

The Sectional Title  
**Insurance** Guide



Facts you should know

By **Mike Addison** | 2017

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Addsure is an authorised financial services provider (FSB Licence No 15269), operating nationally in South Africa. Addsure is essentially an insurance brokerage and financial advisory practice that specialises in community scheme property insurance and financial planning.

Addsure has become well-known in the sectional title industry and is considered a leader in South African sectional title insurance.

This booklet, first published some 12 years ago, now its fifth edition, is one example of how Addsure sets the benchmarks for many aspects of sectional title insurance in South Africa.

Addsure has offices in Cape Town, Johannesburg and Durban, and services all main centres including Port Elizabeth, Bloemfontein, George and other key areas.

Read / subscribe to our weekly blog (which can be found on our website) where we write about interesting and useful community scheme insurance topics, relevant to anyone involved in sectional title or community schemes at large.

Managing Agents and portfolio managers can register to monitor their client community scheme claims live online. Simply log in and check the progress of any claim.

An electronic version of this booklet as well as a host of many more detailed articles, information and templates can be found at [www.addsure.co.za](http://www.addsure.co.za). Another way to keep abreast with industry information is by joining our Facebook group or Twitter handle.



## About The Author

The Author, Mike Addison, is co-owner and founding director of [Addsure](http://www.addsure.co.za), a registered financial services provider (FSB Licence No 15269).

With a banking, finance, insurance and property background, sectional title insurance was an almost perfect fit for an area of expertise / specialty.

Mike started his career in banking (initially Barclays Bank in 1979), completing his studies (CAIB (SA)) while working his way up the corporate ladder. He gained experience in asset finance (Nedfin Bank) and later Unibank Ltd where asset finance including property finance and insurance fell under his wing. Addsure was born more than twenty years ago since when Mike's passion for property and insurance started to evolve into the practice Addsure is today.

Over many years, Mike and the Addsure team have become well known for their presentations and workshops in easy to understand format, with this booklet the core, acting as the textbook assisting many community schemes in their efforts to reduce risk and properly protect themselves.

The lighthouse logo, a registered Addsure trademark is in itself an interesting brand story – The Addison family descendants of generations of lighthouse keepers. More about that can be found at the Addsure website.

Today, Mike and the Addsure team of advisors remain committed to community scheme risk prevention and cover in South Africa particularly in the wake of the challenges that face us all.

This booklet is the fifth updated version/edition which is available both in hard copy and electronic format. This edition includes the latest changes to the relevant Acts and their respective regulations which affect community scheme insurance.





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## 1. Introduction

Welcome to the Fifth edition of The Sectional Title Insurance Guide.

Since the first edition in 2005, more than a decade later, this publication has become widely used, mainly as a reference tool in dealing with sectional title insurance matters. It has served as course material, workshop reference and more importantly, supported the broker/insurance advisor advice process in the dispensing of fit and proper advice to client bodies corporate and their management structures.

In this updated edition, we simplify the recently introduced community scheme insurance legislation and relative regulations in conjunction with the latest insurance and financial and intermediary services legislation and regulations.



### How an insurance advisor can use this material:

Insurance advice in terms of FAIS Regulations (Financial Services and Intermediary Services Act Regulations (Code of Conduct)) is very important and this guide assists financial advisors dispense fit and proper advice by drawing attention to the needs of the scheme and the owners and how to deal with many of the issues. By having these important aspects of sectional title insurance explained in easy to read format, owners and trustees obtain a better understanding on their part. The culture of TCF (Treating Customers Fairly) is very much part of this publication i.e. designed to be a broad based sectional title insurance key information document with the FAIS code of conduct and TCF outcomes.



## How a trustee can make use of this material:

Actually written with the owner trustee in mind. The trustees are ultimately responsible for the financial wellbeing and insurance of the scheme. The Sectional title Insurance Guide is intended to be a one stop insurance reference guide for trustees in a compact, comprehensive yet easy to understand format.

## Why this material is most useful to the managing agent / portfolio manager:

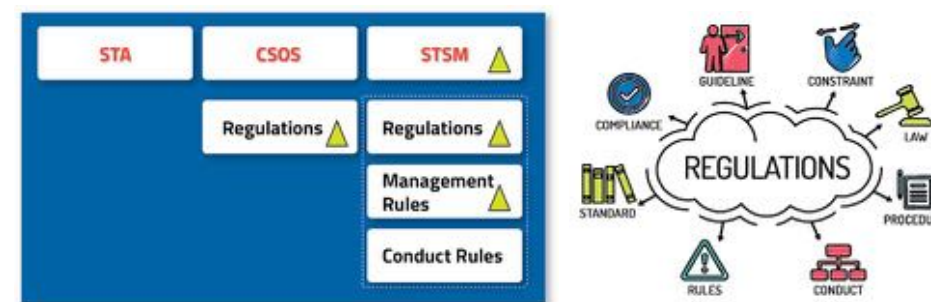
Unless the managing agent is a licensed financial services provider, and the portfolio manager an authorized representative in terms of FAIS legislation, the managing agent or their staff may not provide insurance advice in any form, help select nor choose financial products on behalf of clients. This booklet assists managing agents deliver packaged insurance information without stepping into a space beyond their expertise or permitted area of service delivery.

## 2. Community Scheme and Sectional Title Legislation

Both the Community Schemes Ombud Services Act (CSOS Act) and the Sectional Title Schemes Management Act (STSM Act) and their regulations guide and direct trustees in terms of the of the insurance and related aspects of a sectional title scheme.

The Acts themselves are comprised of sections which are statutory. The regulations to these Acts regulate aspects of the community scheme and may be amended from time to time. The Sectional Titles Scheme management Act Regulations also include prescribed management rules and conduct rules which can be amended by the agreement of owners under various types of prescribed resolutions.

This is more easily understood if one looks at this diagrammatically:



The Insurance rules and regulations are found in the different areas as depicted by the diamond shape.

One needs to read the Acts, insurance rules and regulations in conjunction with each other. For example, **CSOS Regulation 15** pertaining to Fidelity Insurance needs to be read in conjunction with **STSM Act Prescribed Management Rule 23.7** in order for the trustees to properly deal with arrangement of fidelity insurance. It is for this reason that this sectional title insurance guide is so useful to insurance advisors, trustees and managing agents.

*Let's look at the legislation which impacts insurance itself:*

## Community Schemes Ombud Services (CSOS) Act

### Regulation 15

#### Fidelity insurance

*15.(1) **Subject to sub-regulation (5)**, every community scheme must insure against the risk of loss of money belonging to the community scheme or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insurable person.*



(2) For the purposes of **sub-regulation (1)**, “insurable person” means any:-

- (a) scheme executive;
- (b) employee or agent of a community scheme who has control over the money of a community scheme;
- (c) managing agent; or
- (d) contractor, employee or other person acting on behalf of or under the direction of a managing agent, who in the normal course of the community scheme’s affairs has access to or control over the monies of the community scheme.

(3) The minimum amount of the fidelity insurance cover required in terms of **sub-regulation (1)** is the total value of-

- (a) the community scheme’s investments and reserves at the end of its last financial year; and
- (b) 25 per cent of the community scheme’s operational budget for its current financial year.

(4) The insurance cover referred to in **sub-regulation (1)** must-

- (a) provide for payment of a loss by the insurer to the community scheme within a reasonable period after reasonably satisfactory proof of the loss has been furnished to the insurer; and
- (b) not require that criminal or civil proceedings be taken or completed against the insured person before payment is made under the insurance policy.



(5) A community scheme is not obliged to obtain fidelity cover for an insurable person if that person has delivered to the community schemes written proof that-

- a) the monies of the community scheme are covered by fidelity insurance that complies with the requirements of **sub-regulations (3) and (4)**; and
- (b) the insurer concerned has noted the community scheme’s interest in the application of the proceeds of the policy and undertaken not to cancel or withdraw cover without giving the community scheme at least 30 days written notice. **NOTE: It is the writer’s view that sub regulation (5) should be deleted - see note on page 26 regarding this.**

## The Sectional Title Scheme Management (STSM) Act

### Functions of the body corporate

#### Section 3.(1)

- (h) to insure the building or buildings and keep it or them insured to the replacement value thereof against fire and such other risks as may be prescribed;
- (i) to insure against such other risks as the owners may by special resolution determine;
- (j) subject to **section 17** and to the rights of the holder of any sectional mortgage bond, forthwith to apply any insurance money received by it in respect of damage to the building, in rebuilding and reinstating the building or buildings in so far as this may be effected;
- (k) to pay the premiums on any insurance policy effected by it;



## Insurance by owners

### Section 14.

(1) Notwithstanding the existence of a valid insurance policy effected by the body corporate pursuant to the provisions of **section 3(1)(h)**, an owner may obtain an insurance policy in respect of any damage to his or her section arising from risks not covered by the policy effected by the body corporate.

