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POPI IN RELATION TO COMMUNITY SCHEMES

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Introduction

The purpose of the Protection of Personal Information Act No 4 of 2013 (“POPI”) is, among other things, to promote the protection of personal information of data subjects (defined as a person to whom personal information relates), processed by private and public bodies and to establish certain conditions and minimum requirements for the processing of personal information.¹

POPI is applicable to Community Schemes such as Sectional Title Schemes and any disregard of its provisions by trustees, managing agents and owners/ members of community schemes can result in far reaching punitive consequences.

Trustees Duties and Responsibilities

Trustees of sectional title schemes are authorized to act on behalf of the body corporate and control, manage and administer the scheme through their mandated agents (managing agents).² In the carrying out of their duties, trustees and managing agents are

required to obtain the personal information of owners in the scheme. Such information is used for the purposes of levy collection, the arrangement of the scheme meetings and the distribution of information to members.

It is important to note that while trustees’ actions can be restricted by way of a resolution of the members of the scheme, that they can never be halted from performing their duties under the Sectional Title Act 95 of 1986 (“The Act”) and The Sectional Title Schemes Management Act 8 of 2011 (“The STSMA”)

Trustees are subject to a fiduciary duty which means that they have a responsibility to act in good faith and in the interests of the body corporate at all times. Trustees may not act in their own interest or to benefit another.³

Trustees and managing agents must ensure that information that has been obtained from the members of a scheme, is only used for the purposes

¹ The Protection of Personal Information Act No 4 of 2013

² The Sectional Title Schemes Management Act No 8 of 2011; sections 3 & 7

³ The Sectional Title Schemes Management Act No 8 of 2011; section 8



for which it was given. If a request is made to obtain the information of one or multiple members in a scheme, trustees must determine if the request is one in pursuit of a legitimate interest for the facilitation of the successful management of the scheme, should this be the case, the trustees would be entitled to furnish the requested information because of the fact that trustees are empowered to do all things necessary to comply with the Act, STSMA and enforce the schemes rules.⁴

The trustees powers with regard to distributing members information is subject to the fact that the trustees act in accordance with their fiduciary duties and act within the best interest of the scheme at all times.

Should the request for personal information of a member be made to a trustee or managing agent and not fall within the pursuit of a legitimate interest in terms of which the scheme is successfully managed, the trustee or managing agent concerned may not distribute such information without first obtaining the approval of the member concerned. Should the members approval not be obtained, the information may not be distributed at all.

POPI provides for penalties and administrative fines for contravention of its provisions, which depend on the nature and extent of the contravention concerned. For certain contraventions the penalty imposed is a fine or imprisonment for a period not exceeding 10 years, or a fine and imprisonment.⁵⁶

⁴ Protection of Personal Information Act No 4 of 2013; Section 12 &13

⁵Protection of Personal Information Act No 4 of 2013; section 100, 103(1), 104(2), 105(1) and 106(1), 106(3) and 106(4),

⁶ Protection of Personal Information Act No 4 of 2013; section 107(a)

Other less serious contraventions attract a fine or imprisonment not exceeding 12 months or both a fine and such imprisonment.⁷⁸

Administrative fines may be levied by the Regulator on parties who are alleged to have committed an offense in terms of POPI. The fine will be limited to a maximum amount of R10,000,000.00 and the infringer will then have the choice of either paying the fine within 30 days of service of the fine, or to be tried in court on a charge of having committed the alleged offence.⁹

Owners Duties and Responsibilities

Owners/ members of a scheme are required to provide accurate personal information to the trustees and managing agents of a scheme when such information requested.

The above information will assist body corporates in t effectively running schemes and will prove essential for the collection of levies and enforcement of the conduct and management rules. However, it is essential to note that members information may only be used by the managing agent and trustees in the furtherance of their duties, as described above.

Should a member find themselves in a position where their contact information has been distributed and that such distribution was not in line with the use of the information that was agreed to or is

⁷ Protection of Personal Information Act No 4 of 2013; section 107(b)

⁸ Protection of Personal Information Act No 4 of 2013 section 59, 101, 102 103(2) and 104(1)

⁹ Protection of Personal Information Act No 4 of 2013; section 109



reasonably necessary to facilitate the management of the scheme, the trustee or the managing agent responsible for the distribution of the information will be in transgression of POPI and may be liable for a fine.

Conclusion

If you are uncertain how POPI applies to your scheme, or are uncertain of what type of information or documents may be distributed by an owner, managing agents and trustees managing your scheme, it is important to contact an attorney who will be able to advise and assist you before dispensing with any information or documentation that could have the effect of contravening POPI and may open you up to possible liability or fines and in more serious cases imprisonment.

Similarly, if you are a trustee or managing agent and are unsure if the personal information you wish to circulate is deemed as information in pursuit of a legitimate interest for the facilitation of the successful management of the scheme, it is advisable to contact an attorney for assistance before distributing such information as any unlawful distribution of information in terms of POPI can have grave financial consequences, open you up to the possible liability or fines being imposed on you and in more serious cases lead to imprisonment.



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