

SECTIONAL TITLES (MANAGEMENT) RULES

(under section 56(a))

(30th December, 2005)

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S.I. 90, 2005.

PART 1

Preliminary (rules 1-2)

1. Citation

These Rules may be cited as the Sectional Titles (Management) Rules.

2. First general meeting

(1) The first general meeting of members of the association shall be held within 60 days of the establishment of the association and at least seven days notice shall be given, in writing, of such meeting which shall be convened by the developer.

(2) The notice to convene the first general meeting shall be accompanied by a copy of the agenda which shall comprise the following-

(a) the consideration, confirmation or variation of the insurance effected by the developer on behalf of the association;

(b) the consideration, confirmation or variation of an itemized estimate of the anticipated income and expenses of the association for the ensuing financial year;

(c) the consideration of financial statements relating to the management, control, and administration of the building from the date of establishment of the association to the date of notice of the first general meeting;

(d) the taking of cession of a contract relating to the management, control and administration of the building and the common property and in respect of which the developer shall be obliged to submit such contract to the meeting;

(e) the appointment of an auditor or an accounting officer;

(f) the election of trustees;

(g) the discussion of any restrictions that the members of the association may impose; and

(h) the determination of the *domicilium citandi et executandi* of the association, which address shall be situated within the area of jurisdiction of a local authority within which the association is situated.

(3) The developer, or his or her nominee shall act as a chairperson from the date of the establishment of the association until the first general meeting.

(4) The developer shall circulate a notice to all members of the association to nominate a trustee and nominations must be received by the developer not later than 48 hours before the first general meeting.

PART II

Trustees (rules 3-15)

3. Trustees of association

(1) With effect from the date of the formation of an association, all owners shall be trustees who shall hold office until the first general meeting of the members of the association in accordance with rule 2 whereupon they shall retire and be eligible for re-election.

(2) Members of the association in the first general meeting shall elect trustees to manage the association.

(3) The minimum number of trustees elected under subrule (2) shall be two.

4. Tenure of office of trustees

A trustee shall be elected for a year, and at the termination of such a period such trustee shall be eligible for re-election.

5. Qualification

A trustee or alternate trustee shall not be required to be an owner or the nominee of an owner who is a juristic person, in order to qualify for „office as a trustee, except that the majority of the trustees must be owners of sections or spouses of owners of sections.

6. Nomination

(1) Nominations by owners for the election of trustees at any annual general meeting shall be given in writing, accompanied by the written consent of the person nominated, so as to be received by the trustees at the *domicilium citandi et executandi* of the association not later than 48 hours before the general meeting.

(2) A trustee may be re-elected for another term, where the trustee is nominated for re-election at the general meeting and the trustee consents to the nomination.

7. Filling of vacancies

(1) Where a vacancy occurs before any general meeting, the trustees may appoint a qualified person to fill the vacancy.

(2) A person appointed in terms of subrule (1) shall hold office until the next general meeting, and at the general meeting the person shall be eligible for re-election.

(3) The trustees may appoint another person, whether or not the person is an owner of a unit, to act as an alternate trustee during the absence or inability of the trustee to act.

(4) An alternate trustee shall cease to hold office if the trustee whom the alternate replaces, ceases to be a trustee, or if the alternate's appointment is revoked by the trustees.

8. Resignation

A trustee shall resign as a trustee by notice in writing addressed to the association.

9. Removal from office

(1) A trustee may be removed from office by the association, if the trustee-

- (a) is of unsound mind;
- (b) surrenders his or her estate as insolvent, or is declared insolvent;
- (c) is convicted of an offence involving dishonesty; or
- (d) is removed from office by a resolution of the general meeting of the association.

(2) Where a trustee is to be removed from office under subrule (1)(d), the intention to remove the trustee from office must be specified in the notice convening the general meeting.

(3) Where a trustee is removed from office under subrule 1(d), the association may, at a general meeting, appoint another qualified person to be a trustee for the remaining term of the trustee who is being replaced.

10. Meeting of trustees

(1) A trustee may convene a meeting of the trustees by giving to the other trustees and all first mortgagees not less than seven days written notice of a meeting proposed by the trustee.

