Short notes on:

**SECTIONAL TITLE SCHEMES: HOW THE MANAGEMENT HAS CHANGED**

*Introduction*

The new Sectional Title Schemes Management Act No. 8 of 2011 (the “STSMA”) came into operation on 7 October 2016. This Act, in essence, has taken all the management, governance and rules as provided in the Sectional Titles Act No. 95 of 1986, as amended from time to time (the “STA”), and codified the current management practice holistically into this new Act. This new Act contains 20 sections.

Due to the sensitive nature of the differences and disputes that often arise in sectional title schemes and/or its body corporate, it is important that any dispute is well regulated, especially in cases where amicable resolutions have either failed, or is impossible. Previous legislation and practice management rules are fairly complex and difficult to understand, which made it difficult for owners and trustees to fully understand all rights and responsibilities involved in the management of a sectional title scheme. Moreover, due to the increasing number of homeowners associations and sectional title schemes and other community housing developments, more “user friendly” legislation was sorely needed. The new Act have been welcomed by many industry experts thus far as a long overdue addition.

*The Sectional Title Schemes Management Act*

Body Corporates, Trustees, owners and Sectional Title administrators should note that the Regulations to the STSMA provide for a mandatory maintenance plan and maintaining a compulsory reserve fund. The STSMA must be analysed critically and practically implemented in the management of sectional title schemes, if not done already. These areas have changed from the provisions in the STA to those of the STSMA. However, for many trustees, owners and schemes, the STSMA does not make many fundamental changes to how a sectional title scheme is run. The previous Act continues to deal with all aspects related to the transfer of ownership in Sectional Titles Schemes.

The STSMA has been adopted parallel with another piece of legislation, creating a so-called third generation system of law governing not only Sectional Title schemes but also other community
schemes like Home Owners Associations. This legislation is called the Community Schemes Ombud Services Act No. 9 of 2011 (hereinafter the “CSOSA”), which also came into operation on 7 October 2016 and creates the office of an Ombud to, amongst other things, deal with community schemes dispute resolution.

Therefore, the STSMA and the CSOSA are used to manage sectional titles schemes and disputes relating to these schemes. The STSMA’s main focus is to assist body corporates, trustees and owners to manage and regulate sectional title schemes and the governance thereof. The CSOSA on the other hand, aims to provide for the establishment of the Community Schemes Ombud Services. Thus, a dispute resolution mechanism in sectional titles and community schemes. The above Acts will become operational once the regulations thereto has been proclaimed, which date is not yet known. The ombudsman, created in terms of the CSOSA, has however been established already and has been in operation since 7 October 2016.

**Community Schemes Ombud Services**

Up until the implementation of this ombuds services, owners and trustees in sectional title schemes and other community schemes such as homeowner’s associations, where forced to resolve disputes by making use of arbitration as provided for in Management Rule 71, or alternatively, approach the High Court.

Hundreds of matters have already been referred to the office of the Community Schemes Ombud Services through its official website. This fact alone indicates that there was a need for an alternative service. This provides a far more cost effective method of resolving disputes than arbitration or litigation in court.

As mentioned above, the purpose of the CSOSA is to provide a legal structure to monitor and control the administration of sectional title schemes and to deal with disputes in these schemes by effectively providing an affordable, as well as effective, dispute resolution service in the community or sectional title schemes. It is important to note that often an issue can be erroneously considered a dispute and referred to the ombudsman, whereas the correct process would have been court litigation. An example hereof is given in *Body Corporate of Greenacres v Greenacre Unit 17 CC and 1 other*. In this case the owner ignored a demand for payment of levies, or simply refused to pay the levies,

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1 2008 (3) 167 (SCA)

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therefor no dispute was shown. Should the owner have been able to show cause that the levy amount was incorrect, then this would have been a suitable dispute which would have been able to be referred to the ombudsman. However, the dispute involving levies not paid, due to it not being determined correctly, for instance, would be a situation where it will be preferable to approach the ombudsman’s office.

The CSOSA\(^2\) states the ombud “may make an order for the payment or re-payment of a contribution or any other amount”. This could possibly lead to confusion when being interpreted that the ombud’s office can be used as a platform for collection of undisputed levies, where in fact the correct an appropriate avenue in this instance, would have been a court of law.

Both the STSMA and CSOSA are very recently implemented into practice, and we will only know the practical impact thereof on dispute resolution once it has been judicially interpreted and properly tested. The provisions of the above Acts need to be interpreted in the courts in order to know exactly when it is necessary to refer, for example, a case where the owner defaults in levy payments to a court or to the ombudsman.

**Conclusion**

Due to the complexity and sensitivity of certain matters, obtaining professional advice regarding the management of sectional title schemes, or even the mere interpretation and unpacking the newly implemented legislation, is highly recommended. Contact a professional at SchoemanLaw Inc. for assistance in understanding the new legislation and how it may impact you, your rights, that of your neighbour or your communal living arrangement going forward.

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\(^2\) Section 39(e)