

# CSOS PANEL OF EXECUTIVE MANAGING AGENTS

BY J WASSERMAN



# WHAT IS AN EXECUTIVE MANAGING AGENT (EMA)?

□ Means a qualified managing agent with the required skill and experience, who is appointed to carry out all the functions and powers of The Trustees of a Body Corporate in terms of Prescribed Management Rule (PMR) 28 of the Sectional Titles Schemes Management Act (STSMA).

# HOW IS AN EMA APPOINTED?

In terms of **PMR 28(2)** of the STSMA a body corporate may by **special resolution**, appoint an EMA.

**SPECIAL RESOLUTION:** The requirement for the Special Resolution is that at least 75% calculated both in value and in number, of the votes of the members of the body corporate represented at a general meeting should have passed the resolution; or agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.

## Cont....

### If a Special Resolution CANNOT be obtained then:

- ✓ Members entitled to **25 percent of the total quotas** of all sections may apply to the CSOS for the appointment of an EMA.
- ✓ CSOS will then provide a list of all panelists in the schemes respective provinces to select an EMA.

# THE CSOS PANEL OF EMA REQUIREMENTS

- Be registered as a Managing Agent at the Estate Agents Affairs Board
- Valid Fidelity Fund Certificate
- NQF5 qualification
- Be in possession of a BBB-EE Level 1 and 2 Certificate
- Uphold the CSOS Code of Conduct for EMA
- Professional Indemnity cover (covers errors and omissions resulting in client's economic or financial losses) = [will not cover the physical loss claims brought against the managing agent – MA own insurance cover]
- ✓ Have a **thorough knowledge of:**
  - Constitution of RSA
  - CSOS Act & Regulations
  - STSMA & Regulations
  - POPIA
  - PAIA (manual)

# CSOS PANELISTS OF EMA

- **Affluence Property Management**
- **BDM Property Management Agency**
- **Billionwalk Property Group**
- **Elaine Moonian Properties**
- **Habitat Property Management**
- **Mafadi Property Services**
- **Ponelopele Property Management**
- **Property to Link**
- **Segoale Properties**
- **Summit Homes**
- **Team Group Real Estate**
- **Unlimited Town Houses**
- **Vhumbanani Property Management Solutions**
- **Zamapho Property Management**

- Gauteng**
- Gauteng, Limpopo, Mpumalanga**
- Gauteng, KwaZulu Natal, Northwest**
- Gauteng**
- Gauteng, Mpumalanga, Northwest**
- Free State, Gauteng, KwaZulu Natal, E/W Cape**
- Free State**
- Gauteng**
- Gauteng, Limpopo, Mpumalanga, North West**
- Gauteng**
- KwaZulu Natal**
- KwaZulu Natal**
- Gauteng**
- Gauteng, Eastern Cape**

# APPOINTMENT

- ✓ Written Agreement signed (CSOS Template).
- ✓ Always be aligned to the CSOS Code of Conduct for EMA.

## SHOW ME THE MONEY



**Remuneration of an EMA is entirely at the discretion of the owners in the scheme, in terms of PMR 28 of the STSMA!**

# CSOS CODE OF CONDUCT

Before entering into a management agreement with the body corporate, the EMA must **disclose certain information:**

- Trade Name
- Address
- Contact details
- Whether or not the managing agent (and/or its partners, members, shareholders, directors or trustees, as the case may be) directly or indirectly, has or is about to acquire, any proprietary or other personal interest in the body corporate concerned or the immovable property managed, controlled or administered by such body corporate, and, if applicable, details of any such interest
- Office hours!



## **CSOS CODE OF CONDUCT**

- The name of the auditor appointed by the managing agent.**
- Confirmation of whether it will be working in conjunction with the existing managing agent, or a newly appointed managing agent of the body corporate concerned, a copy of the managing agent's contract, and the managing agent's monthly fee (including all ancillary costs).**

# CSOS CODE OF CONDUCT

**Must be included in the contract:**

- **The remuneration to be paid to the EMA in respect of the services provided to the body corporate.**
- **Any charges that the EMA may levy on the body corporate, or costs that it may recover from the body corporate, in respect of management services rendered to the body corporate.**
- **State with which insurance company its professional indemnity insurance which may not be less than R 5 million at any time and the contact details of the policyholder, unless the Body Corporate concerned requires a higher indemnity insurance cover.**