(2) The notice shall specify the reason for calling such a meeting.

(3) A shorter notice under subrule (1) as is reasonable in the circumstances may be given where there is an urgent matter to be attended to.

(4) An owner is entitled to attend and speak at any meeting of the trustees, but shall not be entitled to vote.

11. Quorum

(1) At a meeting of the trustees, two trustees shall constitute a quorum.

(2) Where the number of trustees falls below the number necessary to form a quorum, the remaining trustee may continue to act for the purpose of appointing or co-opting additional trustees to make up a quorum.

(3) Where at any meeting of trustees a quorum is not present within 30 minutes of the appointed time of the meeting, such meeting shall stand adjourned to the next business day at the same time, and the trustees then present at the subsequent meeting who shall not be less than two shall form a quorum.

12. Chairperson

(1) The trustees shall, at their first meeting after an annual general meeting, elect a chairperson from among their number who shall hold office until the end of the next annual general meeting of the members of the association.

(2) The chairperson shall have a casting vote except where there are only two trustees at a meeting.

(3) The trustees may at their meeting or the special meeting of the association, in respect of which notice of the intention to remove the chairperson has been given, remove the chairperson from office.

(4) Where a chairperson vacates the office as chairperson or no longer continues in office, the trustees shall elect another chairperson who shall hold office for the remainder of the period of the first chairperson.

(5) Where the chairperson vacates the chair during a meeting or is not present, or is for any other reason unable to preside at any meeting, the trustees present at the meeting shall choose another chairperson.

(6) A chairperson who serves the remaining term of a chairperson who has vacated office shall have the same right of voting.

13. Voting

(1) A decision of the meeting of the trustees shall be by majority vote, and, in the case of an equality of votes, the chairperson shall have a casting vote.

(2) A trustee shall be disqualified from voting in respect of any matter he or she has an interest in.

(3) A resolution in writing by all trustees for the time being present in Botswana and being not less than two, shall be as valid and effective as if it had been passed at a meeting of the trustees duly convened and held.

14. Remuneration

(1) Unless otherwise determined by a special resolution of the owners, trustees who are owners shall not be entitled to any

remuneration in respect of their services.

(2) A trustee who is not an owner of a unit may be remunerated by the association at such rate as may be agreed by the trustee and the association.

(3) A trustee shall be reimbursed by the association for all disbursement and expenses incurred by the trustee in carrying out his or her duties.

(4) Where an alternate trustee is appointed by a trustee who is not an owner of a unit, the alternate trustee shall claim his or her remuneration, if any, from the trustee whom he or she replaced and not from the association, unless the association is instructed in writing, by the trustee, to pay a portion of the remuneration to the alternate trustee.

15. Exemption from liability

A trustee shall be indemnified by the association against any loss that may be incurred by the association by reason of any act done by the trustee in the discharge of his or her duties, unless such loss was caused by mala fide or gross negligence of the trustee.

PART III

Powers and duties of trustees (rules 16-18)

16. Powers of trustees

(1) Subject to any restriction imposed at a general meeting of the association, the powers of the trustees shall be to-

- (a) appoint on behalf of the association, such agents and employees as they consider appropriate;
- (b) change if necessary, the address constituting the *domicilium citandi et executandi* of the association, which address shall be situated within the area of jurisdiction of a local authority within which the association is situated; and
- (c) delegate to one or more of the trustees such of their powers and duties as they consider appropriate.

(2) An agent or employee under subrule (1)(a) may be responsible for the control, management and administration of the common property, or the exercise and performance of any of the powers and duties of the association.

(3) No change of the *domicilium citandi et executandi* shall be effective until written notification thereof is received by the Registrar of Deeds.