(2) This section does not limit the rights of an owner to insure against risks other than damage to his or her section.

## Other risks to be insured against

### Insurance Other Risks

#### Regulation 3

Other risks against which a body corporate may insure, in terms of **section 3 (1)(h)** of the Act, are -

- (a) lightning, explosion and smoke;
- (b) riot, civil commotion, strikes, lock-outs, labour disturbances or malicious persons acting on behalf of or in connection with any political organisation;
- (c) storm, tempest, windstorm, hail and flood;
- (d) earthquake and subsidence;
- (e) water escape, including bursting or overflowing of water tanks, apparatus or pipes;
- (f) impact by aircraft and vehicles; and
- (g) housebreaking or any attempt thereat.



Earth quake damage



Lightning /storm damage



Water damage

## Prescribed Management Rules

### Insurance

23.(1) The insurance policies of the body corporate in terms of sections 3(1)(h) and (i) of the Act -

- (a) must provide cover against -
  - (i) risks referred to in **regulation 3**;
  - (ii) risks that members resolve must be covered by insurance; and
  - (iii) risks that holders of registered first mortgage bonds over not less than 25 per cent in number of the primary sections by written notice to the body corporate may require to be covered by insurance;
- (b) must specify a replacement value for each unit and exclusive use area, excluding the member's interest in the land included in the scheme; provided that any member may at any time, by written notice to the body corporate require that the replacement value specified for that member's unit or exclusive use area be increased;
- (c) must restrict the application of any "average" clause to individual units and exclusive use areas, so that no such clause applies to the buildings as a whole;
- (d) must include a clause in terms of which the policy is valid and enforceable by any holder of a registered mortgage bond over a section or exclusive use area against the insurer notwithstanding any circumstances whatsoever which would otherwise entitle the insurer to refuse to make payment of the amount insured, unless and until the insurer terminates the insurance on at least 30 days' notice to the bondholder; and
- (e) may include provision for "excess" amounts.



**23.(2)** *A member is responsible -*

*(a) for payment of any additional premium payable on account of an increase in the replacement value referred to in **sub-rule (1)(b)**;*

*(b) for any excess amount that relates to damage to any part of the buildings that member is obliged to repair and maintain in terms of the Act or these rules, and must furnish the body corporate with written proof from the insurer of payment of that amount within seven days of written request.*

**23.(3)** *A body corporate must obtain a replacement valuation of all buildings and improvements that it must insure at least every three years and present such replacement valuation to the annual general meeting.*

**23.(4)** *A body corporate must prepare for each annual general meeting schedules showing estimates of -*

*(a) the replacement value of the buildings and all improvements to the common property; and*

*(b) the replacement value of each unit, excluding the member's interest in the land included in the scheme, the total of such values of all units being equal to the value referred to in **sub-rule 4(a)**.*

**23.(5)** *On written request by any registered bondholder and the furnishing of satisfactory proof, the body corporate must record the cession to that bondholder of that member's interest in any of the proceeds of the insurance policies of the body corporate.*

**23.(6)** *A body corporate must take out public liability insurance to cover the risk of any liability it may incur to pay compensation in respect of -*

*(a) any bodily injury to or death or illness of a person on or in connection with the common property; and*

*(b) any damage to or loss of property that is sustained as a result of an occurrence or happening in connection with the common property, for an amount determined by members in general meeting, but not less than 10 million rand or any such higher amount as may be prescribed by the Minister in any one claim and in total for any one period of insurance.*

**23.(7)** *A body corporate must take out insurance for an amount determined by members in general meeting to cover the risk of loss of funds belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by a trustee, managing agent, employee or other agent of the body corporate.*

**23.(8)** *A body corporate, authorised by a special resolution of members, may insure any additional insurable interest the body corporate has -*

*(a) in the land and buildings included in the scheme; and*

*(b) relating to the performance of its functions, for an amount determined in that resolution.*

### 3. Sectional Title Insurance and the Advice process

*The insurance advice process in the sectional title environment is even more important for a number of reasons.*

*As we will detail in the chapter that follows, Sectional Title Insurance needs and requirements can be divided into three main categories i.e. Buildings Cover, Liability Cover and Fidelity Cover.*

*Additional needs such as General Liability cover, Levy Guarantee Cover, Excess buyback, additional vehicle cover and so on can be considered, however, the first three categories are dealt with in that order in the sectional title scheme prescribed management rules and in the order of business to be concluded at annual general meetings.*



*In terms of FAIS legislation, a financial advisor / broker is obliged to deal with his/her client in accordance with the General Code of Conduct for Authorised Financial Services Providers and Representatives. Published under Board Notice 80 in Government Gazette 25299 of 8 August 2003 and as amended. Paragraph pertaining to Record of Advice:*

*(1) A provider must, ..... maintain a record of the advice furnished to a client ..., which record must reflect the basis on which the advice was given, and in particular-*

- (a) a brief summary of the information and material on which the advice was based;*
- (b) the financial products which were considered;*
- (c) the financial product or products recommended with an explanation of why the product or products selected, is or are likely to satisfy the client's identified needs and objectives; and*

*(2) A provider, other than a direct marketer, must provide a client with a copy of the record contemplated in 9(1) in writing.*

*Usually, when trustees in sectional title schemes consider their insurance for the ensuing year, it would be at a trustee meeting with the matter "Insurance" on the agenda. The trustees may be meeting alone or together with a portfolio manager / the managing agent. The insurance advisor is rarely present but those present are expected to make a decision. The portfolio manager / the managing agent, unless they are authorised financial services providers / representatives themselves, cannot advise on product selection or even suggest which product to select as this would be highly irregular. Only a licensed authorized financial advisor may dispense insurance advice, particularly in respect of product selection.*

*Thus, practically, the only possible way for decisions to be made under advice from a suitably qualified advisor would be to expect written advice which can be circulated, easily understood, in summary with supporting documentation and tabled.*

*The managing agent cannot act as insurance agent, unless registered as a financial services provider but acts as "post office". In other words, merely delivers the advice to the trustees or their meeting by presenting the broker's written advice.*

*Therefore, considering all of the above, we would summarise the standard of written advice one should expect from an insurance advisor as follows:*

- a) It should briefly mention the prescribed needs (Buildings, Liability and Fidelity) confirming that the advice has accounted for these. This would be the basis on which the advice was given per (1)(a) above.*
- b) It should in summary, compare quotations, with the full quotations separately provided i.e meet the needs to reflect the products which were considered per (1)(b) above.*
- c) The actual advice should be there. It is suggested that the advisor should clearly state the advice in summary form so as to explain which product should be selected and why.*

*With this tabled, especially if circulated to the trustees ahead of the meeting, trustees would be able to reach a decision simply and easily, based on the advice provided.*

*The minutes of that meeting would refer to the letter of advice eg. "The trustees resolve to renew the insurance cover with XYZ Insurance as advised in Addsure's letter of advice dated 16 January 2017".*

*A copy of the letter of advice should be attached to the minutes of the trustee meeting or even included with the minutes and simultaneously, a copy of the minutes or an extract from the minutes can be sent to the broker as confirmation.*

*This important FAIS legislation, coupled with the clear requirements of the Sectional Titles Act/Sectional Title Scheme's Management Act and prescribed rules, place a burden of responsibility on both the financial advisor and trustees. The Managing Agent is not excluded from the responsibility, but rather, a key party in the process. The managing agent, unless a registered FSP themselves, should take great care not to be finding themselves in a compromised position i.e. providing financial advice where*



not permitted or authorised to do so and/or providing intermediary services where this is also prohibited in terms of FAIS (Financial and Intermediary Services legislation). The importance of the role of the specialized insurance advisor / broker is key here.

## 4. Insurance 1-2-3

As alluded to, community scheme insurance can be divided into 3 main categories (Buildings, Liability and Fidelity) with a fourth category for "other insurances" which may be needed individually for a particular scheme.

So, we will discuss each category in detail below:

### Buildings Insurance

This aspect, we aptly name "buildings insurance" for want of a better name. Taking into account various definitions and pieces of legislation, we set out the trustees duties and responsibilities in respect of the buildings cover. Let us first understand what a building actually is in this environment, so that we can understand what it is we are really insuring.

