

MAINTENANCE PLANNING

AND THE NEW PROPOSED AMENDMENTS TO THE SECTIONAL TITLE ACT



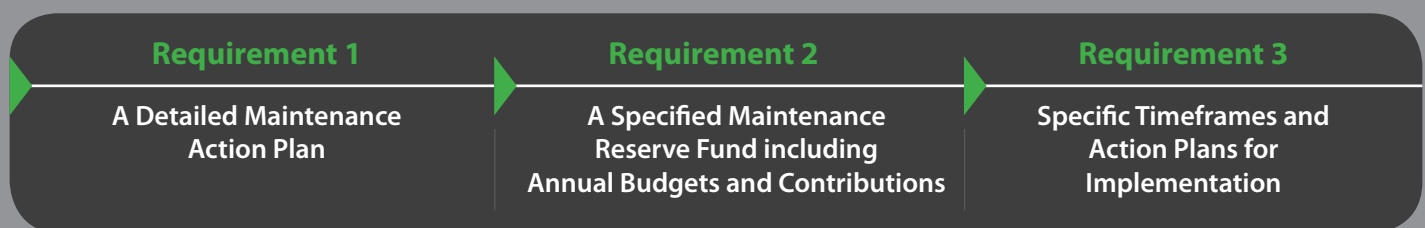
In 2006, I was requested to write an article for the architectural magazine "Walls & Roofs". The article was titled: "the winds of change". In 2016, this caption is more applicable than ever before in the history of Sectional Title Schemes in South Africa.

The new proposed amendments and revision of the Sectional Title Act is a hot topic and has the industry buzzing with debate. These new provisions of the Act, in conjunction with the formation of the Sectional Title Ombudsman service are bound to have a long-lasting impact on the industry.

The proposed changes will have a far-reaching impact on the industry and most of the specialists I have consulted agree that the proposed changes will be implemented, with or without minor adjustments or changes.

Although the updated legislation is comprehensive, this article will specifically deal with managing the maintenance of Sectional Title Schemes. The new amendments will have a material impact on how Bodies Corporate will have to manage budgets, as well as maintenance of the properties.

By way of introduction, we list the major new requirements of the Act:



In addition to these basic requirements, the legislator prescribes specific conditions in order to comply with the Act. These are not limited to, but may include:

Step 1	Step 2	Step 3
Detailed Maintenance Action Plan to include: <ul style="list-style-type: none">Detailed list of maintenance items.The present condition.A timeframe or programme for maintenance.The estimate cost of maintenance.The expected life of the listed maintenance items.	Specified Administrations and Reserve Fund with Annual Contributions: <ul style="list-style-type: none">The Administrative Fund is separated from the Reserve Fund and approved annually for general operating expenses.The Reserve Fund requires compulsory annual contributions, and the contribution quantum is specified.	Specified Timeframes : <ul style="list-style-type: none">The requirements are stipulated as an annual re-occurring event.

It is clear that the responsibility for managing maintenance expenditure in Bodies Corporate has now changed.

Although the requirements are comprehensive, it is in my opinion a huge step forward in protecting the asset value and maintenance expenditure of Sectional Title Schemes.

"Preventative Maintenance requires a Paradigm Shift" – Frederik Nel

This will certainly pose challenges to all stakeholders, but will protect the integrity and aesthetics of the schemes. My suggested approach is that a Body Corporate starts off with a Compliance Action Plan (**CAP** report).

As most of us know, the Sectional Title Act has previously always called for maintenance of the common property and the funding of maintenance through generally levies, special levies or preferably a maintenance reserve fund. Unfortunately, the Act was silent on specific details on how the legislator expected compliance in this regard.

Previously, very few Bodies Corporate took the Act to heart, to actually establish a maintenance reserve fund, or effectively manage their major maintenance cycles. Over the last 17 years, I've seen too many Bodies Corporate fall into a trap of spending zero money on maintenance, rather than asking owners for permission to spend money on maintenance at a general meeting.

The reality is that many Bodies Corporate in South Africa have been allowed to deteriorate to a point where the assets are at risk of losing value. For those Bodies Corporate that have spent the time, money and effort not only to manage the maintenance, but also to establish budgets and reserve funds in the past, the Act now merely requires that their budgets, actions and forward planning be documented.

