



Responsibilities of Trustees

Training by Leigh Maingard – 20 February 2023

Applicable legislation

1. Sectional Title Schemes Management Act 8 of 2011 & Regulations (STSMA)

<https://www.gov.za/documents/sectional-titles-schemes-management-act>

2. Community Schemes Ombud Service (CSOS)

<https://csos.org.za/>

Trustees` fiduciary position

Meaning of fiduciary relationship (1)

- Definition: <https://www.oxfordlearnersdictionaries.com/>
 - a person or company that is in a position of trust, especially when it involves controlling money or property belonging to others
- STSMA - Section 8
 - Act honestly & in good faith
 - Exercise powers for the benefit of the scheme
 - Except where conduct approved by members having full knowledge of material facts
 - Not act without or exceed those powers
 - Avoid material conflict of own interests
 - Not receive direct/indirect financial gain from anybody
 - Notify trustees of any material direct/indirect benefits – such as contracts
 - Breach? Liable to scheme for losses or benefits received

Meaning of fiduciary relationship (2)

- Community Schemes Ombud Service Act 9 of 2011 – regulation 14
 - Take reasonable steps to educate themselves:
 - About the scheme, its affairs & activities
 - Legislative & governance documents of the scheme
 - Take reasonable steps to:
 - Obtain information & advice about all scheme matters
 - Make informed and conscientious decisions
 - Attend all scheme and trustee meetings
 - Exercise an active and independent opinion on matters
 - Exercise due diligence in relation to trustee meetings and business to be discussed (prepare)

Requirements & disqualification for holding office

Requirements & disqualification (1)

Requirements

- Need not be a member of the scheme
- May not be the managing agent or an employee of the managing agent / body corporate unless that person is a member
- May not be present or play any part in the consideration if direct / indirect interest in any matter to be considered by the trustees

Disqualification

- By written notice to the body corporate
- Is declared to be of unsound mind by a court
- Is or becomes insolvent & the result is sequestration of trustee's estate
- Is convicted/has been convicted in the Republic or elsewhere - theft, fraud, forgery, perjury or any other offence involving dishonesty

Requirements & disqualification (2)

Disqualification

- Is sentenced to imprisonment without the option of a fine
- Is removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money
- 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
- Is / becomes disqualified to hold office as a director of a company in terms of the Companies Act
- Fails / refuses to pay the body corporate any amount due after a court or adjudication order

What must trustees do

Trustees must -

- Meet to carry out the body corporate's business – how often?:
 - Not prescribed – meetings when required
 - Not less than 7 days` notice
 - Only when an emergency less than 7 days
 - Any trustee can call for a meeting
- Regulate their meetings as they think fit - subject to legislative provisions
- Exercise the powers & functions assigned & delegated to them – resolutions taken at general & trustee meetings
- Apply scheme funds in accordance with approved budgets
- Appoint any agent or employee in terms of duly signed written contract
- Compile minutes of each trustee & general meeting (managing agent?)
- Distribute such minutes to the persons entitled to notice of the meeting concerned
- Do all things reasonably necessary for the enforcement of the rules, management and administration of the common property

Trustees` functions

Subject to conditions and authority from the body corporate (special or unanimous resolutions)

- Establishing and maintaining operating and reserve funds
- Budgeting
- Raising contributions in proportion to the owners participation quotas
- Opening and operating a bank account (more than 1?)
- Insuring the building, paying the premiums and submitting insurance claims
- Maintaining common property, pipes, wires, cables & ducts, any plant, machinery, fixtures & fittings used in connection with the common property
- Complying with orders from competent authorities in respect of repairs/maintenance
- Maintaining lists of contact details of all the members
- Maintaining all the books of account and other records of the body corporate

Trustees` powers

Subject to conditions and authority from the body corporate (special or unanimous resolutions)

- Appointing agents and employees
- To purchase or otherwise acquire, take transfer of, mortgage, sell, give transfer of or hire or let units (generally for staff)
- To purchase, hire or otherwise acquire movable property
- To establish & maintain on the common property suitable lawns, gardens and recreation facilities
- To borrow moneys and to secure the repayment of moneys borrowed
- Investing money in the reserve fund
- Enter into agreements for the provision of amenities or services by the body corporate to an owner or occupier
- Letting a portion of the common property to any owner or occupier by means of a short term lease
- Doing all things reasonably necessary for the enforcement of the rules & management of the common property

The chairperson

Functions of the chairperson

- Elected by majority vote by the trustees
- 2 members in scheme then chairperson does not apply
- Must preside at every general meeting
- Must maintain order, regulate expression of views, guide members through the business of the meeting
- Ensure motions and amendments proposed are within the powers of the meeting
- Ensure scheme's rules, minute books & other documents relevant to the agenda are available at the meeting
- Act fairly, impartially and courteously to all members
- Ensure members & other persons entitled to speak are able to express their views
- Adjourn the meeting, when it is not able to complete or continue with its business
- Make decisions on points of procedure & settle disputes by giving rulings on points of order
- 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

Conclusion

- Trustee are expected to deal with apathetic & ignorant owners, varied & strong personalities, complicated financial, legal & physical issues
- For these reasons, trustees must be considered for their experience & qualifications in dealing with sectional title matters when being elected
- They must further understand sectional title legislation & follow the applicable rules
- Per the CSOS Act, schemes must make provision in their budget for the education & training of their trustees

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