



*Affordable Reliable Justice*

## **CODE OF CONDUCT FOR EXECUTIVE MANAGING AGENTS**

In terms of Prescribed Management Rule (PMR) 28 (2) of the Sectional Titles Schemes Management Act (No. 8 of 2011) a 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 its scheme executives.

Executive managing agent means a managing agent appointed to carry out all the functions and powers of the scheme executives.

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.

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

The CSOS has therefore established a Code of Conduct for Executive Managing Agents as below.

### **1. DEFINITIONS**

In this Code of Conduct, unless the context indicates otherwise: -

- (a) **“Body Corporate”** means the collective name given to the owners of sections and common property within a sectional title scheme, which is established by operation of law and where the developer of the sectional scheme transfers the first unit out of its name and into the name of a person other than itself, in terms of the in terms of section 2(1) of the Sectional Titles Schemes Management Act No. 8 of 2011 or, if applicable, its predecessor, the Sectional Titles Act No. 95 of 1986;

- (b) **“Broad-Based Black Empowerment”** means the viable economic empowerment of all black people [including], in particular women historically disadvantaged individuals including black people, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to—
- (a) increasing the number of black people that manage, own and control enterprises and productive assets;
  - (b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;
  - (c) human resource and skills development;
  - (d) achieving equitable representation in all occupational categories and levels in the workforce;
  - (e) preferential procurement from enterprises that are owned or managed by black people; and
  - (f) investment in enterprises that are owned or managed by black people in terms of the Broad-Based Black Empowerment Amendment Act No. 46 of 2013;
- (c) **“CSOS”** means the Community Scheme Ombud Service, established in terms of the Community Schemes Ombud Service Act No. 8 of 2011;
- (d) **“Executive Managing Agent”** 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 Management Rule 28 of the Sectional Titles Schemes Management Act (“STSM Act”);
- (e) **“Fidelity Fund Certificate”** means the certificate obtained from the Estate Agency Affairs Board in terms of the Estate Agency Affairs Act No.112 of 1976;
- (f) **“Professional Indemnity Insurance”** means insurance cover taken out or on behalf of the Executive Managing Agent, to provide protection for civil liability or loss arising from the professional services that are rendered to its clients, and more specifically the Bodies Corporate to whom it offers services as an Executive Managing Agent;

- (g) **“Functions and Powers”** means all of the functions and powers that must or may be performed and exercised by the trustees of the Body Corporate;
- (h) **“Management Agreement”** means the management agreement entered into between the Body Corporate and the Executive Managing Agent, whereby the Body Corporate appoints the Executive Managing Agent to provide the services for a period of time as set out in the agreement in terms of Prescribed Management Rule 28 to the Sectional Titles Schemes Management Act No. 8 of 2011;
- (i) **“Managing Agent”** means an estate agent referred to in paragraph (a) of the definition of “estate agent” in section 1 of the Estate Agency Act No. 112 of 1976 who renders or offers to render any management service to a Body Corporate in his/ her/its capacity as such;
- (j) **“Prescribed Management Rules”** means Annexure 1 to the Sectional Titles Schemes Management Act No. 9 of 2011;
- (k) **“Sectional Title Development”** means a development in terms of which there is separate ownership of a section and an undivided share in the common property, known as a unit, within a sectional title scheme;
- (l) **“Special Resolution”** means a resolution passed at a duly convened and quorate general meeting of members of a Body Corporate, whereat 75% per cent of the members vote (in value and number) in favour of appointing an Executive Managing Agent to perform and exercise the functions and powers of the Trustees; and
- (m) **“ST SMA”** means the Sectional Titles Schemes Management Act No. 8 of 2011.

## **2. APPLICATION**

2.1 This Code of Conduct only applies to Executive Managing Agents.

2.2 Executive Managing Agents must comply with this Code of Conduct.

2.3 The duties and obligations imposed on Executive Managing Agents by this Code of Conduct are imposed in favour of the Body Corporate with whom the Executive Managing Agent has concluded, or is about to conclude, a management agreement in terms of Prescribed Management Rule 28 to the Sectional Titles Schemes Management Act (ST SMA).

