# CSOS TRAINING
# FEBRUARY 2020



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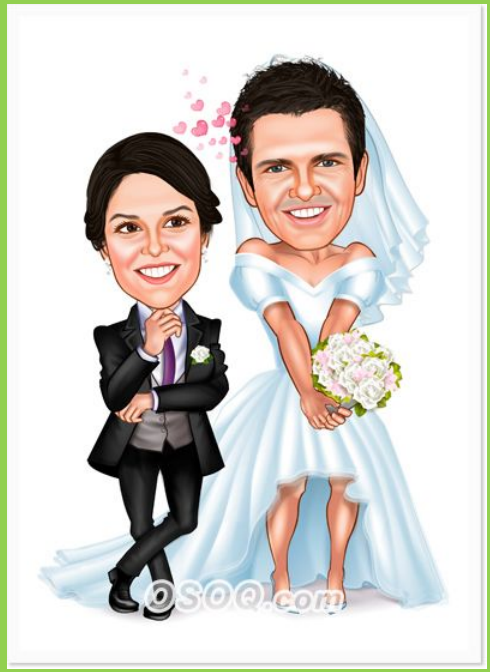
*Affordable Reliable Justice*

**Buying a unit in a community scheme is a bit like getting married**

- *to have and to hold, from this day forward,*
- *for better, for worse, <u>for richer, for poorer</u>,*
- *in sickness and in health,*



**until registration of the property out of our name/s do us part.**

***…… and like a marriage, it's a two-way commitment***

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# BUT UNLIKE MOST MARRIAGES, IN A SECTIONAL TITLE 'MARRIAGE' THERE IS A MANUAL(S)!

- The Sectional Titles Schemes Management Act No.8 of 2011 (Signed into Law on the 7th of November 2016) AND
- The Management Rules in Annexure 1 to the Act;
- The Conduct Rules in Annexure 2 to the Act; AND
- The CSOS Act

# … AND IN A CLUSTER DEVELOPMENT OR HOMEOWNERS ASSOCIATION THERE IS ALSO A MANUAL(S)!

- If the HOA has been registered as a Company with CIPC, then:
  - The Companies Act No.71 of 2008;
  - The Memorandum of Association; AND
  - The CSOS Act

- If the HOA is a 'Common Law' entity that is not registered as a company then:
  - The Constitution

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## . . . AND IN A SHAREBLOCK SCHEME THERE ARE ALSO MANUALS!

- The Share Blocks Control Act 59 of 1980;
- The Use Agreement

## . . . AND IN RETIREMENT SCHEMES THERE ARE ALSO MANUALS, DEPENDING ON WHAT KIND OF SCHEME IT IS!

- Housing Development Schemes for Retired Persons Act 65 of 1988;
- Life Right Agreement;
- Rules of the Scheme.

# THE INSTITUTIONAL MEMORY OF A BODY CORPORATE *OR, a comma can win a court case!*

Woman without her man is nothing.

Highlights of my year in office include encounters with Nelson Mandela an 800-year-old demigod and a dildo collector.

Anne Boleyn walked around and talked to her ladies in waiting half an hour after her head was cut off.

Woman, without her man is nothing! **OR**

**Woman, without her man, is nothing!**

Highlights of my year in office, include encounters with Nelson Mandela, an 800-year-old demigod, and a dildo collector.

"Anne Boleyn walked around and talked to her ladies in waiting: half an hour after; her head was cut off.

# What does the Sectional Titles Schemes Management Act 8 of 2011 say about minutes?

***Does it stipulate that the minutes of a Body Corporate must be kept in perpetuity?***

Trustees:

PMR 9(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*.

PMRR27(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 representatives;

iii. the text of all resolutions; and

iv. the results of the voting on all motions.

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# **Definition:** Minutes are an official record of the proceedings of a meeting – *NOT A VERBATIM RECORD (otherwise they'd be called "hours!)!*



1. **Meeting minutes offer legal protection**
   From a legal perspective, if an action isn't in the minutes of a meeting, it didn't happen.

