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### **1. LEGISLATIVE UPDATE**

On the 10th of July 2013 Cornelia September was sworn in as the Minister of Human Settlements, replacing Tokyo Sexwale in Jacob Zuma's cabinet re-shuffle announced on the 9th of July 2013. The consequences Minister September's appointment will have on the announcement of the effective date of the Sectional Titles Schemes Management Act 8 of 2011 and the Community Schemes Ombud Service Act 9 of 2011 (promulgated on 14 June 2011) are still to be determined. Professor Paddock has advised that he now estimates the implementation of this legislation in the first half of 2014. Minister September has an impressive record of experience, beginning as a factory worker and rising to serve as a shop steward for Rex Trueform clothing and the National Treasurer of the Southern African Clothing and Textile Workers Union (SACTWU) in 1988; roles which she continued to act in despite her progressively more demanding appointments. Minister September was appointed as the vice-president of Cosatu in 1993 (first woman to hold an appointment in Cosatu), as chairperson of the portfolio committee of Water Affairs and Forestry in the national assembly and member of the portfolio committee of Trade and Industry in 1999. We hope that Minister September's experience in parliamentary process will enable the efficient management of the legislation governing communal housing.

At the Estate Agency Affairs Board (EAAB) roadshow held on the 24<sup>th</sup> of May 2013 participants were advised by Nomsa Mokoena from the EAAB that all estate agents and property management companies governed by the EAAB would be required to complete the statutory qualifications by no later than the extended deadline, being 31<sup>st</sup> of December 2013. This means that all non-principal estate agents of property management companies would be required to obtain the designation of Professional Practitioner in Real Estate and principal estate agents the designation of Master Practitioner in Real Estate to ensure the issuance

of their fidelity fund certificates and the legal operation of the agent / company. We were advised at this roadshow that the qualification will be adjusted by 2015 to cater for those specialisations that fall under the EAAB, such as auctioneers and property portfolio managers (dealing with sectional title, home owner associations, life rights and other communal property management concerns). Currently, while the directors and principles of property management companies have to complete the EAAB statutory qualification there is no obligation on the individual property portfolio managers to do this, but we have been told that this is under discussion. A statutory qualification will improve the standard of the property management profession and we look forward to the implementation of relevant educational practices. While there is no statutory qualification introduced as yet, we require our property portfolio managers to complete the property management courses facilitated by Paddocks, a specialist legal firm providing certified courses accredited by the University of Cape Town.

Chairman of our Board of Directors, Greer Moore-Barnes, has actively promoted a statutory qualification for a profession that requires a broad legislative knowledge base and has been influential in training the public on sectional title matters on behalf of the National Association of Managing Agents (NAMA). She is a founder Member of NAMA, and was appointed as a Director of this Association when, with the approval of the EAAB, it was registered as a company in July 2001. At the first NAMA Indaba held in 2011, Greer received a prestigious long service award from NAMA, having given 10 years continuous service as a Director, and earlier this year was elected as Deputy National Chairman of NAMA. Greer Moore-Barnes has also had the distinction of an appointment by the Minister of Rural Development and Land Reform to serve as an Alternate Director on the Regulations Board for Sectional Title. During her three year period of service she was active in promoting and getting approval for amendments deemed necessary to the Regulations controlling Sectional Title Schemes, proposed to assist Managing Agents in the administration of their clients.

## **2. RENTAL & SALES DIVISION**

We encourage you to visit our website to view the properties we have for rent and for sale. We pride ourselves on the proven service we render our clients and we sincerely hope that we will be able to include your property in our valued property portfolio. Should you require assistance with any of your property needs please contact our agents:

- Liezel van Tonder on 083 412 2854 (selling and rental agent)
- Kelly Hall on 083 512 6669 (rental agent)
- Jenni Elliott on 084 505 7839 (selling agent)

**All agents can be contacted at our office on 041-374 4444.**

## **3. DISPUTE RESOLUTION**

When living in a closed community with shared common property, contact with neighbours is almost unavoidable and tolerance and patience are important factors in attaining a harmonious living environment. It is often said that parties, pets and parking are the cause of most disputes in communal housing, but there are many other issues that can arise. In order to mitigate unpleasantness and limit the usage of legal adjudication mechanisms, it is important for the governing body to have a sound internal dispute resolution process. In terms of the current legislation recourse to disputes between the body corporate and owners or between individual owners is through Prescribed Management Rule (PMR) 71, which details the process required for arbitration. In our September 2011 newsletter we emphasized that once the Community Scheme Ombud Service (CSOS) Act No. 9 of 2011 became effective this would replace arbitration as detailed in PMR 71. The scope of dispute resolution will be expanded to include all communal housing schemes. Further, applications to the ombud may be made by any person who is a party to, or affected materially by, a dispute. This entitles occupiers to make use of the ombud service for dispute resolution. The ombud can make orders on contributions relevant to a scheme, as well as attach rental in lieu of money owed to schemes by owners. However, the ombud does not remove the body corporate's right to rather refer matters for legal collection or action.