# **FUNCTIONS OF THE EMA**

- **Identify the risks to be insured against.**
- **Handle any insurance claims.**
- **Maintain and keep in a state of proper maintenance and repair, all common property.**
- **Comply with any notices or orders of any competent authority (CSOS).**
- **Repairs to be done in respect of the common property.**
- **Collect or receive monies or levies owing to the Body Corporate.**
- **Recruit and/or appoint employees and/or service providers.**
- **Pay any accounts which the Body Corporate is legally obliged to pay.**

# FUNCTIONS OF THE EMA

- Attend to the preparation of the Body Corporate annual financial statements.
- Convene meetings.
- Keep and store financial and administrative records of the Body Corporate.
- Allow access to the records! **(CSOS Media Statement)**  
[The EMA may not conceal or withhold from a body corporate, any information, document or facts within its possession or knowledge, which may or could reasonably be material to the body corporate relating to its management or administration responsibilities]
- Supervise work of a capital nature in respect of improvements or alterations.

# REPORTING

**Every four months, members of the scheme must be updated as to the administration of the scheme!**

**Reports to be sent to CSOS quarterly!**



# DUTIES OF THE TRUSTEES

Trustee resolutions is made by simple majority in number at a trustee meeting or in writing.

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
PMR 4(1)	Change the service address of the body corporate	Trustees (majority)
PMR 24(3)(d)	Determine amounts other than prescribed to be paid into the reserve fund	Trustees (majority)
Section 3(2)	Raising the annual contribution	Trustees (majority)
Section 3(3)	Raising a special contribution	Trustees (majority)
Section 7(2)	Consent for subdivision or consolidation of sections	Trustees (majority)
Section 7(3)	Enter into agreements about boundaries of the common property in terms of the Land Survey Act	Trustees (majority)
PMR 7(7)	Appoint a replacement trustee to serve while trustee is unavailable	Trustees (majority)
PMR 10(1)	Sign a document binding on the body corporate	Trustees (majority)
PMR 11 (2)	Set the dates for future trustee meetings with a standard agenda	Trustees (majority)

<b>PMR 11(3)(b)</b>	<b>Exclude non-trustee members and others entitled to attend trustee meetings from the meeting</b>	<b>Trustees (majority)</b>
<b>PMR 11(5)</b>	<b>Hold a trustee meeting using electronic communication</b>	<b>Trustees (majority)</b>
<b>PMR 12(3)</b>	<b>Elect the chairperson</b>	<b>Trustees (majority)</b>
<b>PMR 12(6) and (7)</b>	<b>Elect a replacement chairperson if the chairperson is removed from office, is not present or is unwilling to chair the trustee meeting</b>	<b>Trustees (majority)</b>
<b>PMR 15(7)(a)</b>	<b>Call general meetings at short notice</b>	<b>Trustees (majority)</b>
<b>PMR 17(4)</b>	<b>Call general meetings whenever they see fit</b>	<b>Trustees (majority)</b>
<b>PMR 17(7)</b>	<b>Determine the agenda of general meetings except meetings called on request of members holding at least 25% of the vote</b>	<b>Trustees (majority)</b>
<b>PMR 20(9)(a)</b>	<b>Decide that a special resolution passed by members holding less than 50% of the vote value must be implemented immediately</b>	<b>Trustees (majority)</b>

<b>PMR 21(3)(b)</b>	<b>Increase the contribution by up to 10% for the period between the end of the financial year and when the new contribution becomes payable</b>	<b>Trustees (majority)</b>
<b>PMR 21(3)(g)</b>	<b>Delegate trustee duties</b>	<b>Trustees (majority)</b>
<b>PMR 24(4) and (5)</b>	<b>Pay money from the administrative and reserve funds</b>	<b>Trustees (majority)</b>
<b>PMR 26(1)</b>	<b>Adopt a report for presentation at the AGM</b>	<b>Trustees (majority)</b>
<b>PCR 1</b>	<b>Consent to keep a pet</b>	<b>Trustees (majority)</b>
<b>PCR 2</b>	<b>Specify the type of refuse receptacle to be used and where it must be kept</b>	<b>Trustees (majority)</b>
<b>PCR 3</b>	<b>Consent to park a vehicle on common property</b>	<b>Trustees (majority)</b>