## **3. DISCLOSURE BY EXECUTIVE MANAGING AGENTS**

3.1 Before entering into a management agreement with the Body Corporate, the Executive Managing Agent must, in writing, disclose the following information to the Body Corporate:

- 3.1.1. the Executive Managing Agent's trade name and, in the case of a company, close corporation or trading trust, its registered name and registration number;
- 3.1.2. the Executive Managing Agent's postal and business street address, telephone number and e-mail address;
- 3.1.3. the date when the managing agent, which will be appointed as an Executive Managing Agent, was established, and the date it commenced trading as a managing agent;
- 3.1.4. Confirmation and proof that it has a current Professional Indemnity Insurance Policy in place and the amount of such cover;
- 3.1.5. if the managing agent is a: –
  - 3.1.5.1. sole proprietor: his or her name and identity number, and nationality (if not South African);
  - 3.1.5.2. company: the name, business address, identity number, occupation and term of office of each director, and his or her nationality (if not South African);
  - 3.1.5.3. close corporation: the name, business address, identity number and occupation of each member, and his or her nationality (if not South African);
  - 3.1.5.4. partnership: the name, business address, identity number and occupation of each partner, and his or her nationality (if not South African);
  - 3.1.5.5. a trading trust: the name, business address, identity number and occupation of each trustee, and his or her nationality (if not South African);

3.2 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;

3.3 Details of any business activities, other than as a managing agent, in which the managing agent is materially engaged from the same premises where it renders services as a managing agent, using staff also employed by it in its capacity as a managing agent;

3.4 The managing agent's office hours and days of the week during which it conducts business as a managing agent;

3.5 A copy of the fidelity fund certificate for the current year issued to such managing agent, and when the fidelity fund certificate for the current year was received from the Estate Agency Affairs Board. Further to the aforesaid, the Executive Managing Agent must send out a letter with the monthly levy statements confirming that the new fidelity fund certificate is available to be viewed at the offices of the Managing Agent.

3.6 The name of the auditor appointed by the managing agent;

3.7 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).

#### **4. THE EXECUTIVE MANAGEMENT AGREEMENT**

4.1 An executive management agreement and any renewal or extension thereof must:

4.1.1 be in writing;

4.1.2 be signed by or on behalf of the Executive Managing Agent and the Body Corporate;

4.1.3 state the date on which the Executive Managing Agent will commence with the rendering of the services to the Body Corporate in its capacity as such;

4.1.4 state the date on which the agreement will terminate and/or the notice period required by either party to terminate the agreement;

4.1.5 contain all the material terms of the agreement, extension or renewal as the case may be, including all stipulations and disclosures prescribed by law;

4.1.6 Contain a full and precise description of –

- 4.1.6.1 the management service or services that the Executive Managing Agent undertakes to render over and above those referred to in clause 5;
- 4.1.6.2 the extent to which the Executive Managing Agent is empowered by the Body Corporate to perform any executive management service on behalf of and/or in the name of the Body Corporate other than what is prescribed by the STMSA.
- 4.1.6.3 the managing agent's duty (if any) to invest trust money as contemplated in section 32(2)(a) of EAAB Act No. 12 of 1976 (EAAB Act);
- 4.1.6.4 the person entitled to any interest earned on monies collected or received by the Executive Managing Agent on the management body's behalf, while such monies are kept in trust in terms of section 32(1) or 32(2)(a) of EAAB Act;
- 4.1.6.5 the remuneration to be paid to the Executive Managing Agent in respect of the executive management services provided to the Body Corporate, when such remuneration becomes payable and the manner in which it must be paid;
- 4.1.6.6 any charges that the Executive Managing Agent 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, over and above the agreed remuneration in terms of the contract;
- 4.1.6.7 state with which insurance company its professional indemnity insurance policy is held, the amount of the professional indemnity insurance cover (which may not be less than R 5 million [five million rand] at any time) and the contact details of the policyholder, unless the Body Corporate concerned requires a higher indemnity insurance cover.

## **5. FUNCTIONS AND POWERS OF THE EXECUTIVE MANAGING AGENT**

- 5.1 The Executive Managing Agent takes over the functions and powers exercised by the trustees during the tenure of its appointment, which will include, but not limited to, the following duties and responsibilities certain which may be delegated to the managing agent in the normal course in terms of the STSMA:

- 5.1.1 identify the risks to be insured against, and to insure (and/or keep insured) the Body Corporate against such risks, any movable and/or immovable property under the control, management or administration of the Body Corporate;
- 5.1.2 handle any insurance claims in respect of any movable or immovable property under the control, management or administration of the Body Corporate;
- 5.1.3 maintain and keep in a state of proper maintenance and repair, all common property under the control, management and administration of the Body Corporate;
- 5.1.4 comply with any notices or orders of any competent authority requiring work or repairs to be done in respect of the common property under the control, management and administration of the Body Corporate;
- 5.1.5 maintain and keep in a state of proper and serviceable repair any plant, machinery, recreational facilities, fixtures and fittings, equipment and/or elevators used in connection with the common property under the control, management and administration of the Body Corporate;
- 5.1.6 take any steps, as may be prescribed by the STSMA or the Rules promulgated thereunder, or any other applicable legislation, to collect from any member of the Body Corporate any arrear levies, contributions or monies owing to the Body Corporate;
- 5.1.7 take any steps, as may be prescribed by law, to collect or receive monies or levies owing to the Body Corporate by any person other than a member of the Body Corporate, for whatever reason;
- 5.1.8 recruit and/or appoint employees and/or service providers to perform routine maintenance and cleaning work pertaining to any common property at the scheme (and/or any plant, machinery, recreational facilities, fixtures and fittings or equipment used in connection with the common property) under the control, management and administration of the Body Corporate;
- 5.1.9 train, supervise, remunerate and discipline any of the persons employed by the Body Corporate to perform any work referred to in clause 5;
- 5.1.10 comply with any applicable taxation and labour laws pertaining to any of the persons employed by the Body Corporate to perform any work referred to in clause

- pay any accounts which the Body Corporate is legally obliged to pay;
- 5.1.11 purchase or hire equipment to maintain any common property (and/or any plant, machinery, recreational facilities, fixtures and fittings or equipment used in connection with the common property) under the control, management and administration of the Body Corporate;
- 5.1.12 ensure compliance with any law relating to any common property, as well as any plant, machinery, recreational facilities, fixtures and fittings, equipment and/or elevators used in connection with any common property;
- 5.1.13 make available to any person legally entitled thereto, the Governance documents and records as set out in terms of Prescribed Management Rule 27 and any other information or document which the Body Corporate is obliged to make available, prepare an annual budget to cover expected expenditure in respect of any common property, and/or any plant, machinery, recreational facilities, fixtures and fittings, equipment and/or elevators used in connection therewith;
- 5.1.14 attend to the preparation of the Body Corporate annual financial statements;
- 5.1.15 convene any general meetings of the members of the Body Corporate;
- 5.1.16 render secretarial or any other services at any meetings of the members of the Body Corporate and to circulate the minutes;
- 5.1.17 keep and store financial and administrative records of the Body Corporate;
- 5.1.18 allow access to the records referred to in clause 5.1.13 to any person entitled thereto by law or otherwise authorized by the Body Corporate;
- 5.1.19 the Executive Managing Agent 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;
- 5.1.20 supervise work of a capital nature in respect of improvements, additions or alterations to any common property under the control, management and administration of the Body Corporate; order and/or supply materials and supplies to employees who perform routine maintenance and cleaning work pertaining to any common property (and/or any plant, machinery, recreational facilities, fixtures and fittings or equipment used in connection with the common property);



5.1.21 In accordance with Prescribed Management Rule 28(3), the Executive Managing Agent:

- (a) is subject to all of the duties and obligations of a trustee under the STSMA except in the instance where members of the Body Corporate give direction or impose restrictions on the Executive Managing Agent in terms of Prescribed Management Rule 17 (6)(m);
- (b) is obliged to manage the Scheme with the required level of professional skill and care;
- (c) has a fiduciary duty to each member of the Body Corporate
- (d) must arrange for the inspection of the Scheme's common property at least every 6 (six) months. However, the Executive Managing Agent must, in terms of its Agreement with the Body Corporate, arrange for the inspection of the scheme's common property at least every month during the existence of the Agreement; and
- (e) must report at least every 4 (four) months to every member of the Body Corporate on the Executive Managing Agent's administration of the Scheme, which report must include at least the details required under Prescribed Management Rule 28(4).
- (f) However, the Executive Managing Agent undertakes under this Agreement to provide:
  - each Member with the monthly management accounts of the Body Corporate during each month during the existence of this Agreement; and
  - the reports otherwise required under Management Rule 28(4) to each Member at least quarterly, as required by Management Rule 28(3)(f). although the Executive Managing Agent may, but does not have to, provide the Members with those reports at intervals more frequent than quarterly.
  - Without limiting the Executive Managing Agent's functions, powers or authority at all, but for purposes of clarity, the Executive Managing Agent may, on behalf of the Body Corporate, appoint or contract with any specialist service provider to assist the Body Corporate with the preparation, revision and implementation of its maintenance plans,

maintenance costings, project management thereof and all similar or related aspects, all of the specialist service provider's fees, costs and charges and all other related costs and charges will be for the Body Corporate's account.

- The Executive Managing Agent is subject to all of the duties and obligations of a trustee under the STSMA.