2. **Meeting minutes provide structure**
   There is no standardised format for Trustees' minutes, but it is very helpful to create a standardised structure and stick to it – *adhere strictly to the agenda, it creates certainty*.
   PMR 16.2. sets out the agenda for the First meeting of the Body Corporate; and
   PMR 17.6. sets out the "Order of Business" at a general meeting, including the AGM.
   (These guide your minutes)

3. **Meeting minutes drive action**

4. **Meeting minutes act as a measuring stick of the progress of a Body Corporate – *THE LIFE OF A BODY CORPORATE***
   Because they record decisions, they are an invaluable review document when it comes to measuring progress. They are also an important accountability tool – (Trustees and members of Bodies Corporate must be held accountable for their actions/non-actions)

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# **Minute-writing is a learned skill –** some guidelines:



1. They don't have to be a verbatim record (in fact, preferably not!);
2. Cut down the information to just the "meat" of what needs to be covered, discussed, and decided on;
3. Use plain language ***but be creative and engaging*** and say what you mean directly – get someone to check to see that the minutes make sense!
4. Always bear in mind that the minutes are a RECORD OF "the proceedings of the meeting" because the Body Corporate needs to memorialize what happened ***during the meeting*** for future reference - don't be pressured into inserting extraneous information by *anyone*.
5. Must reflect the exact wording of the resolution discussed, the outcome of the vote (i.e. votes in favour and against, by value).
6. If the resolution to be passed is unanimous or special, the votes are calculated in value *and* number, and the outcome of **both** must be recorded.
7. The minutes must reflect the time that the meeting opened and the time that it closed or adjourned.
8. The minutes of a meeting of a Body Corporate, company etc., are always considered the *best* evidence of what transpired at the meeting;

**ENSURE THAT THEY ARE ACCURATE –** ***remember that minutes can be subpoenaed as evidence!***

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# Last but not least, *as far as minutes are concerned:*

## SEND THE MINUTES OUT ON TIME:



**TRUSTEE MEETINGS AND DECISIONS**

**General powers and duties of Trustees**

**PMR 9.** The trustees must—

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.

***(a member, a registered mortgagee or the holder of a future development right who in writing requests notice of trustee meetings)***

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# VOTING AT SECTIONAL TITLE MEETINGS . . .

## *How do you vote at Trustees' meetings?*

**ALWAYS by show of hands!!!!!!!**



### Management Rule 14

**Voting**

**14.** (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.

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# Cont. VOTING AT GENERAL MEETINGGS . . .

## What does the Act say?

*Section 11(1) . . . The quota of a section must determine –*

*(a) The value of the vote of the owner of section, in any case where the vote is to be reckoned in value*

## What do the Management Rules say?

*Management Rule 20(1)(b) – (Except for a special or unanimous resolution, which must be adopted in number and value) a decision must be adopted by resolution of the majority of the votes, calculated in value, of the members present and voting*

## What is the "value" of your vote?

*It is the participation quota of your unit, which you will find on the very last page of the sectional plans for the scheme, and has 4 decimal places e.g. 1, 2354.*

***Of course, the participation quota of your unit also determines the amount Of the levy that you pay!!!!!!!!***

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# Cont. VOTING AT GENERAL MEETINGS . . .



*Have quorum requirements been established?*

**Is the p.q. used to establish if a quorum is present at a Body Corporate meeting ?**




**and the answer is . . .**

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# *Found in* MANAGEMENT RULE 19



19(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**, 1) by members **entitled to vote** and holding one third of the total votes of members in value, 2) 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 3) 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.

# VOTING – CALCULATION !!!!!!

## SHAKA'S ROCK BODY CORPORATE – P.Q. SCHEDULE

| Name | Unit No | Unit square Meterage | PQ |
|---|---|---|---|
| Mrs G. Naidoo | 1 | 148 | 0,0754 |
| Mrs L. Smith | 2 | 164 | 0,0836 |
| Mrs. L Smith | 3 | 249 | 0,1269 |
| Mrs L. Smith | 4 | 249 | 0,1269 |
| Mr N. van der Bijl | 5 | 170 | 0,0866 |
| Mr G. Buthelezi | 6 | 172 | 0,0877 |
| Mr T. and Mrs L. Cross | 7 | 148 | 0,0754 |
| Mrs O. Dube | 8 | 164 | 0,0836 |
| Ms L. Ngwenya | 9 | 249 | 0,1269 |
| Mrs R. Rentsch | 10 | 249 | 0,1269 |
| | TOTAL | 1962 | 100% |

## QUORUM CALCULATION:

## VOTING CALCULATION:

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**IS THE BODY CORPORATE ALLOWED TO DISCONNECT OR RESTRICT WATER OR ELECTRICITY TO A SECTION *OR* IN AN HOA, PREVENT ACCESS TO THE SCHEME ?**




# WHAT DOES THE LAW SAY ?











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# Niehaus v High Meadow Grove Body Corporate (40667/2018) [2018] ZAGPJHC 712 (13 November 2018)

**Facts . . .**

**What the Judge said:**

*"In any number of cases it has been held that to deprive a person of electricity supply, is an example of the deprivation of quasi-possession, which is remediable by the* ***mandament van spolie****. A full bench decision in this Division, in* **Queensgate Body Corporate v Claesen (A3076/98) [1998] ZAGPHC 1(26 November 1999)** *is one such case. There Blieden, J with whom Serobe, AJ agreed, dismissed with costs an appeal from a Magistrates' Court which granted a spoliation order against a body corporate."*