17. Duties of trustees

(1) At the first meeting of the trustees or within a reasonable time thereafter, the trustees shall-

- (a) insure the buildings and all improvements to the common property, to the full replacement value of the insured property against-
 - (i) fire, lightning and explosion,
 - (ii) riot, civil commotion, strikes, lockouts, labour disturbance or malicious persons acting on behalf of or in connection with any political organization,
 - (iii) storm, tempest and flood,
 - (iv) earthquake,
 - (v) aircraft, aerial devices or articles dropped there,
 - (vi) bursting or overflowing of water tanks, apparatus or pipes,
 - (vii) damage to the property by vehicles and animals, and
 - (viii) loss of occupation of the units by occupants as a result of the above risks;
- (b) insure the owners and the trustees against liability in respect of death, bodily injury or illness, caused by accidents in the common property;
- (c) levy and collect contributions from the members of the association;
- (d) be responsible for preparing schedules reflecting the estimates of the replacement value of the building, all improvements to the common property and value of each unit;
- (e) on the written request of a mortgagee and satisfactory proof thereof, record the cession by an owner to such mortgagee of the owner's interest in the application of the proceeds of the policies of insurance;
- (f) procure to such extent as may be determined by the members of the association in a general meeting, a fidelity guarantee account, in terms of which shall be refunded any loss of moneys belonging to the association or for which it is responsible, sustained as a result of any fraud or dishonesty committed by any insured person acting in the capacity of managing agent of the association;

- (g) insure against such other risks as the owners of the units may by special resolution, determine; and
- (h) keep a record of all rules in force, and, shall on the application of-
 - (i) an owner of a unit,
 - (ii) an occupant of a unit,
 - (iii) a prospective purchaser of a unit,
 - (iv) a holder of a sectional mortgage bond,
 - (v) the managing agent, and
 - (vi) the auditor or accounting officer,

supply to such person a copy of the rules and may require the person to pay a charge for the rules.

18. Validity of documents

No document signed on behalf of the association shall be valid and binding unless the document is signed by a trustee and the managing agent.

PART IV

Finances (rules 19-25)

19. Books of accounts

(1) The trustees shall cause proper books of accounts and records to be kept so as to reflect the transactions and financial position of the association.

(2) The trustees shall keep a record of-

- (a) the assets and liabilities of the association;
- (b) all sums of money received and expended by the association and the matter in respect of which such receipt and expenditure occurred;
- (c) owners and registered mortgagees of units and of all other persons having real right in the units showing the address of every person so recorded; and
- (d) ledger accounts in respect of each owner.

(3) On the application of an owner, registered mortgagee or the managing agent, the trustees shall make all or any of the books of accounts and records available for inspection by the person who made the application.

(4) The trustees shall retain the books of accounts and records for a period of six years after completion of the transaction, acts or operations to which they relate, except that minute books shall be retained for so long as the scheme remains registered.

20. Annual financial estimates

(1) Before every annual general meeting, the trustees shall cause to be prepared itemized estimates of the anticipated income and expenses of the association during the ensuing financial year, which estimates shall be laid before the annual general meeting for consideration.

(2) The estimates of expenses referred to in subrule (1) shall include a reasonable provision for contingencies.

(3) The trustees shall cause to be prepared, and shall lay before every annual general meeting, for consideration, a financial statement in conformity with generally accepted accounting practices, which statement shall fairly present the state of affairs of the association and its finances and transactions as at the end of the financial year concerned.

(4) The trustees shall cause to be prepared and shall lay before every annual general meeting a report signed by the chairperson reviewing the affairs of the association for the financial year.

(5) The trustees shall cause copies of the schedules, financial estimates, audited estimates and report to be delivered to each owner of a unit and to any mortgagee that has advised the association of its interest, at least 14 days before the date of the annual general meeting at which they are to be considered.

(6) Delivery under subrule (5) shall be deemed to have been effected if the documents referred to are sent by prepaid post addressed to the owner at his or her *domicilium citandi et executandi* and to any mortgagee at the address of such mortgagee as reflected in the records of the association.

21. Audit

At the first general meeting and thereafter at every subsequent general meeting, the association shall appoint an auditor to hold office from the end of that meeting until the end of the next annual general meeting, except that where a scheme comprises less than 10 units, an accounting officer may be appointed to audit the finances of the association.

