



Property management you trust



Trustee Code of Conduct and Conflict of Interest Policy

1. Purpose and Scope

This policy is here to guide all trustees, ensuring their actions reflect the best interests of the scheme they serve. It applies to every trustee involved in the governance of the scheme.

2. Fiduciary Duty

Trustees hold a special position under Section 8 of the Sectional Title Schemes Management Act, 8 of 2011. This means trustees are expected to:

- Act honestly and with good intentions for the benefit of the body corporate.
- Stay within their legal powers.
- Avoid any significant conflict between personal interests and those of the body corporate.
- Not receive personal economic benefits from the body corporate or others.
- Share any personal interest in contracts with fellow trustees.

If a trustee breaches this duty, they might be responsible for any losses to the body corporate or for personal gains received from the breach.

3. Compliance with the Law

Trustees must comply with South African common law, the Sectional Titles Act, the Sectional Titles Schemes Management Act and Regulations, as well as other relevant laws including the Occupational Health and Safety Act and local bylaws.

4. Participation and Conduct

Trustees should:

- Avoid abusive behavior and personal attacks.
- Show respect, honesty, and integrity.
- Attend and prepare for meetings with dedication.
- Listen carefully and focus on the agenda without unnecessary interruptions.

5. Conflict of Interest

This section is designed to protect the scheme's interests in transactions that might benefit a trustee personally. Trustees should disclose any conflicts of interest and step aside from related decisions. A conflict arises when a trustee's personal interests might not align with their obligations to the scheme.

6. Use of Information – Confidentiality

Trustees are expected to keep information gained from their position confidential, never using it for personal gain or to harm the scheme unless authorized.

7. Use of Body Corporate Resources

Trustees should not use scheme resources for personal benefit. Resources like staff time, equipment, or supplies should be used solely for the scheme's benefit.

8. Disclosure and Recusal

Trustees must disclose any interests that could conflict with their duties and step back from relevant discussions and decisions. This ensures transparency and integrity in decision-making.

9. Non-compliance

Trustees who fail to comply with this policy or breach their fiduciary duty could face personal liability for any resulting losses or benefits. Non-compliance might lead to dismissal and legal action, with the trustee covering legal costs.

10. Record-keeping

Minutes of meetings discussing conflicts of interest must be documented, detailing disclosures, discussions, and decisions. These records should be kept for five years.

11. Gifts and Favours

Trustees should avoid accepting gifts or favors that could compromise their independence. Their actions should always be free from any appearance of bias.

12. Acknowledgement and Disclosure

Trustees are required to sign this policy annually, acknowledging their understanding and commitment. This document serves as an official record of their agreement to follow the policy.

Thank You

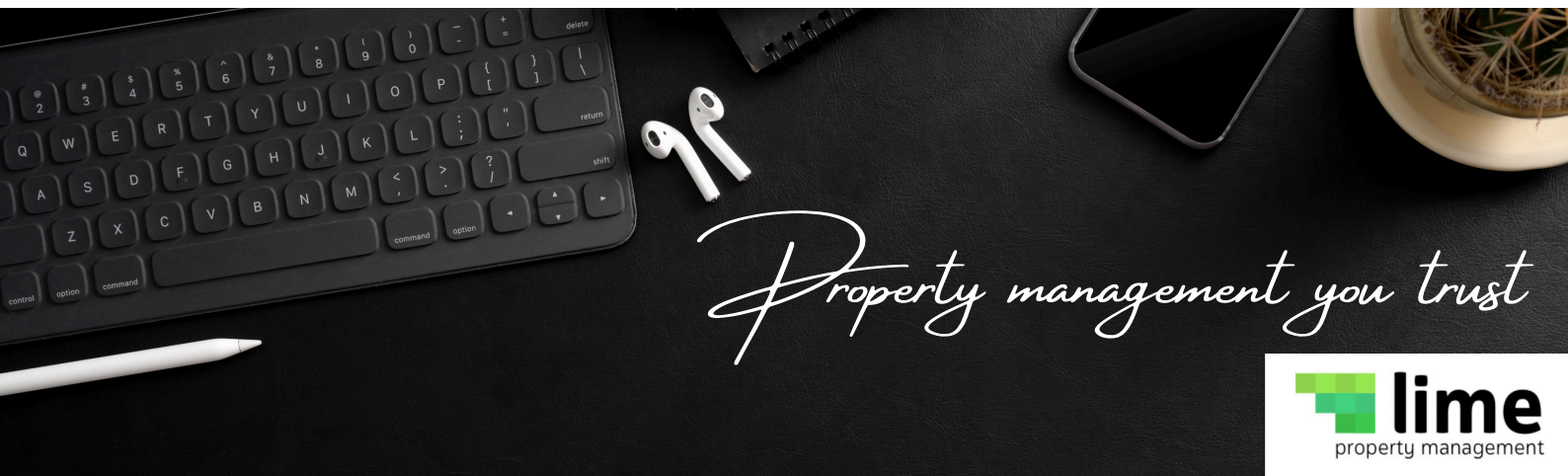
Being a trustee is both a privilege and a responsibility. By stepping up, you're playing a key role in ensuring the smooth operation and success of your scheme. It's a role that comes with challenges but also great rewards, including stronger communities, well-managed finances, and a thriving living environment.