In this article we are concentrating on dispute resolution prior to legal adjudication. In order to avoid legal repercussions and liability claims professional advice has recommended that matters are researched thoroughly prior to taking any action to ensure that sufficient evidence has been obtained. It is important to remember that buying into a communal scheme still requires the owner to take

responsibility for their life and trustees should encourage owners where possible to settle disputes between themselves. The body corporate should only become involved where the governing body believes that a real nuisance in law can be proven against the body corporate and not just against one member of the body corporate. This would involve the owners proving that they have made a genuine effort to resolve the situation amicably and the body corporate receiving multiple written complaints or affidavits on any issue. Where the trustees are not convinced that a real nuisance in law can be proven against the body corporate they should recommend that the owner or owners concerned follow the legislated adjudication mechanisms. This would avoid the body corporate being placed in a position where it could incur liability on behalf of all owners, and having to explain to owners why the scheme has incurred damages (whether due to legal costs or other liability claims).

In a video tutorial titled 'rules of natural justice in enforcement procedures' released on Paddocks Club, members were advised that any person who is one of the complainants involved in a dispute cannot be party to the decision making in this regard. In Latin this unbiased or impartial opinion is translated as *nemo iudex in sua causa* meaning that no one can be a judge in their own matter. Therefore, if a member of the governing body, such as a trustee, is one of the complainants they are not entitled to participate in the decision making process and would have to recuse themselves. Any conflict of interest would be taken into consideration in terms of the impartiality clause and a trustee would also have to recuse themselves if the dispute involved their tenant. This tutorial also emphasizes the importance of adequate notice and the right of the other party to speak and respond to the evidence given to them. In Latin this is referred to as *audi alteram partem* meaning let the other side be heard.

Many schemes will impose penalties on owners who they believe are in breach. Please remember that neither the Sectional Titles Act nor the prescribed rules allow for the imposition of penalties. In order to impose penalties a scheme specific rule would have to be passed by owners in terms of the requisite resolution and filed with the Deeds office. The content of this rule must be carefully constructed to ensure the rules of natural justice discussed

in the previous paragraph are enforced, specifically with regard to impartiality and hearing both sides of the story. This will guide the governing body with regard to the process relating to internal dispute mechanisms and protect them from possible recourse. Where schemes are managed by Bellbuoy this type of rule wording is available from your Property Portfolio Manager.

*For a lighter take on communal living refer [www.bellbuoy.co.za](http://www.bellbuoy.co.za) under News and Events / Bellbuoy News for a link to Bruno Bozzetto's animation of "peaceful" living in a high rise scheme.*

#### **4. EXCLUSIVE USE AREAS**

In Sectional Title schemes owners purchase private property, being their sections, as well as an undivided share of the common property. In 1973 the concept of sectional title allowed owners for the first time in South Africa to register title to property that was measured in horizontal as well as vertical strata as opposed to the previous legislation which only allowed title to ground surveyed as a section or piece of the land. Sectional Title legislation allowed real property rights to be registered in high rise buildings. Therefore, in sectional title schemes real property rights are defined in terms of approved and registered sectional plans as opposed to conventional diagrams.

Exclusive Use Areas can be registered over common property. These usage rights can either be real rights, which can be bonded and sold, when created through section 27 of the Sectional Titles Act (STA) 95 of 1986, or personal rights when created through section 27A of the STA. In this article we will not deal with exclusive use formed through altered Schedule I rules created under the STA 66 of 1971. EUAs always remain common property owned by all owners, but are reserved for use by one or more owners. In terms of section 37(1)(b) of the STA once an area is created as exclusive use, whether as a real or personal usage right, the owner being allocated the usage right is responsible for paying an additional contribution for costs in terms of rates, taxes, insurance and maintenance (including electricity and water) for the specified area unless a scheme specific rule is created making the owners directly responsible for these costs. Where no scheme specific rule has been created the governing body will raise contributions to cover all costs. Whether these contributions are raised monthly or at the time costs arise is dependent on the governing body of the

scheme. Whichever way the contributions are collected it is important that the same concept is applied fairly and equally to all owners who have been allocated usage rights.

