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NOTICE TO ALL SECTIONAL TITLE SCHEMES AND HOMEOWNERS ASSOCIATIONS OWNERS AND/OR TENANTS

IN RE: UNDERSTANDING LOCKDOWN STAGE 4 IMPLICATIONS WITHIN SECTIONAL TITLE SCHEMES AND HOMEOWNERS ASSOCIATIONS

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Introduction

As announced by President Cyril Ramaphosa on Thursday evening (23 April), the country is now in a graded alert level system and phased approach to the 'easing' of lock down measures from level 5 to level 4. The measures aim to (amongst others) stimulate the economy as the country continues to battle the Covid-19 pandemic.

We are in Level 4 as of 1 May 2020. In this regard, we will address these implications of level 4 in sectional title schemes and homeowners' associations ("**community schemes**").

Movement Within Community Schemes

During level 5 of lockdown, owners and tenants living in sectional title schemes were required to remain within their sections and there was

controversy over whether they were permitted to move around on common property. It is generally accepted that owners and tenants residing in community schemes were permitted to use the common property (for example the common driveway shared by all residents within a scheme).

The Disaster Management Act Regulations Amendment dated 29 April 2020 ("**Regulations**"), aim to ease lockdown restrictions during level 4 and to this end section 16 of the Regulations provides for new parameters on movement.

The Regulations indicate that certain people working in professional services (who qualify as essential or permitted services) may return to work (where necessary) from 1 May 2020 but only outside the new curfew hours which are set



between 20h00 to 05h00. However, certain essential services may work within these hours. The Regulations also allow persons to travel to "obtain" the use of essential and permitted services. This means that people who want to make use of the professional services offered by those who are working from home, must be let into the complex/community scheme area, in order to access these services. Management of community schemes may need to adjust their security protocols and/or even their rules, to cater for this, as if they deny entrance to a person seeking to obtain such services they might be violating the rights of parties to exercise their trade/profession and to earn a living.

People residing in the scheme may only leave the scheme within the curfew hours to purchase goods and obtain services.

The new Level 4 lockdown restrictions state that South Africans are now permitted to leave their homes for exercise such as to walk, run or cycle between 06h00 to 09h00 and within a 5km radius of your residence. However, everyone will be prohibited from participating in organised fitness activities or to making use of shared facilities such as gyms, tennis courts and swimming pools located within the schemes. For example, exercising together with neighbouring owners and/or tenants is prohibited. However, the scheme could create a roster in terms of which it allocates time slots to owners/tenants to make use of the common property recreational and exercise facilities, such that they are enabled to exercise alone without company.

Furthermore, owners and tenants residing in the scheme should not have any visitors and/or embark on any recreational travel. For example, visiting neighbouring owners and/or tenants within the community scheme is still prohibited.

Working staff who do not reside in the community scheme

The Regulations have further added other services and industries other than non-essential workers that are listed therein, allowing them to now (with a permit) commute from their homes to their workplace in order to continue working.

Services that may return in in community schemes are listed below:

- "Health, social and personal services, which also include cleaning, sanitation, sewerage, pest control sewerage, waste and refuse removal services;
- "Care Services social relief of distress provided older persons, mentally ill, persons with disabilities, sick and children";
- "Medical, Health (including Mental Health), Laboratory and Medical services"; and
- "Private Security Services"

"Private households will allow for live-in staff and staff providing care to the sick, mentally ill elderly people with disabilities and children".

It must be emphasised that all COVID-19 health and safety protocols must be followed at all times, including observance of guidelines for social distancing, sanitation and hygiene (such



as sanitizers at entrances of community schemes), and use of appropriate personal protective equipment, like cloth face masks or homemade item that cover the nose and mouth when in a public place, as contemplated in section 5 of the Regulations.

In addition, the Regulations require all returning services and industries to have a workplace plan in order to ensure phased services and safety measures are followed when essential and permitted workers return.

Cleaners and Domestic workers

Cleaners would fall within the ambit of the phrase “cleaning and sanitation” and accordingly, would be able to perform the necessary cleaning services within community schemes. In addition, they would be required to have an essential/permitted service permit in order to continue performing their services and would have to follow all hygiene/social distancing protocols when doing so.