Interesting is that the definition of a building as defined by the STSM Act is somewhat different to that as defined in a policy of insurance i.e. it states that:

"building" means a structure of a permanent nature erected or to be erected and which is shown on a sectional plan as part of a scheme"

A typical buildings policy wording definition of a building is more specific, i.e. it may state that:

Buildings shall be deemed to include outbuildings and landlords fixtures and fittings therein and thereon including fitted carpets and lifts with all associated equipment, transformers, motors, boilers, air conditioning, standby generators and walls (except dam walls), gates, posts, fences (excluding hedges) and sporting/recreational structures including but not limited to swimming pools, tennis courts (including

floodlights) sauna/spa baths/jacuzzis and water pumps, pool machinery, borehole motors and brick, tar, concrete or paved roads, driveways, parking areas, paths or patios, all the property of the insured and situated as stated in the schedule. Unless otherwise stated in the schedule, the buildings and outbuildings shall be constructed of brick, stone, concrete or metal on metal framework and roofed with slate, tiles, metal, concrete or asbestos.

Wordings are evolving and changing constantly. Latest examples of policy wordings can be found on the Addsure website.

More recently, the newer all risk wordings have made their debut where the building definition is similar although refer to exclusions rather than inclusions.

#### The CIA all risk Community Scheme policy refers to a building as:

Means buildings and all outbuildings thereto, constructed of brick, stone, concrete or metal on metal framework, roofed with slate, tile, concrete or any other material specifically stated in the schedule, and anything else permanently built, constructed or installed on your property that you own or are legally responsible for, and tenants fixtures and fittings (if stated in the schedule to be included), at the situation stated in the schedule.

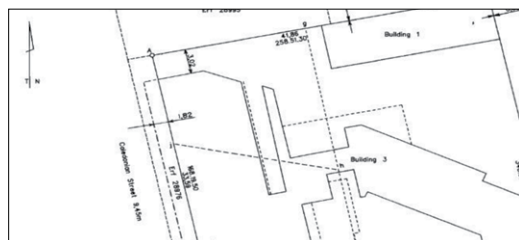
#### However, building does not include:

- Dam walls
- Hedges
- Above-ground portable swimming pools
- Marina, wharves, docks, jetties and pontoons used for commercial purposes or to provide fuel distribution facilities
- Mobile air conditioning units
- Gardens, plants, lawns, trees, gravel, pebbles, rocks, stones, soil, sand, bark or mulch except as covered under extra cover on page 13
- Any property belonging to tenants or for which they are responsible
- Unfixed, moveable floor coverings, curtains and window coverings inside a unit;
- A new building under construction



*Some important points should be noted from the insurance policy definition.*

*Note "...and situated as stated in the schedule." The risk address i.e. the physical address of the property itself will need to be correctly stated. If the buildings defined in a policy extend over to another property, or over a number of plots (or erven), take care to note all the erven as the insured properties, or at least to make sure that the address is clearly indicated. Take note of servitudes over municipal and/ or leased property. Encroachments are more common than one realizes.*



*In short, the buildings insured are the buildings at the risk address stated in the policy schedule.*

*Wooden structures or thatch need to be dealt with carefully. It cannot be assumed that wooden structures and thatch roofs will be automatically covered – they are not according to the definition above. Non-covered items such as thatch need to be dealt with separately i.e. the body corporate trustees need to make it clear to the insurer that the additional risks need to be covered or added to the policy, even if for an additional premium.*

*Looking at the STSM Act definition vs the typical policy wording definition, one can quickly see when one can fall short. Let's say that you as trustees send a sectional plan of a wooden building or even partly wooden to the broker/insurer and instruct them to place cover without anyone realizing that it is wooden. The buildings policy would be issued but at claims stage after a fire, there would be no cover.*

*Most insurers apply a loading to the rate if a thatch lapa is larger than 20sqm and closer than 4 metres to the building. Important - Owners with thatch lapas need to refer to their brokers/insurance for advice and find out the underwriting requirements under their specific circumstances.*

*More recently, certain leading underwriting managers have introduced "ALL RISK" type policy wordings which further impact on our understanding of the various definitions. In these policies, the wider definition of the building still remains, however, insurers are more specific as to which items are excluded from cover. What is the difference between "perils based policies" and "all risk policies" in the sectional title environment? It is the writers view that the perils based policy sets out what is defined as a claimable event and if the event which the insured experiences, matches that as defined, one has a claim. The insured needs to prove / show that the event occurred as defined in the policy wording.*

*The "All Risk" type policy on the other hand, defines damage and then excludes certain causes to that damage. Although the claimant (insured) must present his / her claim, the onus now rests on the insurer to disprove the claim rather than the onus being on the insured to prove the claim.*

*In a nutshell, the All Risk type policies offer much the same cover, the processes are much the same as a perils based policy, however, there may be circumstances not excluded which widens the possibility for a claim where sudden damage occurs.*

**The Sectional Titles Schemes Management Act, the regulations and the prescribed management rules** set out what needs to be covered. The Trustees, together with a suitably experienced and qualified insurance advisor need to ensure that the selected insurance product meets both the legislative/regulatory requirements as well as the actual needs of the community scheme.

*We have already unpacked the rules and regulations which impact on the insurance, however, we tabulate again below in a rough sketch to see how policies compare.*



Please note that this is an example and may not apply to your specific scheme:

Act / Regulation / Rule Requirement	Typical Building Policy	Note
Fire, lightning, explosion and smoke	Fire, lightning, explosion	
riot, civil commotion, strikes, lock-outs, labour disturbances	Covered under Sasria coupon	
storm, tempest, windstorm, hail and flood	Storm, wind, water, hail or snow	Retaining walls not covered or only conditionally covered Excludes wear and tear or gradual deterioration Excludes cover where process includes the application of water
earthquake and subsidence	Earthquake covered Subsidence often excluded	Earthquake could be limited Subsidence compulsory but either not covered or very limited in cover and/or expensive
water escape, including bursting or overflowing of water tanks, apparatus or pipes	Bursting or overflowing of water tanks, apparatus or pipes	Water escape could be problematic
impact by aircraft and vehicles	Covered more widely	
housebreaking or any attempt thereat	Damage to the buildings caused by break in is covered	

The 2016 rules and regulations will certainly need some tweaking and we expect amendments in due course.

Noticeable omissions include "Loss of occupation or loss of rent" in respect of insured events and the preamble in previous **PMR 29.(1)(a)** which included "subject to negotiation of such excess, premiums and insurance rates as in the opinion of trustees are most beneficial to the owners"

We also feel that "subsidence" should have been excluded from being compulsory and that "Accidental damage" should have been brought in.

It is thus recommended that these omissions be borne in mind and still considered.

Where subsidence is not covered, all owners should be made aware and the insurance brokers advice in this regard properly noted.

We have always used the analogy of a dolls house – shake it out, turn it upside down, and whatever stays intact, should be covered. More simply put, the buildings cover is intended to cover the owner/owners against sudden and unforeseen damage to the buildings (not contents) and improvements to the common property caused by an insured peril (as stated above) as long as the damage is not caused by wear and tear nor is of a gradual nature. There are conditions and exclusions but owners can have the comfort of knowing that presently, South African insurers offer community schemes very wide building (material damages) cover; much more than 20 years ago.





*Obvious dangers in basement areas, loose fittings etc. could hurt someone or cause damage to property or vehicles. The insurer would surely not be expected to honour claims where trustees are not taking reasonable care, or precautions to prevent loss*



*Dangerous electrical connections being used by body corporate employees on common areas - this aspect must be checked*



*Gas bottles should be stored correctly and safely*



*Wendy houses, storage areas being used by the body corporate should be kept safe and in order*



*Loose bricks, tiles, paving should be repaired immediately or at least cordoned off to prevent loss or injury*



*Slopes and stairways should have handrails per national building regulations*



*Slippery areas on common property should be attended to*



*Poorly lit driveways, underground areas or unmarked islands are a recipe for liability claims*



Liability Cover / Property Owners Liability



The “public liability” required is actually very simply put in the prescribed **management rule 26.3** and we repeat it for ease of reference and discussion:

**23.(6)** A body corporate must take out public liability insurance to cover the risk of any liability it may incur to pay compensation in respect of—

- (a) any bodily injury to or death or illness of a person on or in connection with the common property; and
- (b) any damage to or loss of property that is sustained as a result of an occurrence or happening in connection with the common property, for an amount determined by members in general meeting, but not less than **10 million rand** or any such higher amount as may be prescribed by the Minister in any one claim and in total for any one period of insurance.



Because the public liability pertains to the need to cover occurrences or happening on or in connection with the common property, the community scheme insurers have worded their policies accordingly and aptly named the liability cover “Property Owners Liability”.

Note that there is no mention of liability in respect of claims arising from economic losses. Liability cover is more specifically about loss or damage to property or injury, illness and resulting death.

