

Amending sectional title management rules, the experts weigh in

Proposals being made to sectional title property owners to amend their management rules by way of unanimous resolution in order to obtain an independent review and not a proper audit could have disastrous consequences for sectional title schemes and the sector as a whole.



Source: [Pexels](#)

This is the contention of specialist sectional title attorney and BBM Law director, Marina Constas and other concerned sectional title roleplayers.

Constas asserts that should the Community Schemes Ombud Service (CSOS) allow Prescribed Management Rule 26(4) to be amended by unanimous resolution, the growing sectional title sector will be detrimentally affected.

She explains that some property industry stakeholders have engaged with the CSOS and have alleged that these amended rules have received compliance certificates. Constas notes, however, that when the Ombud's office was approached for comment, they denied that such a rule had been amended.

“This suggested management rule change would allow schemes to avoid having their financial statements audited, and to opt for an independent review instead.

"This would likely be by a bookkeeper as opposed to a professional audit firm. While proponents of the move state that it will save money for smaller sectional-title schemes, it will undoubtedly jeopardise the value, integrity and growing popularity of sectional title living and investments," Constas stresses.

She reveals that she has been inundated with calls from concerned owners, trustees, managing agents and other roleplayers.

"Sectional title is booming in South Africa, with more and more property buyers and investors choosing sectional title homes for their affordability and security. In 2013, sectional title accounted for 44.6% of all residential property sales in South Africa's major centres.



Sectional title homes dominate South Africa's property market

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In 2023, the market share of sectional title property sales had reportedly risen to 53.1%. More than half of all homes sold today are in sectional title, and it is vital that there is no compromise when it comes to good governance, transparency and integrity in an industry that has been marred by fraud allegations in the past. Never before have we seen so much fraud in our schemes," says Constas.

Complex audits non-negotiable

"We need complexes audited. It is not negotiable.

"Rather than saving small schemes money, there may be grave, costly consequences in permitting this change in an industry that presents opportunities for the misappropriation of shared funds," she states. Constas notes that revising this Prescribed Management Rule would also be a step backwards for sectional title.

"Prior to October 2016 and the implementation of the Sectional Titles Schemes Management Act, 8 of 2011, only sectional title schemes with 10 or less units were excluded from an audit. They were entitled to obtain the services of an accounting officer to present their financial statements.

"The long-awaited revisions to the laws governing community housing schemes like townhouse complexes, retirement villages and residential estates that became effective on 7 October 2016 brought positive changes in the way that sectional title developments are run.

"The law made it compulsory for all schemes to be audited. The changes were good news for owners, investors and all stakeholders. These included improved governance and financial management.

"Owners and investors could be more confident that there was a reasonable level of protection against theft or fraud, and that the financial affairs of the body corporate are effectively managed."

Upcoming CSOS amendments

Constas reports that she has been working with the legal department of CSOS on amendments that will be ready in 18 months.

"CSOS is looking at allowing schemes of 10 units or less to go back to using an accounting officer. That is the very least that would be acceptable.

"For all other sectional title schemes, one would hope that auditors continue to play a role. This is a potential crisis that should be at the top of the agenda for everyone involved in sectional title in any way," she concludes.

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