Domestic workers are not “cleaners”. Domestic workers who perform cleaning services and do not reside within the community schemes will not be able to commute from home to work each day in order to perform their cleaning services for each individual owner or tenant. Only live-in domestic workers or care workers will be allowed to return to work in level 4.

There has been some confusion in the public as to whether a domestic worker could be interpreted as support staff to level 4 personnel and therefore be allowed to commute to work. This is simply not the case as the Regulations

make specific reference to “live in” domestic staff that are allowed to work during the level 4 lockdown. Unless a domestic worker is residing within a unit in the community scheme, they may not attend to their employment duties under the current stage of lockdown.

Permits in relation to cleaners and domestic workers

As mentioned previously, staff attending to the cleaning of a community scheme will be deemed as essential services as catered for in Part P(2) of the Alert Level 4 Table to the Regulations which lists persons authorised to work outside of the home and to travel to and from work. According to sections 16(2)(b) and 28(4) of the Regulations, cleaning staff and similarly authorised personnel will require a permit that corresponds with Form 2 of Annexure A to the Regulations.

At first glance, it seems that domestic workers will not require permits as only “live in” domestic workers are authorised to continue with their duties during this time. However, for the purposes of returning to work as “live in” staff, it is important to note the wording of the Regulations being that *“a person may only leave their place of residence to:- (a) perform an essential service as allowed in alert level 4;(b) to go to work where a permit which corresponds with Form 2 of Annexure A has been issued...”*.

The Regulations are unclear as to whether “live in” staff will require a permit to work but we would advise that if your “live in” domestic worker is returning from their primary residence



on a once off basis to reside and work within your unit during level 4 of lockdown, that the domestic worker would be required to obtain a permit corresponding with Form B to Annexure A for their travel back to your residence. Once present at your residence, the "live in" domestic worker may not return home to their primary residence for the duration of the level 4 lockdown unless otherwise authorised by the Regulations.

Gardeners

On analysis of the Regulations gardeners are not considered to be essential services and accordingly, would not be able to acquire any essential/permitted service permits to work within the community schemes during level 4. Their services are aesthetics orientated which do not form part the new list of services allowed to return to work at stage 4. There is an exception – however – and this is where gardening work is necessary to avoid damage to life or property. In this case, the work to be carried out would fall under the next category of workers discussed – namely maintenance workers.

Other ground staff for maintenance of common property

Other ground staff members which are employed for maintenance within the community schemes may only perform services such as waste and refuse removal services and essential maintenance services during lockdown. It is advisable that each personnel member should have an essential/permitted service permit from their employer while traveling to and from work and carry

identification to prove that they are the person named in the permit. Accordingly, these workers are allowed to commute from home to work but employers must ensure strict health and safety guidelines are complied with. Essential maintenance might include the removal of leaves that block gutters, as this is considered waste, and also can cause property damage (through overflowing gutters which cause unwanted water ingress) if not taken care of.

In this regard, other maintenance services such as painting and/or repairs on common property etc. (being cosmetic in nature and which can safely be delayed) would not be allowed during stage 4 lockdown unless they are "critical".

Caretakers/Supervisors

Caretakers who oversee ground staff who perform maintenance on the common property would not be able to perform any services other than facilitating and supporting essential services and/or returning industries listed in the Regulations. Only emergency/essential maintenance issues would be allowed to be carried out.

Security

Private security companies and personnel are expressly listed under essential services in the Regulations and these personnel are permitted to work during all levels of lockdown. Security personnel are accordingly able to commute from home to work each day in order to perform their service with a permit. The community scheme must ensure that these staff



members who are exposed are provided with necessary protective gear such as masks, gloves and sanitizers.

Care Services

To ensure that people with disabilities and their families continue to receive services during the lockdown, residential facilities, including care centre and community-based facilities, will remain operational, as they form part of essential services. Care services which fall within the category of essential services are permitted, however, such persons would be required to obtain a permit as set out in Form 2 of the Regulations in order perform their services and travel to and from their places of work.