22. Investment of funds

(1) The trustees shall cause all moneys received by the association to be deposited in the credit account of the association at a registered commercial bank or building society in the name of the association and, subject to any restriction imposed at a general meeting of the association, such moneys shall only be withdrawn for the purpose of payment of the expenses of the association.

(2) The trustees may authorize the managing agent to administer and operate the account referred to in subrule (1), except that where the agent is an estate agent, the trustees may authorize such managing agent to deposit moneys contemplated in subrule (1) in a trust account of the estate agent.

(3) Any funds not immediately required for disbursement may be invested in a savings account with any registered commercial bank or building society approved by the trustees, and any interest accruing from such moneys shall be used by the association for any lawful purposes.

23. Managing agent

(1) The trustees may from time to time, if required by a registered mortgagee of the units or 50 per cent of the members of the association in a general meeting, appoint by a written contract, a managing agent to control, manage and administer the common property and to exercise such powers and duties as may be entrusted to the managing agent, including the power to collect levies and to appoint a supervisor.

(2) A managing agent shall be appointed for a year and unless the association notifies the managing agent to the contrary, such appointment will be automatically renewed every year.

(3) The trustee shall ensure that there is included in the contract of appointment of a managing agent a provision to the effect that if the managing agent is in breach of any provisions of the contract, or if he or she is guilty of conduct which would justify the termination of a contract between master and servant, the trustees may, without notice, cancel the contract of appointment, and the managing agent shall have no claim whatsoever against the association or any owners as a result of the cancellation.

(4) An owner or a mortgagee of a section in a building where the managing agent is in breach of any term of the contract, may require the trustees to cancel the managing agent's contract.

(5) An owner or mortgagee who requires the trustees to cancel the managing agent's contract in terms of subrule (4) shall furnish the trustees with such security as the trustees in their discretion may determine for the payment of and shall indemnify the trustees and the association against all costs and damages arising out of such cancellation, purported cancellation or litigation for which the trustees or the association might be liable up to the time such owner notifies the trustees that he or she no longer requires the trustees to pursue the action.

24. Grounds for revoking contract

A managing agent's contract shall be revoked-

(a) where the managing agent is a juristic person if-

(i) an order is made for a provisional liquidation of the company or is placed under judicial management, or

(ii) any of its directors or members is convicted of an offence involving an element of fraud or an element of dishonesty;

(b) where the managing agent is a natural person if-

(i) the managing agent has applied for the surrender of his or her estate, or he or she is declared insolvent, or

(ii) that person is convicted of an offence involving an element of fraud or an element of dishonesty.

25. Duties of a managing agent

The managing agent shall keep full records of his or her administration and shall report to the association and to all holders of registered sectional mortgage bonds who have notified the association of their interest, all matters which in his or her opinion detrimentally affect the value of the common property or any section.

PART V

General Meetings (rules 26-31)

26. Notice of annual general meetings

(1) An annual general meeting shall be held within four months of the end of each financial year and at least 14 days notice of such meeting shall be given to the members of the association in writing.

(2) The notice referred to in subrule (1) shall state the time and place within the area of jurisdiction of a local authority within which the association is situated, or such other place and time determined by special resolution of the members of the association, for the holding of the annual general meeting.

(3) The notice shall be addressed to-

(a) all owners;

(b) all holders of registered sectional mortgage bonds who have advised the association of their interest;
and

(c) the managing agent.

(4) The notice shall be accompanied by-

(a) an estimate of the income and expenses of the association during the ensuing financial year;

(b) a financial statement of the association; and

(c) a report, signed by the chairperson of the trustees, reviewing the affairs of the association for the financial year.

(5) A holder of registered sectional mortgage bonds and the managing agent shall have the right to attend a general meeting and to speak at such meeting, but shall not be entitled to vote.

(6) Inadvertent omission to give notice to any person who is entitled to the notice or the non receipt of such notice by such person shall not invalidate the proceedings of any such meeting.

(7) A general meeting of the association may be called on a shorter notice than that specified in subrule (1) if it is agreed to by all persons entitled to attend.