**The Court further stated that** ***"where the incorporeal right, such as a right to the supply of electricity, is as a matter of fact, an incident of the possession of immovable property, then the mandament van spolie will protect interference with such possession, as if it were interference with possession of the immovable property itself.***

It is necessary finally to say something about the argument that ***not all of the electricity supply was cut but only a portion of it.*** That argument seems to me to be without merit; in ***Burger v Van Rooyen*** **1961 (1) SA 159 (O)** a full court held that the spoliation relief avails even where the applicant has not been entirely deprived of possession of the whole of his property.

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# *Fisher v Body Corporate Misty Bay (* 2012 (4) SA 215 (GNP)) [2011] ZAGPPHC 234, 56 (12 April 2011)

**Brief facts: . . .**

Judge Legodi directed the body corporate to restore to Mr Fisher's possession of and access to the premises, on an urgent application based on the *mandament van spolie*. That case was not concerned with electricity supply but the body corporate had interfered with Mr Fisher's access by disabling his vehicular access disc. The body corporate argued that in terms of the rules of conduct of the rules of the body corporate, the body corporate was entitled to suspend the access discs of those owners who failed to make payment of their levies.

The Judge said:
"***The respondent would not have been entitled to spoliation without due process of the law. In other words, it could not have taken the law into its own hands as it is the case in the present case."***

**MORAL OF THE STORY: *IF YOU WANT TO DISCONNECT, GET A COURT ORDER FIRST!***

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# *Is the body corporate responsible for the security of the scheme's residents?*



## Van der Bijl and Another v Featherbrooke Estate Home Owners' Association (NPC) and Another; In Re: Featherbrooke Estate Home Owners' Association (NPC) v Van der Bijl

On 8 April 2014 at 10.30 p.m., robbers gained access to an Estate in Johannesburg, to the home of a certain Mr and Mrs van der Bijl.

Mr van der Bijl was shot and suffered a serious wound to his stomach, and his wife was assaulted and sustained injuries. ***They both suffered mental trauma from the attack***.

They then sued Fidelity Security Services, the security company employed by the HOA, on the basis that they were in breach of their duty of care, and with gross negligence, failed to take various measures to ensure the safety of the residents of the Estate, **as well as the HOA.**
**The HOA excepted to the claim, and this is what the Court case is about.**

**The central legal question that the Court had to answer was whether the HOA owed the van der Bijls *any* duty to protect them?**

In law, a legal duty is determined by making reference to the legal convictions of the community. The Court found no duty on the part of the HOA to protect those residing in the **Estate but the situation would have been different if there had been an agreement in terms of which the HOA *undertook* to provide such protection.**

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# Van der Bijl and Another v Featherbrooke Estate Home Owners' Association (NPC) and Another . . . *continued*

**What about the security company?**

**The Judge said:**

"I shall assume that Fidelity owed a duty to protect those persons it was contracted by the Association to protect and that those persons, according to the particulars of claim, included the van der Bijls, who resided on the Estate."

It does not follow that by taking these actions Fidelity's legal duty somehow becomes attributable to the Association.

# All about a dog . . . a pig, or a python for that matter!



Photo courtesy Van Deventer & Van Deventer Inc Attorneys Website

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# Pets in complexes . . .

**Pathmasolahani Abraham and Anor v The Mt Edgecombe Country Club Estate**




" . . . ***This case is not about a dog. It is about human conduct, the Consequences of voluntary submission to special rules and regulations, and the duties of those who are elected as arbiters when the enforcement of such rules is the issue"***

**Mt Edgecombe is described as "one of the finest residential estates in South Africa.**

Mt Edgecombe has 890 freehold residences, as well as sectional title schemes, and there are extensive common areas with dams, ponds, rivulets and magnificent garden areas. It is also a registered conservancy area, so the natural fauna and flora is protected.

Being a registered Non Profit Company, the HOA is governed by a Memorandum of Incorporation, which Empowers the directors to make Rules.

The Rules regarding pets say that Applicants **must** first apply to the directors of the HOA and consent will not be unreasonably withheld *SUBJECT TO THE CONDITION THAT*:
The dog must be small and not of a known aggressive breed; in regard to the size, the dog Should be of a breed that will not exceed 20 kg when fully grown.
Mrs Abraham's son bought Theodore as a puppy and brought him onto the Estate

# Pets in complexes . . .

When he was a 3-month old puppy permission was requested for Theodore to stay at the Estate.