Plumbing, Gas and Electricity Services

Maintenance service(s) are permitted for emergencies e.g. burst geysers & pipes, leaks, electrical supply problems. This does not include renovations and/or completion of construction projects to common property.

Working staff who currently reside or who are returning to reside on the sectional title scheme and home owners association area grounds

The Minister of Cooperative Governance and Traditional Affairs (CoGTA) Dr Nkosazana Dlamini-Zuma said that the major change under the 'Level 4' restrictions is that more people will be allowed to return to work. Previously within level 5, the scheme would not be able to compel their staff to return from their homes to stay within the community scheme and attend to work during lockdown.

The Regulations now make provision for employment within private households and state that all employment of staff that support level 4 personnel and live-in staff including staff providing care to the sick, mentally ill, elderly people with disabilities and children will be permitted to work. Our interpretation is that all live-in staff providing such services who reside within the community schemes can return to work provided that the work that they are doing qualifies as essential or permitted services as explained above.

However, the Regulations do not expressly provide guidelines on how such returning live-in staff would return, such as whether such staff would be required to further self-isolate or not. Minister of Trade Ebrahim Patel has expressed that curtailment of movement from one household to another household is of utmost importance. As mentioned above, all COVID-19 health and safety protocols must be followed at all times, as set out in the Regulations and determined from time to time by the National Department of Health.

In this regard, certain ground staff, domestic workers, cleaning staff, gardeners, and care service workers who usually reside within community schemes would be able to return to work if they provide essential or permitted services. This would further apply to any ground staff who reside in the community schemes.



Community Schemes Ombud Services **("CSOS")**

CSOS has provided notice amending its directive in accordance with the COVID-19 health guidelines set out in the Regulations. It has ensured that the CSOS Service to the public will resume on Monday, 4 May 2020 and in accordance with any limitations which may imposed.

In terms of the Regulations large gathering are prohibited and accordingly, community scheme meetings may not be held in person under any circumstances. Meetings (including scheme executives, owners, special, annual) that are to be held within community schemes may be held telephonically, or by electronic communication platforms that include but are not limited to Skype, Zoom or other electronic platforms, and votes may be taken via round robin in terms of the Sectional Titles Schemes Management Act and/or its Rules or, in the case of a Homeowners' association, in terms of the Constitution or the Memorandum of Incorporation or the Companies Act.

However, it must be noted that using electronic platforms may be prejudicial to some members as they may not be able to participate in the meeting due to connectivity issues and data costs. In this regard, CSOS has advised that it will not penalise any community scheme for scheduling an annual general meeting after the lockdown period (where the meeting ought to have been scheduled during lock down but could not take place due to lock down restrictions). Furthermore, it will not be

necessary for schemes to complete an application for condonation for late filing of their annual returns if they failed to file them during lock down.

Deliveries to and within the Sectional Title Schemes

The Regulations have further permitted services other than non-essential services to reopen and trade (including restaurants and fast food outlets). They will be allowed to operate but only for deliveries and during curfew hours.

In this regard, owners and tenants would be able to receive deliveries of any goods supplied, and not only those that are deemed as essential services, such as medicine and food supplies.

It is advisable that deliveries are made at the gate of the community scheme. Moreover, reasonable discretion must be applied by the owners or tenant living in the scheme, as well as the security and management, in this regard and the limitation of the spreading of COVID-19 must be the paramount concern, as well as the strict observance of social distancing.

Conclusion

Understanding the Disaster Management Act 55 of 2002 and its amended Regulations thereto is a difficult and daunting task, and interpreting it is even more complex in relation to a community scheme. Infringement of the Regulations could lead to a fine or imprisonment and, accordingly, should be avoided at all costs. Should you find yourself uncertain of any provision that relates to your



conduct within your community scheme during this time of lockdown, it is important that you contact an attorney who specialises in community living and be guided by correct advice to avoid criminal sanction.

Kindly note that the above notice is based on the President's statement on Monday 23 March 2020 and the amendment to the Disaster Management Regulations (as amended) dated 29 April 2020 to their application to living in a community scheme during this lockdown period.

Schindlers Attorneys are assisting their clients and the public with drafting permits that comply with the Regulations and can assist you if you require support or guidance in this regard.



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