27. Special general meetings

(1) The trustees may, whenever they think fit or upon a request in writing made by either owners entitled to 25 per cent of the total of the quotas of all sections or by any mortgagee holding sectional mortgage bonds over not less than 25 per cent in number in units, convene a special general meeting.

(2) Where the trustees fail to call a special general meeting within 14 days of the request, the owners or mortgagees concerned shall be entitled to call the meeting.

(3) A special general meeting for the purpose of passing unanimous or special resolution may be convened for a date 30 days or less after notice has been given to all members of the association, if in the opinion of the trustees, it is necessary due to the urgency of a matter or due to the specific nature of the matter to convene the meeting with such shorter period of notice.

28. Quorum

(1) No business shall be transacted at any general meeting of the association unless there is a quorum.

(2) A quorum at a general meeting shall be-

(a) the number of owners holding at least 50 per cent of the votes where there are 10 units or less, present in person or by proxy;

(b) the number of owners holding at least 35 per cent of the votes where there are more than 10 units but not more than 50 units, present in person or by proxy;

(c) the number of owners holding at least 20 per cent of the votes where there are more than 50 units, present in person or by proxy.

(3) Where at any general meeting a quorum is not present within 30 minutes of the appointed time of the meeting, such meeting shall stand adjourned to the same day in the next week at the same time and same place, and the owners or proxies present shall form a quorum.

29. Chairperson

(1) The chairperson of the trustees shall preside at every general meeting of the association, unless otherwise resolved by members of the association at such meeting.

(2) Where the chairperson is not present within 15 minutes after the time appointed for holding the meeting, or if he or she is unwilling to act as chairperson, the members present shall elect one of their number to be a chairperson for the meeting.

30. Voting at general meetings

(1) At any general meeting, a resolution put to vote of the meeting shall be decided on a show of hands, unless either prior to or on the declaration by the chairperson of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting.

(2) Unless a poll is demanded, a declaration by the chairperson that a resolution has on the show of hands been carried, shall be conclusive evidence of the fact that a resolution is made.

(3) A poll, if demanded shall be taken by a show of hands or in such a manner as the chairperson thinks fit, and the result of the poll shall be deemed to be the resolution of the meeting at which such poll was demanded.

(4) A demand for a poll may be withdrawn.

(5) An owner is entitled to one vote or if the owner is a juristic person, its proxy is entitled to one vote.

(6) Except in cases where a special resolution or unanimous resolution is required under the Act, an owner shall not be entitled to vote at any general meeting if-

(a) any contribution payable by him or her in respect of his or her section and his or her undivided share in

the common property is not duly paid; or

(b) he or she persisted in breach of the conduct rules referred to in section 38(3) of the Act and continued to do so notwithstanding any written warning by the trustees or the managing agent to refrain from breaching such rule.

(7) Where two or more people are entitled to exercise one vote jointly, that vote shall be exercised by one person or another person appointed by the people entitled to the vote as a proxy.

31. Proxies

(1) A member of the association who is entitled to vote at any meeting of the association shall be entitled to appoint another person, whether a member of the association or not, as his or her proxy at any general meeting of the association, except that a proxy shall not be the managing agent or any employee of the association.

(2) A proxy shall be appointed in writing and the notice appointing the proxy shall be signed by the person appointing the proxy.

(3) A proxy is effective if the notice appointing a proxy is handed to the chairperson prior to the commencement of the meeting, except where a proxy is created and contained in a registered sectional mortgage bond and the sectional mortgage bond is produced at the meeting.

PART VI

Duties of an owner (rules 32-33)

32. Contributions

(1) An owner shall pay a contribution that is in accordance with the participation quota attaching to his or her section.

(2) At every annual general meeting the association shall determine the amount estimated to be required to be levied upon owners during the ensuing financial year.

(3) The trustees shall, within 14 days after each annual general meeting, advise each owner in writing, the amount that the owner is to pay in the ensuing financial year.

(4) The trustees may from time to time, when necessary, make special levies upon the owners for the purpose of satisfying a judgment debt of the association.

(5) An owner shall be liable for and pay all legal costs, including costs as between attorney and client, collection commission, expenses and charges incurred by the association in obtaining the recovery of arrears levies owed by such owner to the association.

