **"alienate"** means to divest ownership of any unit by way of sale, exchange, waiver, donation, inheritance, cession, assignment, court order, insolvency, sequestration, liquidation, prescription, or expropriation, and including any "transaction" as defined in section 1 of the Transfer Duty Act 1949; and 'alienation' and 'alienee' shall have a corresponding meaning.
- (b) **"capital contribution levy"** means the levy payable to the body corporate in terms of rule 33 upon the alienation of a unit;
- (c) **"fair market value"** means the value determined by the Body Corporate, being the amount at which a willing seller and a willing buyer, negotiating at arm's length, would respectively sell and buy the unit concerned; provided however that in the event of a dispute between the Transferor and the Body Corporate as to the fair market value of the said unit, the valuation of an independent third party (whether he is a sworn appraiser or not) appointed by the Transferor and the Body Corporate jointly on the basis that they reasonably regard him as a person able to express an opinion as to the fair market value of the unit concerned, shall be the fair market value of the said unit. In the event of the Transferor and the Body Corporate failing to agree on the identity of the Valuer within 7 (seven) days after the dispute has been declared, the Valuer shall be appointed by the regional chairperson of the Institute of Professional Valuers. The liability for the payment of the costs (if any) of the Valuer shall be shared between the Transferor and the Body Corporate in equal shares.
- (d) **"frail care centre"** means such facilities as are described in terms section 5 of the Retired Persons Act as read with sub-section 4(1) (o) thereof.
- (e) **"levy clearance"** means a certificate issued by or on behalf of the Body Corporate, in terms of rule 34 as contemplated in section 15B(3)(a)(i)(aa) of the Sectional Titles Act;
- (f) **"life right"** means a right of occupation as such is defined in section 4 A of the Retired Persons Act and any substantially similar right pursuant to an alienation as contemplated herein;
- (g) **"nominated occupant"** means, in circumstances where the owner is a juristic person or alienee, the alienee, or the resident(s), lessee(s), life right holder(s) or physical occupant(s) of a section nominated in writing by the registered owner or alienee of the unit and approved in writing by the trustees, and such person/s shall be the only person(s) allowed to reside in or occupy the section, subject to the provisions of these rules, and provided that there must always be a nominated occupant for a section irrespective of whether the section is let or not;

- (h) "**occupier**" means the lessee, permanent resident or other *de facto* occupier of a section in the scheme;
- (i) "**owner**" means the registered owner of a unit in the scheme;
- (j) "**retired person**" will have the meaning ascribed thereto in section 1 of Retired Persons Act.

- (k) "**Retired Persons Act**" or "**Act**" means the Housing Development Schemes for Retired Persons Act, No. 65 of 1988, as amended from time to time and any regulations made and in force thereunder;
- (l) "**scheme**" means the Somerset Gardens sectional title scheme, Registration Number SS390/2006 and generally known as Helderberg Manor;
- (m) "**spouse**" in relation to any person, means the partner of such person-
 - (i) in a marriage or customary union recognised in terms of the laws of the Republic of South Africa;
 - (ii) in a union recognised as a marriage in accordance with the tenets of any religion; or
 - (iii) in a same-sex or heterosexual union which is according to a written statement by both parties to such relationship intended to be permanent.
- (n) "**transferee**" means the person, trust or juristic person to whom a unit is alienated;
- (o) "**transferor**" means the owner or the executor of his estate or any other person having legal competence in respect of his estate alienating his unit in any manner;
- (p) "**unit**" means a unit as defined in the Sectional Titles Act, 1986 and any fixtures thereon, and includes-
 - (i) an undivided share therein in or a portion thereof;
 - (ii) any real right in a unit but excluding any right under a mortgage bond or a lease of property;
 - (iii) a share or member's interest in a company or a Close Corporation (as the case may be);
 - (iv) a contingent right to any residential property or share or member's interest, contemplated in paragraph (iii) above, held by a discretionary trust (other than a special trust as defined in section 1 of the Income Tax Act, 1962), the acquisition of which is:
 - (a) a consequence of or attendant upon the conclusion of any agreement for consideration with regard to property held by that trust;
 - (b) accompanied by the substitution or variation of that trust's loan creditors, or by the substitution or addition of any mortgage bond or mortgage bond creditor; or
 - (c) accompanied by the change of any trustee of that trust.