The Liability (Property Owners Liability) is normally a section of an overall Community Scheme Policy or it may be a separate policy entirely.

Trustees Indemnity

In order to widen this cover to include losses occurring due to the errors and omissions of trustees, other than that covered by the liability cover, indemnity is extended as “trustees Indemnity”. This is either added as an extension to the liability section, a separate section of its own or even a separate policy.

Like the buildings policy, there are usually exclusions and subtle differences between the various policy wordings offered by the different insurers.

We recommend property owners liability wordings be carefully checked, ensure that Trustee indemnity is adequate and in place and that there are no further liability needs such as frail care responsibilities or gym equipment requiring cover beyond the usual common area needs.

<i>Liability policies typically protects the scheme against action brought against it in respect of:</i>	<i>Trustee Indemnity typically protects the scheme against action being brought against it in respect of:</i>
<i>Injury, Death, Damage related</i>	<i>Pure economic loss</i>

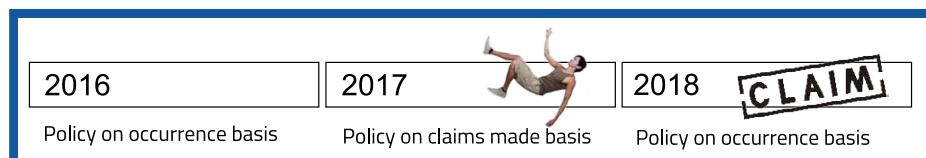
Very important when switching policies is the impact of whether a liability policy wording is on a “claims made basis” or on an “occurrence basis”.



In particular, if one switches from a policy on a “claims made basis” to a policy on an “occurrence basis” one needs to be sure that there were no potential claim occurrences leading up to the policy change date, and for at least three years prior to the change, maybe longer if prescription had been interrupted.

For example, If a policy switches inappropriately say to an occurrence basis wording and a claim is made after an incident occurred in a previous policy year on a different policy, it being a claims made worded liability policy, a large claim could “fall between the cracks”, i.e. not be covered.

*We set this out diagrammatically:*



Thus say the policy switched from a liability wording on a claims made basis in January 2018 to a policy on an occurrence made basis wording for 2018 and a claim needed to be made due to legal action being brought about from an incident which occurred the year before, there would be no claim.

CIA actually offers 3 year retro cover which deals with this, however careful advice is needed.

## Employers Liability

It is sometimes argued that it is not a direct requirement in terms of community schemes legislation, however, an injured “person” would surely include employees. We thus recommend that Employers liability also always be included. Defined events – Damages which the insured shall become legally liable to pay consequent upon death of, or bodily injury to, or illness of any person employed under a contract of service or apprenticeship with the insured, which occurred in the course of and in connection with such person’s employment, by the insured within the territorial limits and on or after the retroactive date shown in the schedule; and which results in a claim or claims first being made against the insured in writing during the period of insurance.

NB Community Schemes should see to it that all employees are registered with the Workman’s Compensation Commissioner. The body corporate’s insurance cover is “over and above” the compensation received from the commissioner (Refer Coida).

Any occurrence which could lead to a future liability claim should be immediately reported to the insurer and noted / recorded. Late notification to insurers very often result in the insurer rejecting a claim where the insurer can show that earlier notification to them could have resulted in some action/reaction or negotiation on their part and thereby reduced or prevented loss. More formally put - Where the insurer can show that they were prejudiced by the late notification, they will likely not accept liability. We will discuss this in more detail under the chapter on claims, “Claims made Simple”.

## Fidelity

The most significant recent change to community scheme insurance in respect of the new legislation, rules and regulations is the regulatory requirement (**CSOS regulation 15**) which sets out the minimum amount of Fidelity Cover required by all community schemes, great and small. Fidelity is now compulsory.

Simply put, all community schemes, including Bodies Corporate, HOAs, share block schemes, informal HOA associations, retirement villages etc. all need to arrange such cover to a minimum amount which is stipulated as the total of :

- (a) the community scheme’s investments and reserves at the end of its last financial year; and
- (b) 25 per cent of the community scheme’s operational budget for its current financial year.

**In other words, the intention is clearly:**

The amount of cash and savings and liquid assets the the scheme has, plus 25% of it’s annual expenses.



## Sub regulation 4 under Regulation 15 states that

### The insurance cover referred to in sub-regulation (1) must-

- (a) *provide for payment of a loss by the insurer to the community scheme within a reasonable period after reasonably satisfactory proof of the loss has been furnished to the insurer; and*
- (b) *not require that criminal or civil proceedings be taken or completed against the insured person before payment is made under the insurance policy.*

This means that the Fidelity cover cannot depend on the offending party to be proven guilty or having to wait for enough evidence to institute criminal charges against the perpetrator.

Presently, Sub regulation 5 alludes to an alternative cover arrangement; however, this is an error in the regulation in our view and should be ignored as an option. We have recommended to the authorities / CSOS board that this sub regulation be deleted. This option exposes community schemes to great risk.

### Bodies Corporate also need to consider prescribed Management Rule 23.7 which states;

*A body corporate must take out insurance for an amount determined by members in general meeting to cover the risk of loss of funds belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by a trustee, managing agent, employee or other agent of the body corporate.*

### So, reading CSOS regulation 15 in conjunction with PMR 23.7, there is no doubt that bodies corporate need to ensure that:

- (a) *A certain minimum amount of fidelity cover is in place according to the formula*
- (b) *The AGM then decides whether or not that minimum amount is adequate and directs the trustees accordingly*

There are various ways in which this aspect of cover can be dealt with but most importantly is to ensure that the body corporate / community scheme is receiving the correct advice and have obtained the most appropriate and reasonably priced premium for the cover offered.

We are recommending products which include an element of computer crime cover. Great care should be taken and written advice from the advisor / broker is important.

## 5. The Valuation and Schedule of Replacement Costs (SRV):

### Let us first understand Replacement Value

#### Replacement Value:

**This is the current cost to replace a building, i.e. to reinstate a property to its original state if completely destroyed. It excludes the value of the vacant land itself. The replacement value is usually determined by adding the estimated cost to replace the buildings (contract price), professional fees, demolition costs plus VAT.**

This has nothing to do with market value. Market Value, on the other hand is the price at which a willing buyer and a willing seller agree or would agree to transact a sale. The estimated market value would be determined by analysing recent sales in an area of similar properties and by taking current market conditions into account, estimate a price at which a certain property is expected to fetch if sold at a certain time. This includes the whole property, i.e. land and buildings or in the case of sectional title, the unit market value.





## Frequently Asked Questions (FAQ):

### Q: Why would the market values and replacement values likely vary?

**A:** A buyer may be willing to pay a premium for a particular property because, at that given time, there may be a shortage of properties in that area. For example, a house or sectional title unit in an area near primary and high schools, walking distance from a convenient store, near a public transport system, etc. may fetch a much higher price than the same house 10 kilometers away without those amenities nearby. However, the cost to replace those houses may be exactly the same.

### Q: Could the replacement value exceed market value?

**A:** Yes, it could. A property, particularly a property in an undesirable area or problem complex, may lack potential buyers. This forces sellers to settle for a much lower price than they may fetch, for example, if the crime rate in an area was reduced. The cost to replace a building is determined by the cost of materials, contractors' prices, professional fees, etc. which increases in line with building inflation, vs. a scenario where the market value decreases due to the deterioration of the area or property.

### Q: Could the replacement value vary from area to area as does the market value?

**A:** It could but if the factors are equal, the values to replace should be equal. In other words, if two properties are similar in size and specification, built on similar land and accessibility the same, equidistant from resources (delivery costs of materials and labour the same), the replacement value should be the same. However, the cost to replace would differ when comparing areas like Cape Flats and a cliff overhang near Noordhoek; the cost of materials and labour as well as construction costs will be more expensive in Noordhoek. Labour and material transport costs will be higher plus more equipment like cranes may be required at the Noordhoek site. Building costs also vary from place to place, e.g. on average, building costs in Cape Town may be higher than in Johannesburg at a given time. This is usually measured at a rate per square meter.

### Q: Do both Market Value and Replacement Value factor in the cost of the land?

**A:** No, the market value includes the value of the land and in the case of a sectional title unit, it includes that section plus its undivided share in the common property including the land. The replacement value excludes the land but will include foundations and services on the property.