We will briefly summarise the process involved for the creation of these two types of EUAs. Firstly, the creation of real right EUAs requires a unanimous resolution to be passed by owners and the body corporate will then have to arrange for the transfer of this right to the owner/s concerned. In order to do this a surveyor will have to update the sectional plans, which once approved and registered will require a conveyancer to endorse the owner's title deed through notarial cession with the real right. Once the title deed has been endorsed the governing body will have to ensure all costs relative to the usage area are collected from the owner concerned. The current STA requires a special resolution to cancel EUAs, but no process is included in the legislation to amend EUAs. Therefore, to amend EUA will require a unanimous resolution until such time as the legislation is updated.

Secondly, personal exclusive use rights are created in terms of section 27A, which specifies that the rules of the scheme can be updated to include these usage rights. This is not a real right created in terms of section 27 that can be bonded and sold. In order to create personal right EUAs either the management rules must be updated by passing a unanimous resolution or the conduct rules by passing a special resolution. When proposing these resolutions to owners the rule wording will have to be accompanied by a to scale layout plan that details the locality of the distinctively numbered EUAs and the purpose for which each area may be used, as well as a schedule indicating to whom each area has been allocated.

The governing body is entitled to approve minor improvements to EUAs. However, in order to change the purpose for which a EUA is intended to be used, the consent of all owners in the scheme will have to be obtained. It is important to note EUAs on your levy / contribution schedules and to advise transferring attorneys of any real right EUAs to ensure this right is endorsed on the purchaser's title deed when transferred and not lost in transfer.

Where it is established that a previous owner still has a real right EUA registered against their name, this right will automatically vest with the body corporate. If the purchaser cannot prove that the right to the EUA was sold to them, the body corporate may then sell this right to another party. Therefore owners are requested to check their title deeds very carefully and ensure that what they bought is in terms of what was contained in their offer to purchase. While real right EUAs provide a real property right they will require the involvement of a surveyor and attorney and are therefore more costly to create than the allocation of personal right EUAs through the rules.

## **5. HOME OWNERS ASSOCIATIONS -**

### **COMMON LAW VERSUS NON PROFIT COMPANY**

Purchasing property in a Home Owners Association (HOA) is fast gaining popularity as a form of property ownership that offers the benefit of increased security in terms of living in a gated community and belonging to an association that shares common property while still allowing traditional land ownership. That is, unlike sectional title, the owner purchases separate even thereby owning the land on which they develop. Further, the common property is vested in the association as opposed to being vested against all owners in equal and undivided shares. There are two different types of HOAs, namely voluntary associations or common law associations and non-profit companies (NPCs). Both HOAs are created out of an agreement between the newly formed association and the local authority, whereby the association takes over the maintenance responsibilities for the common property areas from the municipality. The maintenance of the common property areas would include items such as the internal roads and verges, gatehouses, street lighting, common garden areas and so on.

The voluntary or common law HOA's key governance documents are the constitution and rules. The constitution enables and directs the functioning of the association to the benefit of all its members. This is the document which forms the legislative and organisational backbone to the association, delineating a wide range of important governance issues. These issues would, for example, include items such as quorum requirements, how rules can be made, the formulation of the executive committee (Governing Body), how meetings are called, and so on.

As every constitution is unique, any prospective member should always examine these documents very carefully to ensure their rights are protected and that their duties and obligations are clear.

The key difference between the two forms of HOA is that the NPC is subject to the terms and regulations of the Companies Act 71 of 2008, as amended in 2011. The NPC effectively takes the place of Section 21 companies that were formed under the old 1973 Companies Act. Instead of a constitution, the NPC is governed by a Memorandum of Incorporation (MOI) which will also determine, for example, how quorums are constructed, when it is necessary to call general meetings and in what manner notice must be given and so on. While the MOI can be made quite flexible to suit the individual requirements of each particular HOA, the NPC HOA would need to ensure that all the prerequisites of the Companies Act are followed to the letter. The MOI is filed at the Companies and Intellectual Property Commission (CIPC). The CIPC, under the authority of the Department of Trade and Industry, is the body responsible for, among other things, the registration of Companies and ensuring compliance with the Companies Act. The Commission is an essential reference point for the legislative functioning of the NPC (see [www.cipc.co.za](http://www.cipc.co.za)). Changes to the MOI, as well as a whole range of other issues, from a change in membership of the directors, additions to conduct rules and the filing of audited financials would need to be filed at the CIPC. It is therefore important to be aware of the specific filing requirements in terms of the Companies Act that will need to be satisfied in order for the NPC to comply. Voluntary association HOAs are less stringent in this regard, as it is generally only obligatory to file changes in the conduct rules or the constitution at the local authority (in addition to the normal SARS filing requirements). The voluntary association HOA could therefore be suggested as having less severe legislative requirements, however, where the constitution is silent on a matter common law would be applicable.