We now deal with the specific sections of the Act regarding maintenance, budgets and managing the physical condition of the common property, for those managing agents and trustees who wish to further equip themselves.

"Challenges are what make life interesting and overcoming them is what makes life meaningful."

Joshua J. Marine

Section 22 refers to a maintenance, repair and replacement plan. The Act specifically refers to, and requires the following:

1. A DETAILED MAINTENANCE PLAN

A written maintenance, repair and replacement plan for the common property, setting out:

- Major capital items expected to require maintenance, repair and replacement within the next 10 years.
- The present condition or state of repair of those items.
- A timeframe or program for maintenance, repairs or replacements.
- The estimate cost of maintenance, repair or replacement of maintenance components.
- The expected life of those maintenance items or components, once maintained, repaired or replaced.
- Any other information the Body Corporate considers relevant.

2. A SPECIFIED RESERVE FUND WITH ANNUAL CONTRIBUTIONS

The annual contribution to the reserve fund for the maintenance, repair or replacement of each of the major capital items must be determined according to a formula. The specified formula is supplied as:

$$\frac{\text{Estimated Cost} - \text{Past Contribution}}{\text{Life Expectancy}} \quad \frac{(\text{Estimated Cost} - \text{Past Contribution}) \div \text{Life Expectancy}}$$

3. TIMING AND EFFECT OF THE MAINTENANCE PLAN

The maintenance, repair and replacement plan takes effect on its approval by the members at a general meeting; provided that on approval of such a plan, members may lay down conditions for the payments of money from the reserve fund.

4. TRUSTEES DUTIES

The trustees must report the extent to which the approved maintenance, repair and replacement plan has been implemented to each general meeting. The trustees are therefore not only tasked with managing of the maintenance annually, but also obliged to provide detailed feedback at each Annual General Meeting.

In **Section 24** the Act goes further to govern the management of the Reserve Fund by way of certain of the following conditions:

THE ADMINISTRATIVE FUND

1. The Administrative Fund is separated from the Reserve Fund and used for the general operating expenses of the Body Corporate.
 - 1.1 The Administrative fund is administered and managed by trustees, via trustee resolutions, according to an approved annual budget.

THE RESERVE FUND

2. The Reserve Fund of section 3(1)(b) is ring fenced for the implementation of maintenance, repair and replacement, referred to in rule 22.
 - 2.1 The amounts to be paid into the Reserve Fund are stipulated:
 - A. Any part of the annual levies specifically allocated for the purpose of maintenance, repair and/or replacement plan.
 - B. Any amounts received under an insurance policy in respect of damage or destruction of property for which the Body Corporate is responsible.
 - C. Any interest earned on the investment of money in the reserve fund.
 - D. Any other amounts determined by the Body Corporate.
 - 2.2 Money may be paid out of the reserve fund:
 - A. At any time in accordance with trustees resolutions and in line with the approved maintenance, repair and replacement plan
 - B. If the trustees resolved that such a payment is necessary for the purpose

of an urgent maintenance, repair or replacement expense, which purpose includes without limitation:

- I) To comply with an order of the court or an adjudicator.
- II) To repair, maintain or replace any property for which the Body Corporate is responsible, where there are reasonable grounds to believe that an immediate expenditure is necessary to ensure safety or prevent significant loss or damage to persons or property.
- III) To repair any property for which the Body Corporate is responsible with the need for the repairs could not have been reasonably foreseen in preparing the maintenance repair and replacement plan.
- IV) To enable the Body Corporate to obtain adequate insurance for the property that the Body Corporate is required to ensure; provided that the trustees must report to the members on any such expenditure as soon as possible after it is made.

The above expenditures in B:

Must not exceed the amount necessary for the purpose for which it is expended,

or

any limitation imposed by the Body Corporate on expenditure,

and

must comply with any restrictions imposed by the members.