Capital contribution levy

- (1) The alienation of units shall be subject to the payment of a capital contribution levy by or on behalf of the transferor to the body corporate. No levy clearance certificate for the alienation of a unit may be issued unless payment of the capital contribution levy has been made or provision for the payment thereof has been made in writing to the satisfaction of the trustees whose approval shall not be unreasonably withheld.
- (2) The capital contribution levy payable to the body corporate shall be calculated in the following manner, subject to the exemptions specified in sub-rules (3), (4), (5) and (6) below, the rationale for the different formulas in sub-rules (4), (5) and (6) being that the management rules should correspond to and abide by the various contractual arrangements which the developers put into place with the respective purchasers.
 - (a) Owners whose purchase agreements provide for the payment of a capital contribution levy of 15% (fifteen per cent) of the enhancement value of the unit shall be liable to pay such capital contribution. This will apply only to the first alienation after the initial alienation by the developer and the alienation by all subsequent owners of these units shall be subject to (b) below. Such enhancement value shall be the current fair market value of the unit (at the date of the alienation) less the initial purchase price of the unit at the time of vesting in the name of the Owner (the current transferor) less the sum of:
 - i the estate agency commission, and
 - ii the actual total invoiced or otherwise vouched costs of design, supervision and construction of fixed improvements to the unit that were registered with the Body Corporate within 12 months of completion of construction (or such extended period as the trustees may allow either before or after the expiry of the time limit), approved by the trustees, and in respect of which a written acknowledgement has been issued by the trustees or managing agent on their behalf, recognising and recording the total costs incurred. No adjustment of the costs for subsequent inflation shall be applicable and the deduction shall exclude improvements undertaken and paid for by the Body Corporate.
 - (b) Save for sub-rule (2a) above, and subject to the exceptions mentioned in this rule, the capital contribution levy payable by any other Owner alienating a unit shall be calculated at 2,5% (two comma five per cent) of the current fair market value of the unit at the date of the alienation less the estate agency commission, if any.
- (3) No capital contribution levy shall be payable where a unit is transferred as a consequence of the demise of an Owner where the transferee is a beneficiary in terms of the will of the deceased Owner, or transfer is effected in terms of the laws of intestate succession.
- (4) No capital contribution levy will be payable in respect of the alienation of a unit from the Developer [Silver Knight Properties 43 (Pty Ltd)] and Somerset Gardens Management (Pty) Ltd to the first purchaser or transferee thereof.
- (5) No capital contribution levy will be payable by the first purchaser or transferee in respect of a purchase agreement between Somerset Gardens Development (Pty) Ltd and Somerset Gardens Management (Pty) Ltd and the first purchaser or transferee, where the said purchase agreement and management rules did not make provision for the payment of such a capital contribution levy at the date of signature of such an agreement.

(6) No capital contribution levy will be payable in respect of the alienation of any life rights or rights of occupation, as the case may be, in respect of facilities forming part of the frail care centre.

Restriction on the alienation and transfer of a unit

(1) No transfer of a unit may be effected unless the trustees have granted their consent to such transfer, as evidenced by a levy clearance certificate issued by the trustees or managing agent on behalf of the trustees.

(2) The body corporate may withhold the issue of a levy clearance certificate if: - (a) any levies, the capital contribution levies, charges or contributions payable by the relevant owner in respect of his unit, exclusive use area(s) and/or his undivided share in the common property and/or monies owing for any damages, costs, interest, penalties and fines and/or monies owing for any services rendered to the owner and/or his nominated occupant(s) remain unpaid;

(b) any building alterations and/or additions and/or encroachments exist in respect of such unit, or exclusive use area(s) or common property which have not been properly authorised and registered, as the case may be, in terms of the Act, the Sectional Titles Act, these management rules or the conduct rules.

(c) the trustees have not been notified of the identity/ies of the proposed nominated occupant(s) or that such nominated occupant(s) have not been approved by the trustees in terms of rule 35.

Age restriction, letting and occupation

(1) Save as specifically permitted under or pursuant to the Act or these rules, no person other than a retired person and his or her spouse may occupy or reside in a unit in the scheme.

