

Sectional Titles Schemes : To audit or not to audit?

The Sectional Titles Schemes Management Regulations, 2016 (Regulations, 2016) were published in the Government Gazette on 7 October 2016 and is effective from 7 October 2016. The Regulations, 2016 has made some changes from the previous Sectional Title: Collected Regulations.

One of the changes refers to the requirement for sectional titles schemes to have audited financial statements.

The Sectional Titles: Collected Regulations stated the following in the Rules, included in Annexure 8: *"40. Audit At the first general meeting and thereafter at every ensuing annual general meeting, the body corporate shall appoint an auditor to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting: Provided that where a scheme comprises less than 10 units, an accounting officer may be appointed for that purpose and the auditor or accounting officer, as the case may be, must sign the financial statements."*

If there were 10 or more units, an audit of the scheme was required. Where there was less than 10 units, the statements could be signed off by either an auditor or accounting officer. It was the choice of the body corporate on whether they want an auditor or accounting officer to sign off. All body corporates with 10 units needed to have an auditor sign of the reports.

An accounting officer was defined in the Sectional Titles Act, No 95 of 1986, as follows: ""accounting officer" means a person who in terms of section 60(2) of the Close Corporation Act, 1984 (Act 69 of 1984), is qualified to perform the duties of an accounting officer.

The Sectional Titles: Collected Regulations allowed for the Rules in Annexure 8 to be added to, amended or repealed in accordance with section 35(2)(a) of the Act, and subject to the provisions of section 35(3) and (5) of the Act. Section 35 of the Act allowed for management rules to be substituted, added to or amended by the unanimous resolution of the body corporate and these rules had to be lodged with the registrar.

The Sectional Titles Schemes Management Regulations, 2016 has different requirements. The Management Rules in Annexure 1 state the following: *"26(4) 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 within four months after the end of the financial year."*

- (5) *The audit of a body corporate's annual financial statements:*
- (a) *must be carried out by an independent auditor who has not participated in the preparation of the annual financial statements or advised on any aspect of the accounts of the body corporate during the period being reported on;*
 - (b) *need not be carried out in accordance with any recognised framework of guidelines for financial accounting;*
 - (c) *must include opinions as to whether or not:*
 - (i) *the annual financial statements accurately reflect the financial position of the body corporate for the financial year under review, with such qualifications and reservations as the auditor considers necessary;*
 - (ii) *the body corporate has complied with the accounting requirements set out in rules 21, 24 and this section, with a specific description of any failure to comply with such requirements;*
 - (iii) *the books of account of the body corporate have been kept and its funds have been managed so as to provide a reasonable level of protection against theft or fraud; and*
 - (iv) *the financial affairs of the body corporate appear to be effectively managed;*
 - (d) *must be completed within four months of the end of the body corporate's financial year.*

The Regulations, 2016 does not contain any transitional provisions but the Sectional Titles Scheme Management Act, No 8 of 2011 includes a requirement in section 10(12) which states that any rules made under the Sectional Titles Act, 1986 are deemed to have been made under this Act.

Section 21 of the Sectional Titles Scheme Management Act, No 8 of 2011 states "Rules prescribed under the Sectional Titles Act must continue to apply to new and existing schemes until the Minister has made regulations prescribing management rules and conduct rules referred to in [section 10\(2\)](#) of this Act". Therefore as the Minister has now made the regulations prescribing management rules and conduct rules they will apply.

In our previous article we stated:

"It would therefore seem as if rules made under the Sectional Titles Act, No 95 of 1986 continue to exist and that all new sectional title schemes registered after 7 October 2016 will adopt the Management and Conduct rules as set out in the Regulations, 2016."

Based on feedback from the Department of Human Settlements that statement was not accurate, the Department has confirmed that the Rules in the Regulations, 2016 apply with immediate effect and this renders the previous Regulations made in terms of the previous Act (Sectional Titles Act, No 95 of 1986) unenforceable. The Department also confirmed that there should be no deviations from the provisions of the current Sectional Titles Management Act and its subordinate legislation (regulations).

Therefore **all body corporates** and not just newly registered body corporates will adopt the Management Rules as per the Regulations, 2016.

The Regulations, 2016 does allow for the management rules to be added to, amended or repealed by unanimous resolution of the body corporate, provided that at least 30% of the units are sold. Where the management rules are changed the body corporate or the developer needs to inform the Community Scheme Ombud.

Another important addition refers to the independence of the registered auditor. The Regulations, 2016 require that the registered auditor should not have participated in the preparation of the annual financial statements or should not have advised on any aspect of the accounts of the body corporate during the period being reported on. The term “accounts” is not defined but registered auditors would need to take note of this requirement.

The audited annual financial statements need to be considered at the Annual General Meeting which should be held within four months after the end of the financial year.

Members have raised questions dealing with the appointment of the auditor and based on the effective date of 7 October 2016, all body corporates with a year-end after 7 October 2016 will have to adopt the new Management Rules and will therefore have to appoint an auditor. The Department has indicated that all entities must appoint Auditor in the manner prescribed by the new management rules, this would mean that the regulations apply retrospectively, meaning all entities need to amend their rules in line with the Section Title Scheme Regulations, 2016 and follow the requirements as per the Section Title Scheme Regulations, 2016.