Sections 9 and 31 deal with the general obligation and responsibilities of owners and trustees in relation to general management or maintenance activities:

OBLIGATION TO MAINTAIN OR MANAGE:

Owners:

- Notwithstanding that a water-heating installation forms part of the common property, and is insured by the Body Corporate, the individual owners are required to maintain, repair or replace when necessary such installations.
- Each owner is responsible to maintain their section in the state of good repair. Failing which, if the failure threatens the stability of the common property, the safety of the building or otherwise materially prejudices the interests of the Body Corporate, its members or the occupiers of sections generally, the Body Corporate must remedy the member's failure and recover the reasonable cost of doing so from that member; provided that in the case of an emergency, no demand or notice need be given to the member concerned.

The Trustees must:

- Meet to carry out the Body Corporate's business, subject to the provisions of the Act, the rules and the common law of meetings;
- Exercise the Body Corporate's powers and functions assigned and delegated to them in terms of the Act in

accordance with resolutions taken at general meetings and at meetings of trustees;

- Apply the Body Corporate's funds in accordance with budgets approved by members in general meeting;
- Appoint any agent or employee in terms of the Act in terms of a duly signed written contract; and
- Compile minutes of each trustee and general meeting in accordance with the rules, and distribute these to the persons entitled to notice of the meeting concerned as soon as reasonably possible, but not later than 7 days after the date of the meeting.

"The world as we have created it is a process of our thinking. It cannot be changed without changing our thinking."

Albert Einstein



In **Section 26** the Act deals with financial records, budgets, reports and audits.

Financial records, budgets, reports and audit

- A Body Corporate must keep proper books of accounts that:
 - record all its income, expenditure, assets and liabilities;
 - disclose all amounts recovered from members by the Body Corporate or any managing agent or other service provider acting on its behalf;
 - include individual accounts for each member; and
 - contain all other information necessary to allow members to assess the Body Corporate's financial situation and their financial situation in regard to the Body Corporate.
- Keep separate books of account and bank accounts for its administrative and reserve funds;
- Prepare annual financial statements for presentation at the annual general meeting, which statements must include analyses of the:
 - amounts due to the Body Corporate in respect of contributions, special contributions and other charges;
 - amounts due by the Body Corporate to its creditors generally and prominently disclosing amounts due to any public authority, local municipality or other entity for services;
 - amounts advanced to the Body Corporate by way of levy finance, a loan, in terms of a guarantee insurance policy;
 - amounts in the reserve fund showing the amount available for maintenance, repair and replacement of each major capital item as a percentage of the accrued estimated cost and the rand value of any shortfall; and
 - premiums and other amounts paid and payments received by the Body Corporate and any member in terms of the insurance policies of the Body Corporate and the expiry date of each policy.
- Prepare a maintenance, repair and replacement plan in accordance with rule 22 for presentation at the annual general meeting;
- Prepare budgets for the administrative and reserve funds comprising itemized estimates of the anticipated income and expenses during the next financial year for presentation at the annual general meeting;
- Prepare a report adopted by the trustees reviewing the affairs of the Body Corporate during the financial year for presentation at the annual general meeting; and
- Unless all the sections in the scheme are registered in the name of one person, the Body Corporate must present audited financial statements to a general meeting for consideration as soon as possible after the end of the financial year.

IN CLOSING:

It appears from the new proposed amendments to the Act, that the legislator specifically focuses on how Sectional Title Schemes manage the maintenance, and funding of both the operating fund as well as the maintenance reserve fund.

Collaboration between all stakeholders in managing Sectional Title Schemes is of paramount importance. In my opinion, a well-run Body Corporate will not only require committed and responsible trustees, but also the assistance of a specialised managing agent and additional professionals to assist them in their duties and functions.

As the saying goes: *“how do you eat an elephant...” = one bite at a time.* Therefore, I recommend to trustees and managing agents to tackle the new requirements in simple basic steps and requirements. A structured and programmed approach by a Body Corporate will speed-up the process of attaining a Compliance Action Plan (**CAP** – Report).

Frederik Nel (Curasure)

Copyright © Curasure 2016



“I am thankful for all of those who said NO to me. It’s because of them I’m doing it myself.”

Albert Einstein



“Don’t be afraid to stand for what you believe in, even if that means standing alone.”

Andy Biersack



“Though no one can go back and make a brand new start, anyone can start from now and make a brand new ending.”

Carl Bard



“The great thing in this world is not so much where you stand, as in what direction you are moving.”

Oliver Wendell Holmes