### Q: Who determines market value and who determines replacement value?

**A:** The market value is, in reality, only determined when a sale takes place. Therefore, if there is not yet a concluded sale, the closest one can get is an estimated market value which you can obtain from someone who is familiar with, or has access to, property trends and recent sale prices in the area. Such a person would normally be a qualified estate agent and/or a property valuer who uses the same methodology. On the other hand, the replacement value must be determined only by someone suitably qualified to do so, such as a quantity surveyor or registered qualified property valuer. Such a person calculates, with prices and costs, the construction costs, professional fees and demolition costs with a view to determining what it would cost to put that same building back to its original state, if reduced to rubble.

### Q: What is the municipal valuation of the property in relation to the market valuation?

**A:** The municipal valuation is the value that the municipal authority places on the property with a view to charging that property a certain tax rate in relation to the municipal rates being charged. This may be determined in various ways, but presently the municipality assesses the market value at a certain point in time and pegs that rate for a period. These rates are intended to be as close to the estimated market value as possible but often differ substantially. Property owners who feel that the municipal value of their property is too high and exceeds market value, usually apply to the municipality to have their municipal value reviewed with a view to reducing their rates. Owners whose municipal values are well below estimated market value usually remain silent and enjoy the benefit of the municipal rate discount.



**Q: What is the bank valuation of the property in relation to the market valuation?**

**A:** *A mortgage lender or banker who provides property finance against the security of property will usually seek a very conservative market valuation. In other words, a banker would like to know the net price if they had to sell a property in a hurry, i.e. to realise their security. So, accounting for agents' commission and a slightly lower price to encourage a quick sale, one could expect a banker to base a lending value of approximately 80% of market value in a stable property environment.*

## Professional valuation

Determining the replacement value of a sectional title property is the responsibility of the trustees. This does not mean that trustees should try and estimate the values; it means that trustees should engage the services of a qualified valuer or quantity surveyor.

As already explained, the replacement value is the current cost to reinstate a property to its original state if completely destroyed. It excludes the value of the vacant land itself.

A registered quantity surveyor or valuer should value the property; preferably one which is familiar with sectional title and the needs of the sectional title insurance advisor.

The valuers who are familiar with sectional title are usually either valuers and managing agents themselves and/or are affiliated to NAMA (National Association of Managing Agents). Such a valuer should carry PI (Professional Indemnity) cover.

**A list of valuers can be found on the Addsure website [www.addsure.co.za](http://www.addsure.co.za).**

We believe, for the average size complex up to 50 units, a valuation should be undertaken at least every three years, as prescribed. Larger schemes should be valued more frequently. Most often than not, bodies corporate can negotiate an on-going service whereby the buildings get properly valued every three years but

annually updated with only a quick site visit by the valuer. Large schemes with 100 units or more, or R100 000 000 or more in value are probably best to be valued annually.

Especially in a Home Owners Association (HOA), we strongly suggest a valuation every three years or so. More often than not, HOA common areas and improvements are undervalued. Our experience has been that at claims stage, insurers often find HOAs which are hugely under insured and insurers do not hesitate to apply average. This means that the insurer will only pay a claim in proportion to the actual sum insured versus the actual true replacement value. In other words, if a building is only insured for 20% of the replacement value, the claim will only be paid out 20% of loss, less the excess.

A valuer who is experienced in sectional title, particularly one who has been coached in terms of Addsure's guidelines will understand the importance of certain important factors.

### Some examples of where we expect a valuer to check on:

- Whether the Exclusive Use Areas (EUAs) have any additional structures
- Whether garages are sections or EUAs and separately reflect as such
- Separately show the retaining walls and advise replacement costs accordingly
- Note any wooden structures or thatch coverings and show such measurements
- Note all swimming pools and, if possible, compliance issues
- Keep common property improvements such as guard rooms, parking decks, boundary walls, paving, squash courts separate as common area items so that building values are not "skewed".
- Any illegal structures or additions not provided for in sectional plans etc.



The valuer will provide a valuation report and a schedule of values. At the end of the day, three important separate figures are needed:

1. *The Replacement valuation as at Valuation Date*  
This is the actual cost to replace at the time of the valuation and needs to be considered when placing the insurance policy, that is, the date the policy incepts and/or renews.
2. *The Escalation/inflation figure for the period of insurance*  
This figure is not actually added to the basic sum insured but rather provided to the insurer to add as an escalation figure, in our example below, this figure of R1,399,620 (for the year) means that say the building is totally destroyed in month 8 for example, then eight twelfths of R1,399,620 is added to the sum insured to account for inflation during the period of cover.
3. *The escalation/inflation figure for the period of reconstruction and redesign.*  
Similar to the escalation figure above, however, commences from date the loss, accounting for inflation costs until the buildings are reinstated.



### A few references iro Valuations

List of Valuers – Addsure panel – [www.addsure.co.za/stationery/list-valuers.pdf](http://www.addsure.co.za/stationery/list-valuers.pdf)

List of Valuers – BCMTrac – [www.bcmtrac.co.za](http://www.bcmtrac.co.za)

Building Inflation Rates – [www.ber.ac.za](http://www.ber.ac.za) Contact to subscribe

Addsure Valuation Articles – [www.addsure.co.za](http://www.addsure.co.za) or google Addsure Blog subject

NAMA Affiliated Valuers – [www.nama.org.za](http://www.nama.org.za)

### Example Body Corporate Valuation Schedule as at 5th January 2017

Description	Area sqm	Rate per sqm	Total
9 Dwelling apartments	920	9,000	8,280,000
8 Garages	144	3,000	432,000
Tarred Area	250	350	87,500
Boundary Walls - precast	600	500	300,000
Retaining wall – swimming pool area			300,000
Foyer, stairwell and lifts			1,500,000
Swimming Pool			80,000
<b>TOTAL</b>			<b>10,979,500</b>
PLUS PROFESSIONAL FEES	12%		1,317,540
			12,297,040
DEMOLITION COST	4%		491,882
			12,788,922
VALUE ADDED TAX	14%		1,790,449
<b>REPLACEMENT COST AT INCEPTION DATE</b>			<b>14,579,371</b>
PLUS COST ESCALATION DURING PERIOD OF:			
(A) INSURANCE	0.80%	for	12 months
			1,399,620
(B) REDESIGN	0.80%	for	4 months
			511,328
(C) CONSTRUCTION	0.60%	for	6 months
			593,651
SUMMARY:			
<b>REPLACEMENT COST AT INCEPTION DATE</b>			<b>14,579,371</b>
<b>COST ESCALATION DURING:</b>	<b>PERIOD OF INSURANCE</b>		<b>1,399,620</b>
	<b>PERIOD OF RECONSTRUCTION AND REDESIGN</b>		<b>1,104,979</b>



## This brings us to the Schedule of Replacement Values (SRV).

In terms of prescribed rule 23.(4) a body corporate must prepare for each annual general meeting schedules showing estimates of —

- (a) the replacement value of the buildings and all improvements to the common property; and
- (b) the replacement value of each unit, excluding the member's interest in the land included in the scheme, the total of such values of all units being equal to the value referred to in **sub-rule 4(a)**.

The Schedule of Replacement values sets out the value of each unit separately in terms of the participation quota i.e. as a percentage of the building plus all improvements to common property. Put simply, a unit sum insured therefore equals the replacement value of a section plus its undivided share in the common property, excluding the land itself.

The intention of the schedule being presented at the A.G.M for approval is so that the owners approve or confirm the trustee's determination of replacement values. Some extra columns may be shown to further assist owners check their sums insured. For owners, the additional sums column is an area of focus. It is the column where an additional sum insured for the buildings and fixtures can be stated or requested by the owner for various reasons.

As explained above, the value of the buildings are usually determined by a valuer on behalf of the trustees and based on the standard finish as handed over by the developer. Owners may add further value and more finishes such as granite kitchen tops, laminate flooring, oak kitchens, expensive fitted cupboards, bathrooms and so on. Expensive finishes are the high cost of replacement area as far as claims go. If an owner checks the sum insured and feels that say R9,000 per square meter is too little, they can increase their sum insured by requesting the trustees or managing agent to do so. An additional R100,000 can cost as little as R10 per month extra, usually annualized and debited to the owner's levy statement once a year.

The Schedule of Replacement values (SRV) often arrives in the owner's letterbox (included in the A.G.M. pack) with an additional sum already reflected – how so? Usually the owner's bank has requested this, as well as having had the bank's interest noted in the policy. The owner gave the bank this power (power of attorney) when the bond was being registered. The owner "bonded" himself or herself in respect of the property to the bank.


Very often, and in fact most often, but not always, the replacement value is much lower than the market value. The bank will usually call for insurance to be the market value or price as the bank will be looking at covering their lending and do not have direct access to how values were determined or whether additional improvements have been made. As a default then, the bank instructs the broker or underwriting manager or insurer to increase sums insured accordingly.