<b>PCR 4(1)</b>	<b>Consent to member making a small change to common property</b>	<b>Trustees (majority)</b>
<b>PCR 4(2)</b>	<b>Approve appearance and materials of locking or safety devices attached to common property</b>	<b>Trustees (majority)</b>
<b>PCR 5</b>	<b>Consent to change made to external appearance of section or EUA</b>	<b>Trustees (majority)</b>
<b>PCR 5(2)</b>	<b>Consent to erection of washing lines on common property, hanging washing in section or EUA if visible</b>	<b>Trustees (majority)</b>
<b>PCR 5(2)(c)</b>	<b>Consent to display of signs etc</b>	<b>Trustees (majority)</b>
<b>PCR 6</b>	<b>Store flammable materials</b>	<b>Trustees (majority)</b>
	<b>If you insert fibre in a scheme a contract between the service provider and the scheme can be entered into by way of a trustee's resolution that should be obtained, providing that there are no costs to the members</b>	

# WRITTEN RESOLUTIONS BY THE TRUSTEES

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
PMR 21(3)(a)	Raising a special contribution	Trustees (majority)
PMR 21(3)(b)	Increase the contribution by up to 10% for the period between the end of the financial year and when the new contribution becomes payable	Trustees (majority)
PMR 21(3)(c)	Charging interest on overdue amounts	Trustees (majority)
PMR 21(3)(d)	Investing reserve fund money	Trustees (majority)
PMR 21(3)(e)	Entering into contracts	Trustees (majority)
PMR 21(3)(f)	Joining organisations and subscribing to services	Trustees (majority)
PMR 21(3)(g)	Delegating trustee duties	Trustees (majority)
PMR 21(3)(h)	Approaching the Ombud for relief	Trustees (majority)
PMR 11(2)	Set the dates for future trustee meetings with a standard agenda	Trustees (majority)

# CANCELLING THE EMA CONTRACT



**DECISIONS WHICH CAN BE TAKEN BY EITHER THE BOARD OF TRUSTEES OR BY ORDINARY RESOLUTION OF MEMBERS.**

<b>PMR 28(8)</b>	<b>Cancel the managing agent contract on its terms</b>	<b>Trustees / Ordinary</b>
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**If the EMA contract is cancelled, then all books of accounts must be handed over within a period of 14 days to the body corporate!**

# ADMINISTRATION OR EMA?

**SCENARIO: SUNNY BODY CORPORATE** technically insolvent or struggling with cash-flow issues should be placed under administration....

**YES!!**

**NO!!**

Its much faster and less costly to appoint an executive managing agent.

There is more control if an EMA is appointed as opposed to an Administrator.

The scheme are more likely to be resuscitated if an EMA is appointed?

# Cont.

- ❖ Administrators report only to CSOS, and have the power to **alone** increase levies, raise special levies, authorise repairs, enforce rules, declare disputes and start legal proceedings against levy defaulters.
- ❖ Their decisions also **apply to all owners** in the scheme.

Question: What about members paying their levies each and every month? **[FAIR]???**

- ❖ In addition, the Court decides on the appointment and the fees!! [These **fees** will also be paid by all members of the body corporate according to the participation quotas of their sections].

## TERMINATION: COURT

Administration under Section 16 is expensive and the very LAST RESORT measure!

- **Section 16 – Formal process with very little powers on the part of the CSOS!**

# EXPECTATION OF PANELISTS

**Uphold the CSOS values!**

**Uphold the Rule of Law and the Code of Conduct!**

**Be visible in the industry i.e., CSOS training seminars, webinars, road shows etc.!**

**Interact with fellow panelists!**



**"I WOULD UPHOLD THE LAW IF FOR NO OTHER REASON BUT TO PROTECT MYSELF."**

THOMAS MORE

 Lifeback Games

# SUCCESS OF AN EMA?

1. Engaging with the CSOS
2. Transparency
3. Communication
4. Organization
5. Planning
6. Training
7. Report writing
8. Benchmarking best practices
9. Legislative knowledge
10. Being Professional and Ethical



**THANK YOU**

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