

PoPIA information officer clarity for community schemes

The implementation of the Protection of Personal Information Act (PoPIA) has posed numerous challenges for community housing schemes like sectional title complexes, apartment blocks, residential estates and retirement villages. Issues around the appointment of an information officer, in particular, raised serious concerns, which have now been clarified and resolved by the Community Schemes Ombud Service (CSOS).



Marina Constanas, specialist sectional title attorney and director, BBIMLaw

The pressure is off community scheme stakeholders like sectional title trustees and homeowners association directors as the information regulator has now agreed that a managing agent can be nominated as the information officer for more than one scheme.

For PoPIA compliance, every community scheme must have an information officer who is the PoPIA oversight representative of the scheme. The Information Regulator's initial stipulation that the information officer must be an employee of the community scheme caused confusion and agitation.

The Information Regulator stated in a guidance note: 'Any person authorised as an information officer should be at an executive level or equivalent position. This means that only an employee of a private body at a level of management and above should be considered for authorisation as an information officer of that body'.

However, a community scheme does not have employees at executive or managerial level. A community scheme does not have an operational structure. The trustees and directors are not employees.



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Onerous and time consuming

The role of information officer would almost certainly be too onerous and time consuming for community scheme board

members who are not paid for their services, have regular jobs, and do not have the requisite time, inclination nor skill to protect data. The boards of community schemes are made up of people who, by and large, do not have the requisite skills to be an information officer.

Community schemes are very different private bodies to other fully operational juristic businesses, and so the appointment of the information officer would be very different.

Seeking clarity, myself and a group of stakeholders met Community Schemes Ombud Advocate Boyce Mkhize and highlighted these and other issues. We discussed our concerns around the information regulator not recognising that a senior managing agent should be allowed to be appointed as the information officer of more than one scheme. We highlighted the fact that since community schemes contract the operational and day-to-day management of the scheme to a managing agent, a senior individual at the managing agency would be the most appropriate choice for an information officer.

After CSOS put the matter to the regulator, it was agreed that a managing agent can be nominated as the information officer for more than one community scheme. CSOS recommends that a written agreement be put in place between the community scheme and the managing agency company if an employee of the managing agency is acting as information officer. However, the scheme executives are still ultimately responsible and will be held accountable in respect of the PoPI Act.

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