The annual review of the replacement value schedule ahead of the Annual General Meeting is thus a good test time to make sure numbers are right. The owner can review the figure and if over insured, can request his or her bank to reduce accordingly. This would usually involve submitting a copy of the schedule to the bank which, if it includes a summary or indication of how values were determined, may satisfy the bank enough to reduce the additional sum.



Overleaf we set out an example of how we recommend that a Schedule of Replacement Values (SRV) be set out



<div>  <div> <b>Example Body Corporate</b>            Schedule of Replacement Values         </div> </div>								
As per valuation date - 05-Jan-17								
	Square M	Rate	Residential	Garages	Common Property	TOTAL		
Residential Sections	920	R 9 000	R 8 280 000			R 8 280 000		
Garage Sections	144	R 3 000		432 000		432 000		
Common Property					1 967 500	1 967 500		
Retaining Wall					300 000	300 000		
	1 064		R 8 280 000	R 432 000	R 2 267 500	R 10 979 500		
Professional Fees		12%	993 600	51 840	272 100	1 317 540		
Demolition Costs		4%	330 944	19 354	101 584	451 882		
VAT		14%	1 350 236	70 647	368 766	1 790 649		
Base Sum Insured			R 10 954 780	R 573 641	R 3 010 950	R 14 539 371		
Additional (Improvements / Insurance Certificates)			827 817	0	0	827 817		
<b>Total Sum Insured</b>			<b>R 11 822 597</b>	<b>R 573 641</b>	<b>R 3 010 950</b>	<b>R 15 407 188</b>		
<b>TOTAL SUM TO BE INSURED</b>						<b>R 15 407 188</b>		
Escalation						Insurance		
Inflation						Redesign & construction		
						R 1 399 630		
						R 1 104 979		

Section No.	Door No.	Floor Area	P.Q.	Residential Section Sum Insured	Additional Sum Insured	Total Section Sum Insured	Common Property	Total Unit Sum Insured
<b>RESIDENTIAL SECTIONS</b>								
1	1	120	11,2782	1 434 102		1 434 102	339 581	1 773 683
2	2	100	9,3985	1 195 085		1 195 085	282 984	1 478 069
3	3	100	9,3985	1 195 085		1 195 085	282 984	1 478 069
4	4	100	9,3985	1 195 085		1 195 085	282 984	1 478 069
5	5	100	9,3985	1 195 085		1 195 085	282 984	1 478 069
6	6	100	9,3985	1 195 085		1 195 085	282 984	1 478 069
7	7	100	9,3985	1 195 085		1 195 085	282 984	1 478 069
8	8	100	9,3985	1 195 085		1 195 085	282 984	1 478 069
9	9	100	9,3985	1 195 085	827 817	2 022 902	282 984	2 305 886
		920	86,4862	10 954 780	827 817	11 822 597	2 403 453	14 426 050
<b>GARAGE SECTIONS</b>								
10	Garage A	18	1,6917	71 705		71 705	50 937	122 642
11	Garage B	18	1,6917	71 705		71 705	50 937	122 642
12	Garage C	18	1,6917	71 705		71 705	50 937	122 642
13	Garage D	18	1,6917	71 705		71 705	50 937	122 642
14	Garage E	18	1,6917	71 705		71 705	50 937	122 642
15	Garage F	18	1,6917	71 705		71 705	50 937	122 642
16	Garage G	18	1,6917	71 705		71 705	50 937	122 642
17	Garage H	18	1,6917	71 705		71 705	50 937	122 642
		144	13,5336	573 641		573 641	407 487	981 128
<b>TOTALS</b>		1 064	100,0000	11 568 421	827 817	12 396 238	3 010 950	15 407 188

Once a year, just after the policy has renewed and issues for the new year of insurance, Addsure provides the managing agent or trustees with a letter summarizing the additional sums and estimated additional premium cost for the year. Addsure will also include 'debit advice' notes which can be used as vouchers when recovering cost of insurance from the applicable owners. Remember, the premium is already being collected, this is purely information so that accounting can be processed i.e. recoveries made for the year from the owners who have additional sums. The collected reimbursed premium can then be credited (posted) to the insurance expense account in the books of the body corporate so that insurance premiums stay within the budget. This is often overlooked.

The standardized SRV, as reflected on page 36, allows all to understand. If always set out in a certain format, notes, handouts and examples are easy to follow.

## 6. Insurance and the A.G.M.

The latest prescribed management rules set out the Order of Business for A.G.M.s which includes a few Insurance items for discussion, i.e.

- Approval of the SRV (Schedule of Insurance Replacement Values)

- Determination of the Extent of Insurance Cover:

- Liability (PMR 23(6))

- Fidelity (PMR 23(7))

- Additional Cover (PMR 23(8))



Approval of the SRV

The body corporate / trustees need to have referred to the latest replacement cost valuation and have checked that it was undertaken within the last three years. If not undertaken within last three years, it should have arranged such immediately so that the body corporate complies with **PMR 23.(3)**

This rule states that a body corporate must obtain a replacement valuation of all buildings and improvements that it must insure at least every three years and present such replacement valuation to the annual general meeting. Then one needs to ensure that the **Schedule of Replacement Values (SRV)** is in line with this most recent valuation. In other words, one should ascertain whether the insured sum per the SRV was escalated by at least the Building Inflation Rates.

So for example:

Last Valuation undertaken January 2015		R50,000,000
Building inflation (BER rates) average 2015	4%	R52,000,000
Building inflation (BER rates) average 2016	4.8%	R54,496,000
Figure used as Replacement Cost January 2017		R54,496,000

So one brings along the valuation dated January 2015 (R50,000,000) and explains this as how the figure of R54,496,000 on the SRV dated January 2017 was determined. The above figures need to be at hand. It is most important to keep accurate minutes of this section of the meeting. The minutes should clearly reflect that the chairperson stated how the replacement costs were determined, say as per above, and that all owners agree with the methodology and values. It should be noted that the chairperson explained the “additional sum” so that no owner can in future claim that that they did not understand the insurance schedule. Owners should be reminded of their right to increase the sums insured of their units.

Liability Cover

This has been explained more fully in an earlier chapter, however, a brief explanation of what liability is may need to be given to owners present at the A.G.M. The owners should be advised that **R10,000,000** is the minimum amount per prescribed management rules. State the amount of liability cover held e.g. “We presently have **R50,000,000** liability cover from CIA”. The owners need to decide on whether this amount stated is enough and vote on an amount agreed to.

Fidelity Cover

As we have explained in depth in an earlier chapter, it is at this point in the meeting that the meeting approves the minimum amount stated and/or agrees to an increase in this cover.

**The CSOS Act (Community Scheme Ombud Services Act) regulations set out the minimum, i.e.**

The sum of:

- (a) the community scheme’s investments and reserves at the end of its last financial year; and
- (b) 25% of the community scheme’s operational budget for its current financial year.

With this amount in mind, the general meeting will determine whether more cover is required.

Again, the trustees should engage with the advisors ahead of the AGM to ascertain anticipated premium costs which could be a deciding factor for additional fidelity cover.





## Additional Cover

Any items not prescribed, i.e. other cover may be arranged subject to owners approval by special resolution. A good example would be say a Golf Estate that seeks to insure golf carts.

## Insurance and The Managing Agent

Managing agents provide an important professional service. Aside from being the custodians of significant amounts of money, they also manage and advise on a wide range of property and para legal matters.

Errors and omissions are an unfortunate possibility in every professional individual's life, as nobody is exempt from human error. Sometimes these errors or omissions can cause financial loss to clients and for this reason professional indemnity cover is a necessity.



**PIMA (Professional indemnity for Managing Agents) is a professional indemnity product specifically designed for managing agents in South Africa.**

Besides professional indemnity, managing agents need to consider a few other risks to which they may be more exposed.

Computer Crime and Cyber liability are important areas of cover that should be considered. Managing Agents are also often appointed by the community schemes to control, manage and administer common areas and it is the extent to which they carry out these tasks or even supervise, which could affect the risks and/or liability. The managing agent's insurance advisor should be consulted in order to discuss the extent of the managing agents liability cover needs and see to it that they have cover extending to properties where they manage.

If a managing agent is employing staff on behalf of community schemes, it may also be prudent to consider Employment Practices Liability cover. This policy covers an employers' legal expenses and the awards made against it by the CCMA, Bargaining Councils and Labour Court for unfair labour practices such as unfair dismissal etc.

Managing Agents, who are not registered/authorized intermediaries themselves, should take care that they are not acting as or providing any intermediary services. NAMA has in fact been warned about the possibility of hefty fines and/or jail sentences against managing agents by the Financial Services Board, in this regard. Great care should be taken when drafting the managing agents agreement with client schemes in this regard as well.