As we can see, there are very clear similarities between the common law and NPC HOA. Both associations are legal bodies who enter into an agreement with the local authority.



As a consequence the association is in a position to control and manage the housing development scheme. In both cases the properties are exclusively owned (ie separate stands for which the owner takes all maintenance responsibility), while the communal infrastructure is owned and maintained by the association. The essential difference is that the NPC is incorporated as a non-profit company in terms of the Companies Act, and therefore is subject to more stringent legislative requirements, including but not limited to heightened fiduciary responsibilities undertaken by the directors of the NPC.

### 6. BELLBUOY SERVICE SURVEY

Bellbuoy would like to thank all of their clients who participated in the recent service survey. We really appreciate the feedback and will take seriously all suggestions made.



### 67 MINUTES FOR MADIBA!

The Bellbuoy Directors and staff recently collected items such as blankets, clothing, books and food which were handed over on behalf of The Bellbuoy Group by the Chairperson, Mrs Greer Moore-Barnes, to Mr Ed Williams of Loaves and Fishes, a non-profit organisation.



If there are any specific matters owners would like addressed please let us know and we will endeavour to cover these in future editions.

Please e-mail Shannon on [shannon@bellbuoy.co.za](mailto:shannon@bellbuoy.co.za)

# NEWSLETTER

Issue 3 August 2013  
[www.bellbuoy.co.za](http://www.bellbuoy.co.za)

## BELLBUOY CERTIFICATION

NATIONAL ASSOCIATION OF MANAGING AGENTS (NPC)



### CERTIFICATE OF MEMBERSHIP

is awarded to

**Bellbuoy (Pty) Ltd**

Membership Number : 1001

Members undertake to adhere to the Association's professional Code of Conduct and to provide an acceptable service at all times.

JJ Croukamp  
NATIONAL CHAIRPERSON

Expires : 30 June 2014  
(Membership is renewable annually)



Council for Debt Collectors

### DEBT COLLECTOR'S CERTIFICATE SKULDINVORDERAARSERTIFIKAAT (Regulation 4) (Regulasie 4)

NO. OF CERTIFICATE  
NR. VAN SERTIFIKAAT

0049099/11

Full Names  
Volle Name

BELLBUOY (PTY) LTD

Identity Number / Registration  
number

2012/019786/07

Address  
Adres

KPMG HOUSE 200 NORVIC DRIVE  
GREENACRES  
PORT ELIZABETH  
6001

This is to certify that the debtcollector whose name appears on this certificate is registered to hold a debt collector's certificate.

Hierby word gesertifiseer dat die skuldinvorderaar wie se naam op hierdie sertifikaat verskyn geregistreer is om 'n skuldinvorderaarsertifikaat te hou.

Registered since 30/05/2011

Geregistreer vanaf 30/05/2011

30/05/2013

Date of issue / Datum van uitreiking

Expires / Verval 30/05/2014

Chairperson: Council for Debt  
Collectors



Council for Debt Collectors

This certificate shall only be valid for 12 months from the date of issue and if it bears the seal of the Council for Debt Collectors.

Hierdie sertifikaat is slegs geldig vir 12 maande vanaf die datum van uitreiking en indien die seël van die Raad vir Skuldinvorderaars daarop aangebring is.

ESTATE AGENCY AFFAIRS BOARD  
OF SOUTH AFRICA

### FIDELITY FUND CERTIFICATE

VALID FROM DATE OF ISSUE TO 31 DECEMBER  
OF THE UNDERMENTIONED YEAR.

BELLBUOY (PTY) LIMITED  
PO BOX 7660  
NEWTON PARK  
PORT ELIZABETH  
EASTERN CAPE  
6055

2013

Date of Issue:

01/01/2013

Capacity

FIRM

Certificate Number

2013104241

Full Names

THE BELLBUOY GROUP

Name of firm/Company/Close Corporation

BELLBUOY (PTY) LIMITED

Endorsement

NIL

This is to certify that subject to the provisions of act 112 of 1976 the entity whose name appears on this certificate has complied with the provisions of section 16 of act 112 of 1976 and the regulations promulgated in terms of the said section



FOR AND ON BEHALF OF THE  
ESTATE AGENCY AFFAIRS BOARD