5.2 An Executive Managing Agent may not be a party to any agreement with a Body Corporate or accept any stipulation in its favour whereby: -

5.2.1 the Executive Managing Agent's legal liability to the Body Corporate for damages or losses arising from breach of contract or any negligent conduct on the part of the Executive Managing Agent is excluded, limited or restricted in any manner;

5.2.2 the Body Corporate's right to cancel the management agreement by reason of the Executive Managing Agent's breach of the contract is wholly excluded;

5.2.3 the Body Corporate waives any of its rights conferred by law or any protection afforded by this Code of Conduct;

5.2.4 the Body Corporate is obliged to pay a fee or penalty when lawfully terminating the agreement;

5.2.5 the Body Corporate may only amend, terminate or cancel the management agreement by a resolution requiring any majority or procedure other than what is prescribed by law or the Body Corporate's bespoke Management Rules for the passing of a special resolution;

5.2.6 No Executive Managing Agent –

(a) may render or purport to render any management service to a Body Corporate unless it has entered into a written management agreement with such Body Corporate, which complies with the provisions of the Prescribed Management Rules and this Code of Conduct;

(b) an Executive Managing Agent must, without undue delay and free of charge, furnish the Body Corporate concerned with a copy of the

signed management agreement, or any extension or renewal thereof as the case may be, within 3 (three) days of signing thereof.

## **6. PERFORMANCE OF EXECUTIVE MANAGEMENT SERVICES**

- 6.1 An Executive Managing Agent must perform the duties imposed on it in terms of the management agreement and the Prescribed Management Rules to the STSMA-
- 6.1.1 with due care and skill;
  - 6.1.2 diligently; and
  - 6.1.3 on time.
- 6.2. An Executive Managing Agent may not render or purport to render, or enter into a management agreement, whereby it undertakes to render any service to the Body Corporate, if the rendering of such management service falls outside of its field of competence or expertise, unless it will, in the rendering of such service be assisted by a person (*legal or otherwise*) having the required degree of skill and knowledge, and this fact is disclosed to the Body Corporate.
- 6.3. An Executive Managing Agent rendering management services to more than one Body Corporate –
- 6.3.1. must properly keep separate accounting records in respect of the affairs of each Body Corporate for whom executive management services are rendered; and
  - 6.3.2. may not transfer funds from the account of one Body Corporate to the other, whether by way of a loan or otherwise.
- 6.4. If a management agreement imposes a duty on the Executive Managing Agent to –
- 6.4.1 make available any document, the Executive Managing Agent must furnish to the party concerned, a legible photocopy of the document in question within 7 (seven) days from receipt of a written request to do so; or
  - 6.4.2 keep the minutes of any meeting relating to the Body Corporate affairs, and draft minutes of the meeting are to be made available to the chairperson of that meeting in a typed and properly worded format not later than 7 (seven) days after the meeting.

## **7. CONFLICT OF INTEREST AND DISCLOSURE OF BENEFITS**

- 7.1 An Executive Managing Agent who has concluded a management agreement with a Body Corporate must:
- 7.1.1 avoid any material conflict between its own interests and those of the Body Corporate concerned;
  - 7.1.2 forthwith disclose to the Body Corporate material gifts or benefits directly or indirectly received by or accruing to the Executive Managing Agent from third parties on account of the services rendered by the Executive Managing Agent to the Body Corporate;
  - 7.1.3 refrain from making decisions which may involve perpetuating its own interests through related party transactions, without express approval of the Body Corporate.

## **8. TERMINATION OF EXECUTIVE MANAGING AGENTS CONTRACT**

- 8.1 Termination of the Executive Managing Agent's contract by the Body Corporate may be given on two months' notice, subject to the condition that the cancellation is first approved by a special resolution of the members of the Body Corporate, passed at a duly convened special general meeting, or
- 8.1.2. By the Executive Managing Agent on two months' notice; and
  - 8.1.3. The Body Corporate may, by ordinary resolution, cancel the management agreement in accordance with its terms or refuse to renew the management agreement when it expires;
  - 8.1.4. Should the contract be terminated, the Executive Managing Agent must, not later than 14 (fourteen) days after the termination of the management agreement to which it is a party, hand over to the Body Corporate or its nominee –
    - 8.1.4.1. all books, documents, records, financial statements, bank statements, invoices, statements of account, correspondence and minute books relating to the Body Corporate affairs; and
    - 8.1.4.2. within 14 (fourteen) days, do an electronic fund transfer of all funds

under the control of the Executive Managing Agent relating to the Body Corporate concerned, unless other mutually agreed arrangements have been made between the Executive Managing Agent and the Body Corporate for the control of such funds to be taken over by the Body Corporate or its nominee.

## **9. VICARIOUS RESPONSIBILITY**

- 9.1 The Principal of an Executive Managing Agent shall be held responsible for any contravention or failure to adhere to this code of conduct.