(6) The trustees shall be entitled to charge interest on arrears payable by the owner at such rate as from time to time the trustees may determine.

33. Duties

An owner shall not-

(a) use his or her section of the building or any part of the common property, or permit it to be used in such manner as shall be injurious to the reputation of the building;

(b) make alteration to his or her section of the building which is likely to impair the stability of the building or the use of the enjoyment of other section of the building; or

(c) make any improvement to his or her section without the written consent of the trustees.

(2) An owner shall maintain the hot water installation which serves his or her section.

(3) Where an owner fails to repair or maintain-

(a) his or her section in a state of good repair; or

(b) adequately any area of the common property allocated for his or her exclusive use,

and any such failure persists for a period of 30 days after the giving of written notice to repair the property by the trustees or the managing agent, the association shall be entitled to repair the property and to recover the reasonable cost of doing so from the owner.

PART VII

Miscellaneous (rules 34-37)

34. Improvements

(1) The trustees may, if the owners by unanimous resolution decide, effect improvements of a luxurious nature on the common property.

(2) Where the trustees wish to effect improvements which are not of a luxurious nature, the trustees shall give 30 days written notice of such intention to all owners.

(3) The notice issued under subrule (2) shall provide details of the improvements as to-

- (a) the costs of the improvements;
- (b) the manner in which the improvements are to be financed;
- (c) the effect of the improvement on the levy paid by an owner; or
- (d) the need and desirability of the improvements.

(4) The trustees shall, at the written request of any owner convene a special general meeting to deliberate on the proposals contained in the notice to effect non luxurious improvements.

(5) When the meeting referred to under subrule (4) is convened, the owners may veto, amend or approve the proposal by way of a special resolution.

(6) Notwithstanding the provisions of subrule (4) and subrule (5) , the trustees may, if required in writing by a majority of owners, procure the installation and maintenance of separate meters to record the consumption of electricity, or water in respect of each individual section and the common property.

35. Minutes

(1) The trustees shall keep minutes of-

- (a) the proceedings of the trustees meetings; and
- (b) all meetings of the association.

(2) The minute book of the association shall contain a record of every resolution of the association.

(3) The trustees shall, on the written application of any owner or registered mortgagee of a unit, make available for inspection by such an owner or mortgagee the minute book.

36. Determination of disputes by arbitration

(1) Any dispute between the association and an owner, or between owners, relating to these rules, save where an interdict or any form of urgent relief is required from a court, shall be determined in terms of this rule.

(2) Where a dispute arises, the aggrieved party shall notify the other interested party in writing and copies of such notification shall be served on the trustees and the managing agent.

(3) Where a dispute or complaint is not resolved within 14 days of the notice referred to under subrule (2) , either of the parties may demand that the dispute be referred to arbitration.

(4) The parties to the dispute shall jointly appoint an independent and qualified arbitrator.

(5) Where the parties can not agree to an arbitrator, the Registrar of Deeds shall upon written request by the parties and subject to the payment of a fee, in writing appoint an arbitrator within seven days after he or she has been required to make the appointment.

(6) Arbitration shall be held informally or otherwise as the arbitrator may determine.

(7) The arbitrator shall have the right to demand that the party demanding the arbitration furnish the arbitrator with security for the payment of the cost of the arbitration in such amount and form as the arbitrator may determine, failing which the arbitration shall not be proceeded with.

(8) Where possible the arbitration shall be concluded within 21 days after the matter has been referred to arbitration or security for costs has been furnished.

(9) The arbitrator shall make his or her award within seven days from the date of the completion of the arbitration.

(10) The arbitrator may determine that the cost of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine.

(11) The decision of the arbitrator is binding and may be made an order of the High Court upon an application by a party affected by the arbitration.

37. Obligation of an owner

(1) An owner or occupier of a section is obliged to comply with these Rules, notwithstanding any provision to the contrary contained in any lease or any grant of rights of occupancy.

(2) An owner of a section shall ensure that a lessee, or an occupant, or a guest or a family member complies with these Rules.