## 7. About Geysers

Under previous prescribed rules, insurance rules guided us in respect of bursting or overflowing water tanks, apparatus or pipes, and with regards to the maintenance rule to direct us in dealing with geyser maintenance.

The basic interpretation of these rules was that a burst geyser will be covered by the body corporate's insurance but the maintenance or repair of a geyser was the owner's responsibility.



Strictly speaking this is correct, when a geyser bursts – which rarely occurs – it is covered by the body corporate's insurance but any maintenance related matter is for the owner's account. The most common interpretation was that geyser replacement due to wear and tear is also a maintenance issue as it amounted to

the replacement of a worn component of the building. Geyser replacements due to wear and tear should never be covered in terms of the rules, especially if they were not being properly maintained. For an insurer to send a loss adjuster out to each and every geyser claim simply did not make any financial sense.

Many of the insurers started to cover geysers due to owner expectation and subsequently included a maintenance section in their policy. This step allowed insurers to better control geyser insurance by way of excess and limits, and to manage underwriting of policies better.

### Has anything changed?

The new sectional title insurance rules and regulations do reflect quite a few changes with some of the previous insurance rules now situated in the regulations section.

Sectional Titles Scheme Management Act, **Regulation 3**, refers to other risks to be insured against. Of these, geysers are included as "water escape, including bursting or overflowing of water tanks, apparatus or pipes".

The wording of the new regulation concerns us as it is not clear – it starts with "...may insure..." i.e. it does not say "must insure". Now it also includes the words "water escape" which concerns us in respect of water pipes, as reputable and experienced insurers will not insure every instance of water escape. Sudden and unforeseen resulting water damage will still be covered as usual, as long as it is not as a result of wear and tear.

Previously, **rule 68** stated, among other things, "an owner shall.... maintain the hot water installation which serves his section, or, where such installation serves more than one section, the owners concerned shall maintain such installation pro-rata, notwithstanding that such appliance is situated in part of the common property and is insured in terms of the policy taken out by the body corporate."



The **new geyser maintenance rule (PMR 31)** states:

*"Notwithstanding that a water-heating installation forms part of the common property and is insured by the body corporate, a member must maintain, repair and, when necessary, replace such an installation which serves that member's section or exclusive use area; provided that where such an installation serves sections owned or exclusive use areas held by more than one member, the members concerned must share the maintenance, repair and replacement costs on a pro-rata basis".*

The inclusion of the words "... replace such an installation..." is interesting as it vindicates the interpretation from the old rule that **geyser replacement in the normal course is a maintenance issue rather than an insured event**.

A practical approach to the needs of a scheme is necessary. Every scheme has different dynamics and the trustees – guided by a competent broker – should really consider all factors concerning geyser insurance.

Underwriting manager FPA (First Property Acceptances) has been very successful in managing costs via their call centre and underwriting practices. Assisting with the problem right away also mitigates further loss and frustration. CIA (Commercial and Industrial Acceptances) has also lead the way in managing geyser claims and has done so for many years. CIA's advancement of their geyser claim system and sound underwriting has helped. New players offer a more proactive approach including assistance with anode replacement but this approach also has its challenges.

## How does an owner maintain his/her geyser?

The fact is, most geysers in South Africa can be maintained and should be. Besides a plumber doing a check on the components and checking on compliance, the anode needs to be replaced every year or so. This self-sacrificing anode is a rod that can be replaced. It sacrifices itself while protecting the geyser by preventing corrosion. Once completely sacrificed, it can no longer protect the geyser.



*New Anode vs: Sacrificed Anode*

Geysers which are serviced every 12 to 18 months will last far longer. We have seen evidence of this via claims history when comparing schemes which are proactive in this regard versus those whose geysers are never serviced. Prescribed rules or Sectional Title Regulations place an obligation on owners to maintain their own geysers. Essentially, this means owners should be doing far more in respect of loss prevention and maintenance. Geyser replacement accounts for a large portion of insurance claims.

## What can we expect going forward?

Geysers will remain a high claim item where insurers accept geyser replacement as an insured event and very little or no maintenance has been undertaken.

There are a few new technologies such as devices providing information about your geysers condition electronically and devices that switch off the water supply when a problem occurs. These preventative measures are good but come at a cost. These new systems coupled with some insurers efforts such as STILUS/ ONE who are being proactive by incorporating anode replacement in the process of underwriting, should assist in reducing claim costs in the long term.



## 8. Claims Made Simple

Prescribed / Standard Management Rules spell out that no document signed on behalf of a body corporate is valid or binding unless signed by two trustees or one trustee and the managing agent.

This implies that in order for a claim to be valid and binding, the claim form must be signed by these persons. Not always easy, hence some managing agent contracts provide for the delegation of this to the managing agent. Where does this leave call centre claim systems? Difficult, as technically one could argue that call centres do not fit in with sectional title legislation at this stage. However, one needs to take great care that a managing agent does not start providing “intermediary services” in conflict with FAIS legislation.

Presently, the sectional title industry is sitting somewhere between properly signed claim forms, call centres and new technologies such as form fill claim forms, claims applications or “apps” on mobile devices and websites.

If claims are submitted properly, i.e. on a properly prepared claim form via the trustees / managing agent / broker, a good broker / insurance advisor can properly advise and filter claims so that claims are submitted correctly and efficiently (i.e. properly completed and in order). Incorrectly completed claims often result in repudiation where claims should have been admitted. A good broker coaches and assists clients in the process.

There are plus factors for call centres, fast reporting, mitigation of further losses in some cases, paperless and easy. There is also the argument that owners have a right to claim. Of course they do, but via the body corporate. The owner is not the insured, but they have a right. Indeed, policy definitions might say otherwise, but the insured is the body corporate and the body corporate needs to manage its own policy.

We feel that geyser call centres and claim apps are perfectly acceptable as owners are responsible for geyser maintenance in any event.

To put it in perspective, the owner involved in a claim with regards to damage to his/her section provides the body corporate with the evidence i.e. proof of the claim and signs as such. A blank claim form should be easily available to the owner for this purpose. The claim form should be completed in the hand of the owner (person providing the evidence / proof) and then given to the trustees or managing agent as soon as possible together with invoices / quotes / damage report and photos, in support of the claim. The trustees or managing agent then see to it that the responsible signatories validate the claim and submit to the insurer, usually via the broker. The managing agent acts as “post office”.

The insurer will then either immediately admit the claim, or if larger, appoint at their discretion an assessor/loss adjuster to verify the claim on behalf of the insurer.

Claims must usually be submitted within 30 days of a claimable event taking place – usually a standard condition of the policy.



Once submitted, the process is very quick, provided all proof of claim is correctly collated and the claim form properly completed and signed. In many cases, the insurer will settle the claim straight away, often within 48 hours. Larger or more complex claims usually require the appointment of a loss adjuster. This appointment of the loss adjuster can also happen within a short period but sometimes such claims can take longer than expected. This will certainly be the case where contractors are required to verify quotes, resubmit specifications etc. and then of course, the loss adjuster prepares a report for the insurer with his / her recommendations.

Once finalized, the insurer will either pay a claim, pay a negotiated adjusted claim settlement amount or reject the claim.

The body corporate is the insured as far as the insurer is concerned. Any disagreement or dispute from an owner's point of view would need to be taken up by the body corporate on that owner's behalf. If the body corporate disagrees with that owner, it is the writer's opinion that the dispute is then between the owner and the body corporate, not the individual owner and the insurer. The trustees do need to maintain control, in the interests of all owners, however, the individual owner needs to be aware of his/her rights and the procedures to follow when he or she feels wronged. A good insurance advisor can often informally mediate and assist in this process.

We suggest that each body corporate set up their own claims procedure to suit the needs of their own environment. Some bodies corporate have estate managers, others managing agents and some are self-managed.



