

TRUSTEE – BASIC INTRODUCTION NOTES

Trustees are the 'executive body' of the Body Corporate (BC). The BC is the collective term for all the owners of the units comprising the scheme and responsible for the 'policy-making'. A trustees' primary role is to do everything reasonably necessary to control, manage and administer the common property for the benefit of the BC on a day-to-day basis.

Trustees must perform their duties strictly in accordance with the provisions of the Sectional Title Act 95 of 1986 (the Act), the Management & Conduct Rules of the scheme and within the constraints of any restrictions or directives issued by the owners at the Annual General Meeting (AGM).

In terms of the Prescribed Management Rules (PMR) (Annexure 8 of the Act), trustees have the power to (PMR 26 / 27):

- Appoint agents and employees on behalf of the BC.
- Delegate and revoke certain specialised portfolios to fellow trustees.
- Sign instruments (documents / contracts / cheques) on behalf of the BC. Any signed instrument must in terms of the rules be signed by two trustees or a trustee and the scheme's managing agent in order for it to be deemed valid.

Trustees:

- Perform all functions of the BC.
- Ensure the building/s comprising the scheme are insured to their full replacement-value.
- Maintain the Common Property.
- Ensure owners comply with provisions of the Act and the scheme's rules.
- Maintain accurate secretarial & accounting records.
- Keep records of the scheme's rules and make them available at reasonable notice to owners & mortgagees.
- Calculate and arrange for the prompt collection of levies.
- Conduct and keep minutes of trustee & special meetings of owners.
- Invest the BC surplus funds.
- Arrange for and prepare documents (financial & operational reports for the past year and the proposed budget for consideration and approval by the owners for the financial year ahead) for the prescribed AGM.

Section 40(1) of the Act states *"Each trustee of a body corporate shall stand in a fiduciary relationship to the body corporate"*. Simplified, this means that every trustee stands in a 'relationship of trust' to the BC. It's important to remember that in relationship terms, the BC is the 'master' and trustees the 'servants'!

Trustee must:

- Act honestly and in good faith.
- Perform their duties with due care & skill.
- Have the best interests of the BC in mind while performing their duties.
- Never exceed their powers of management and representation.
- Avoid conflicts of material interest between themselves and the BC.
- Not derive any economic benefit from their relationship with the scheme to which they are not entitled.
- Notify the trustees forthwith of any direct or indirect personal interest in any contract undertaken by the BC.

Trustees are expected to:

- Be responsible in their attitude toward the affairs of the BC.
- Act sensibly.
- Set a good example (e.g. obey the rules).
- Be impartial and sensitive to the welfare and needs of owners.
- Possess leadership & communication skills.
- Deal with owner's issues objectively, compassionately and efficiently.
- Familiarise themselves with and formulate a working knowledge of the Act and the scheme's rules.
- Be diplomatic in their dealings with owners on a one-on-one basis.
- Apply the provisions of the Act, the scheme's rules and any directives or restrictions equally to all owners.
- Prepare for and regularly attend trustee meetings.
- Source professional advice on matters concerning the BC, which are beyond their expertise.

Trustees acting in good faith are indemnified by the BC (PMR 12) for any act carried out. However, if they act with gross negligence or '*mala fide*' they can be held personally liable for any damages or losses the BC incurs as a result of their actions.

No trustee (chairperson included) has automatic authority to individually represent the Trustees or act unilaterally on behalf of the BC.

Notes compiled by Charles Baker for Connecta Realty

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