Shortly thereafter the Applicants were advised that permission to keep Theodore was refused, and a few days later they were asked to remove him off the estate.

Being an attorney himself, Mrs Abrahams' son sent a letter to the directors asking them to review the Rules, with substantiating reasons, but the directors were not prepared to change their mind on the subject. They did however relent and provide Mrs Abrahams and her son a further 3-month period in which to find suitable alternative accommodation for Theodore.

After considering a number of factors with reference to previous case law, the Judge decided that the Rules of the HOA are clear, **and are in the nature of a contract between the HOA and the member,** that based on Theodore's status as a giant breed, the directors could not grant permission for him to remain on the Estate.

***After losing the case, Mr Abrahams was interviewed by the Daily News, his comment was:*** **'This is not a dog to us. This is a family member, a very central part of our family,' 'What we are essentially being told is that we need to get rid of this family member in three months.'**

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# What does the Act say?

- ***1. Keeping of animals, reptiles and birds***

- (1) The owner or occupier of a section must not, without the trustees' written consent, **which must not be unreasonably withheld**, keep an animal, reptile or bird in a section or on the common property.
- (2) An owner or occupier suffering from a disability and who reasonably requires a guide, hearing or assistance dog must be considered to have the trustees' consent to keep that animal in a section and to accompany it on the common property.
- (3) The trustees may provide for any reasonable condition in regard to the keeping of an animal, reptile or bird in a section or on the common property.
- (4) The trustees may withdraw any consent if the owner or occupier of a section breaches any condition imposed in terms of sub-rule (3).

➢ ***Easier said than done to withdraw consent – must follow due process – CSOS Order!***

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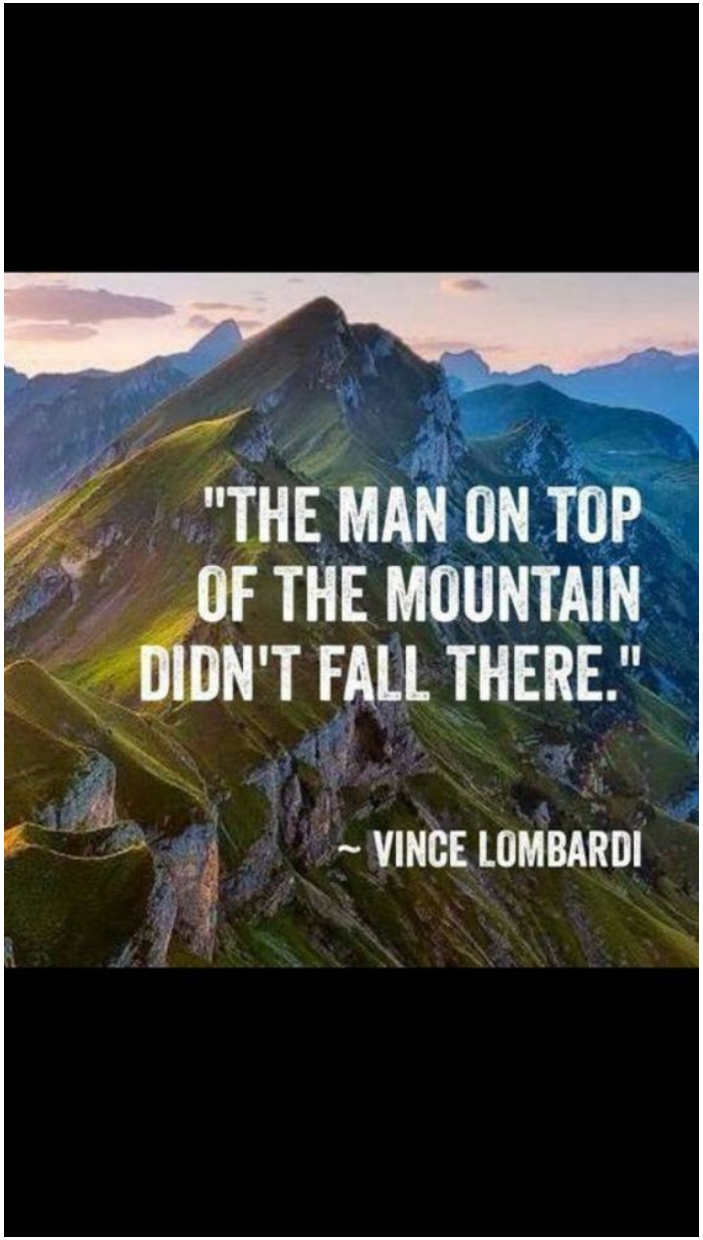
"THE MAN ON TOP
OF THE MOUNTAIN
DIDN'T FALL THERE."
~ VINCE LOMBARDI

# Thank You