To stay informed and confident in your decisions, we encourage you to subscribe to and follow professional resources like Paddocks, TVDM Consultants, and Stratafin. These platforms offer valuable insights, legal updates, and expert advice to support you in your trustee journey.

Remember, you're not alone! Your managing agent is here to guide and assist you every step of the way. Whether you need clarification, advice, or just someone to listen, don't hesitate to reach out.

We look forward to working with you and supporting you in making a meaningful difference in your community.

Welcome aboard!



Legal Framework

Legislative Sections Referenced

Section 7 of the Sectional Titles Schemes Management Act Summary:

- Defines the functions and powers of the body corporate.
- Specifies how trustees should exercise their authority to manage the scheme.
- Sets out the framework for the election and operation of trustees.

Extract: Trustees of body corporate

(1) The functions and powers of the body corporate must, subject to the provisions of this Act, the rules and any restriction imposed or direction given at a general meeting of the owners of sections, be performed and exercised by the trustees of the body corporate holding office in terms of the rules.

(2) (a) In addition to the functions contemplated in subsection (1), the trustees of the body corporate must receive and may consent to applications for subdivision of sections or consolidation of sections, made by the owners of sections.

(b) Such consent must not unreasonably be withheld by the trustees.

(3) For the purposes of an agreement in respect of the beacons and boundaries of the common property required in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), the trustees are deemed to be the owner of the land.

Section 8 of the Sectional Titles Schemes Management Act Summary:

- Establishes the fiduciary duty of trustees.
- Emphasizes that trustees must act honestly, in good faith, and in the best interests of the body corporate.
- Provides musts regarding the avoidance of conflicts of interest and the requirement for trustees to disclose any potential conflicts.

Extract: Fiduciary position of trustees

(1) Each trustee of a body corporate must stand in a fiduciary relationship to the body corporate.

(2) Without derogating from the generality of the expression “fiduciary relationship”, the provision of subsection (1) implies that a trustee—

(a) must in relation to the body corporate act honestly and in good faith, and in particular—

(i) exercise his or her powers in terms of this Act in the interest and for the benefit of the body corporate; and

(ii) not act without or exceed those powers; and

(b) must avoid any material conflict between his or her own interests and those of the body corporate, and in particular—

(i) not receive any personal economic benefit, direct or indirect, from the body corporate or from any other person; and

(ii) notify every other trustee of the nature and extent of any direct or indirect material interest which he or she may have in any contract of the body corporate, as soon as such trustee becomes aware of such interest.

(3) A trustee of a body corporate who acts in breach of his or her fiduciary relationship, is liable to the body corporate for—

(a) any loss suffered as a result thereof by the body corporate; or

(b) any economic benefit received by the trustee by reason thereof.

(4) Except as regards the duty referred to in subsection (2)(a)(i), any particular conduct of a trustee does not constitute a breach of a duty arising from his or her fiduciary relationship to the body corporate if such conduct was preceded or followed by the written approval of all the members of the body corporate where such members were or are cognisant of all the material facts.

Prescribed Management Rules of the Sectional Titles Schemes Management Act Regulations

These rules further detail practical aspects of trustee conduct and management, including:

Prescribed Management Rule 5:

- Sets out initial conditions for trustee appointment (e.g., all members may be considered trustees until formal elections are held).

Extract: 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.

Prescribed Management Rule 6:

- Lists the requirements for holding office and grounds for disqualification.
- Includes criteria such as insolvency, misconduct (like fraud), or failure to meet legal obligations.

Extract: 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.

Prescribed Management Rule 7:

- Covers the nomination, election, and replacement of trustees.
- Details the processes to be followed if vacancies arise.

Extract: 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.

Prescribed Management Rule 8:

- Addresses financial matters such as reimbursement of expenses, indemnity, and any rewards for serving as a trustee.

Extract: 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.