### Some examples of usual claimable vs non-claimable events:

Damage to the building which occurred suddenly and unforeseen and directly by events as listed below may typically be claimable:

- Fire, lightning, explosion
- Wind, hail, storm, snow
- Burst pipe – not as a result of wear and tear
- Burst hot water cylinder
- Impact such as a car colliding with gate / wall
- Accidental damage, e.g. spillage of paint on carpets
- Flood, sudden water damage
- Damage caused as a result of break-in

***Damage or losses caused as a result of wear and tear, ageing, maintenance related, occurring over a period of time would ordinarily not be covered.***

### Typically, the following common losses ARE NOT ordinarily covered:

- Water penetration over time caused by failing waterproofing
- The failed / worn waterproofing itself
- Water damage occurring “whenever it rains” due to leaking balcony from flat above
- Damage to ceilings, over time, due to bath trap or shower above leaking
- Damage to pipes, seeking the leak and repairs where pipes are old, rusty, leaking, have pinholes (corrosion).
- Leaking pipes not as a result of bursting e.g. waste or drain pipes (not under pressure)
- Cracks appearing in tiles and walls unrelated to any specific claimable event
- Damp



- Seeping of water, dampness, mould as a result of leaking pipe or pipe with "pinholes"
- Rain damage as window sill not waterproofed properly
- Damage resulting from poor workmanship
- Damage to a car after wind causes a roof tile to be lifted and fall
- Damage to an owner's contents following a storm, fire, etc.
- Damage caused by tree roots growing into pipes over time



Parts of the building may not be covered nor fall within the definition of buildings, e.g. thatch, canvass awning, signage, certain glass fronts, retaining walls, garden features, wooden decks and balustrades, etc. Note that theft from the buildings, i.e. theft of copper pipe, gate motors, cameras, air conditioner parts etc would also not be covered as a default. Theft cover is not a requirement in terms of prescribed rules however, can be requested. Trustees and owners need to be aware and enquire as to what may or may not be covered against theft.

## BURST PIPES VS SLOW LEAKS, DAMP OVER TIME

We summarise as follows:



Insert 1.

### BURST PIPE WITH RESULTING DAMAGE

*After the claim is proven, the insurer should pay for the entire repair including damaged pipe as well as the reinstatement, e.g. re-tile and replace any other resulting damaged areas such as ceilings damaged, carpet damaged, etc.*



Insert 2.

### DETIORATED PIPE, SLOW LEAK, DAMP OVER TIME

*Not an insurance claim – no sudden water damage, loss caused by deterioration.*

*Gradual deterioration, wear and tear usually excluded.*



Insert 3.

### DETIORATED PIPE, BUT SUDDEN "COLLAPSE" OF PIPE – SUDDEN APPEARANCE OF WATER, RUNNING WATER, POOL OF WATER, FLOW OF WATER

*Insurance will usually only pay for the resulting water damage, e.g. the ceiling in flat below that was SUDDENLY damaged. The location of the leak, and the repair and re-tile, etc. – the cost of this part will be for the owner's account or if this happened on common property, for the body corporate's account.*

*It can be argued that the insurer need not even pay for the resulting damage where the cause was wear and tear related. It is, however, generally accepted that the resulting damage caused by SUDDEN flows of water will be admitted.*



Examples of Burst Pipes



## Liability Claims

Typical examples would be legal claims being made against the body corporate for damages resulting from a gate closing on a car, a boom dropping on a car, roof tiles falling on property or vehicles below, acidic water dripping on cars, windows falling on vehicles, injury resulting from slip and fall, damage to property or clothing after a fall, etc.

Liability insurance cover forms part of the general insurance system of risk financing to protect the insured (the Body Corporate) from liability imposed by legal action and similar claims. It protects the insured in the event that they are sued for claims that come within the coverage of the insurance policy.

Prescribed management rules under sectional title rules and regulations and most HOA constitutions or Memoranda of Incorporation (MOI) set out the liability cover requirements of the community scheme.

Without going too much into the insurer's duties and rights, basically, when a claim is made, the insurer has the duty and right to defend the insured and/or settle up to the claimed amount or indemnity limit (amount of cover). There are sometimes other actions for the insurer to follow, but in principle, the insurer's position is to step in and take the place of the insured with a view to taking the most appropriate course of action to protect and/or indemnify the insured.

### **This is where there is often a misconception.**

Very often trustees, owners and complainants think that the community scheme will simply have their insurer settle the claimant's loss as if the damage or loss was a normal building damages claim. This is not so.

It is a legal matter rather than a straightforward insurance claim and the trustees need to take care not to admit liability or lead the claimant to believe that the loss will be covered by the scheme's policy of insurance.

In a nutshell, the insurer protects its client (in this case the community scheme), not the other party or complainant.

We always suggest to trustees or estate managers or portfolio managers that whenever such an incident occurs, the insurance advisor or broker handling the claims should be advised immediately in writing with a summary of the event. As soon as the aggrieved party demands compensation or demands action on the part of the scheme, they should advise the complainant to put their demands in writing together with the amount of the loss, justification of the cost, reasons for holding the defendant (community scheme) liable and address such demand in writing to the board of trustees. No further discussion or correspondence should be entered into between the insured and the complainant. NEVER hand the complainant a claim form. ONLY the body corporate and delegated management should intimate any claim and complete any claim documentation. Also, never try to recover any excess or part payment or costs. Leave everything to the insurer so as not to prejudice any of the insurer's rights.

Once such letter of demand is received, albeit an email, letter or formal letter of demand or summons from the complainant's attorney, it should be forwarded without any delay to the insurer so an appropriate and immediate response can be effected.

Any further correspondence received by the BC or HOA from the claimant should be immediately re-directed to the insurer without responding to the claimant.

The insurance advisor will usually advise the complainant upfront to at least advise his or her own insurer of the loss so that he or she can recover their loss from their own insurer, as they should have done in the first place. This step, carefully and diplomatically dealt with by an experienced and qualified advisor can often prevent unnecessary delays, as well as additional administration and legal costs. Most insurers prefer the advisor to steer well clear of any engagement with the complainant as the legal matter is between complainant (aggrieved party) and the insurer (for the scheme and with cooperation and assistance of the scheme).



In summary, the body corporate is the insured. The STSM Act, Regulations and the rules as well as prescribed rules put the responsibility of managing the insurance with the trustees. Claims should in reality, flow via the trustees and/or their delegated managing agent so that a certain measure of control / claims management structure is in place. Trustees should not decline claims per say, however, can prevent unnecessary claiming if something is clearly not a claim, e.g. repair of roof needing fresh waterproofing material.

It is suggested that a claims procedure be communicated to owners so that owners understand what they should do when a claimable event arises.

## 9. Technology and Insurance

Technological advances are having a huge positive impact and it is almost becoming old fashioned to be sent a blank claim form to complete.

At the very least, clients expect to receive a “form fill” type claim form, preferably partially completed with at least policy numbers pre-populated. Such forms are often available from the insurers, insurance broker’s and/or the managing agent’s website.

The phrase “Pictures tell a thousand words” has been coined in more recent articles and so true when one considers the fact that almost everybody carries a camera phone, usually of excellent quality. Documents and the scene of the event can be instantly photographed and sent to the appropriate person handling the claim. Even a physically completed claim form can be photographed and submitted.

“Apps” have developed and are downloadable claim tools often supplied by insurers and/or brokers.

Web based software packages such as [ATON](#) and [BCMTrac](#) offer claims management, live tracking and faster service to managing agents and schemes.

Insurer websites and more software packages are starting to provide online tools and applications to make the claims process faster and more efficient.

Information, training, advice and articles are being distributed via websites, webinars, social media and such software products. Information and communication is becoming ever more efficient. Examples are short answer emails to questions with links to further information pointing to appropriate articles on websites.

Records of Advice, policy information, schedules of replacement values and so on can be uploaded to websites of schemes or to cloud based software such as BCMTrac and made available under certain secured access. E.g. trustees get to see Letters of Advice (LOAs), Owners get to see Schedules of Replacement Values (SRVs) etc.

Insurers are investing in smart devices linked to geysers which can mitigate claims. Insurers will also be able to better manage their risks by “logging in” to scheme software (where permitted of course), with a view to checking on certain matters such as maintenance and past records pertaining to claims.

It is the writers view that technology will and is already playing an ever-increasing role in managing claims, policy administration and underwriting. More importantly, technology will go a long way to mitigate claims in future.



## 10. Trustees Responsibility

The trustees, or scheme executives as referred to in the Community Schemes Ombud Services (CSOS) Act, have a duty, among other duties, to take reasonable steps to obtain sufficient information and advice about all matters to be decided by the scheme executives to enable



him or her to make conscientious and informed decisions. They also need to be informed and educated in respect of the scheme, its activities and the schemes governance and legislation documentation.

It follows then that insurance advice as discussed in this booklet, forms an important responsibility of the trustees as well, i.e. to ensure that it is obtained.

This booklet forms part of the advice process and is intended to provide the additional information and education as alluded to in the CSOS Act (Section 14).

Trustees should seek the advice of professionals in most respects, insurance being one such instance.

It is the view of the writer that the Independent insurance Advisor plays a critical role in bringing written advice, information and comparative quotes and analysis, at least annually, to assist trustees acquit their duties responsibly.

Buildings need to be insured to full replacement value. This means regular valuations and proper preparation of Schedules of Replacement Value.

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