(2) Subject to the provisions of these rules, only the owner and their spouse/s (if applicable) or the nominated occupant(s) and their spouse/s (if applicable), all as approved in writing by the trustees in terms of these rules, may occupy or reside in a unit in the scheme.

(3) No owner or legal occupant of a unit shall let or grant any right of occupancy in respect of the unit, other than to his or her spouse, without the written consent of the trustees, who may attach reasonable conditions to their consent but may not unreasonably withhold it if the person for whom the consent is sought is a retired person and his or her spouse.

(4) To obtain the written consent of the trustees when acquiring, letting, or granting any right of occupancy in respect of a unit, the owner or nominated occupant of the unit shall apply to the trustees in writing and shall furnish the trustees with the following information and documentation:

(a) in the case of a nomination as the occupant, a copy of the lease agreement if applicable, or in the absence of such agreement, an occupancy agreement, in each case containing the identity/ies of the nominated occupant, all the other intended occupants, the number/s of the unit/s and the term of the occupancy;

- (b) the particulars and contact details of the intended lessees or occupiers including cell phone numbers and email addresses of both the intended occupants and their next of kin;
- (c) proof that the intended lessee(s) or occupier(s) has/have attained the age of fifty (50) years and, where applicable, proof that a person under 50 years of age is the spouse of a retired person who is nominated as an occupant or lessee;
- (d) in the case of an alienation or deemed alienation, proof of payment of the capital contribution levy or proof to the satisfaction of the trustees that provision for its payment has been made.

(5) The trustees may withhold their consent if they are not satisfied that the applicable criteria mentioned have been met or there are other sound reasons for refusal, which shall be specified.

Conditions and Exceptions

- (1) It shall be deemed not to be a breach of these rules should the owner or the nominated occupant(s) allow occupation of a unit by one or more third parties for a period not exceeding six months, whether on a lease, sub-lease, or other basis, during the temporary absence of such owner or nominated occupant(s) on holiday or otherwise, provided that the trustees have consented thereto in writing, which consent may not be unreasonably withheld. Such third party/ies must meet the requirements of Rule 35 or be approved by the trustees in their reasonable discretion and the owner must comply with the requirements of Rule 35(4)(b).
- (2). An owner or nominated occupant(s) may temporarily house his or her family members, guests, or visitors in his or her unit for up to three months but shall promptly notify the trustees of such occupation which shall be subject to any reasonable conditions imposed from time to time by the trustees.
- (3) The number of occupants and/or temporary occupants of a unit, including children, shall be restricted to:
 - (a) three (3) persons in respect of a unit having one bedroom;
 - (b) five (5) persons in respect of a unit having two bedrooms;
 - (c) seven (7) persons in respect of a unit having three bedrooms.

For the purposes of this rule, an area designated or designed as a lounge, dining area, living area or patio shall not be regarded as a bedroom.

(4) Notwithstanding the foregoing provisions, the trustees shall be empowered and authorised to allow a person who is dependent on an owner or nominated occupant(s), due to physical, mental or other disability or debilitation, or, if special circumstances exist, any other person whomsoever, to reside in a unit with the owner or nominated occupant(s) in circumstances which the trustees deem appropriate and further subject to terms and reasonable conditions as the trustees may impose in their discretion.

(5) If the person for whom the consent is sought in sub-rule 36 (4) does not ordinarily qualify to occupy such unit in terms of rule 35(4) the consent granted will always be upon the express condition that if unforeseen circumstances arise that require the Trustees to withdraw their consent such person will have to vacate the unit within a period of no more than 60 (sixty) days from the date of the notice to vacate.

Frail Care Centre

Owners occupying their units, as well as their respective spouses, or the Nominated Occupants thereof, as well as their respective spouses, where units are not occupied by such owners, shall to the exclusion of non-residents of Somerset Gardens, have priority of accommodation and treatment in the Frail Care Centre once in operation in terms of a service agreement concluded with the operator of such Centre. The terms of such service agreement and the conditions of usage including the costs of usage of such facility will be substantially upon terms as are to be agreed to from time to time between the Body Corporate and the owner and/or operator of the Frail Care Centre upon completion thereof.