

**STBB’s REFERENCE GUIDE TO THE SECTIONAL TITLES SCHEMES MANAGEMENT ACT  
For Managing Agents, Trustees, Owners and Property Practitioners**

*In this, the forty-ninth set of notes for your STSMA Reference Guide, Prescribed Management Rule 28 is discussed.*

<b><u>PRESCRIBED MANAGEMENT RULE 28 – PART 6: ADMINISTRATIVE MANAGEMENT – EXECUTIVE MANAGING AGENTS AND MANAGING AGENTS</u></b>	<b><u>REFERENCES &amp; SEARCH WORDS</u></b>	
<p>One of the newcomers in the STSMA is that of the introduction of an “executive managing agent” as opposed to a “managing agent”. The difference lies in the extent of the responsibilities bestowed on the agent. Generally the executive managing agent literally steps into the shoes of the body corporate and fulfills all the functions ascribed to that body, whilst the managing agent fulfills only a limited amount of tasks (see PMR 28(5)).</p>		
<p>The appointment of an executive managing agent does mean that trustees are no longer required. However, due to the fact that the executive managing agent takes on the role and responsibilities of the trustees, it is unlikely to be necessary to have more than the minimum required number of trustees.</p>		
<p><b>PMR 28(1) and (2)</b></p>	<p>The members of the body corporate may, by special resolution, appoint an executive managing agent.</p> <p>Alternatively, members entitled to 25% of the total quotas of all sections within the scheme may make an application to the Community Scheme Ombud Service for the appointment of an executive managing agent.</p>	<p>Appointment of exec managing agent</p>

**PMR 28(3)**

Stepping into the shoes of the trustees, the executive managing agent is subject to all the duties and obligations that the Act imposes on trustees, and such an agent:

- must manage the scheme with the required professional level of skill and care;
- is liable for any loss suffered by the body corporate as a result of not applying such skill and care;
- has a fiduciary obligation to every member of the body corporate;
- must arrange for the inspection of the common property at least every six months; and
- must report at least every four months to every member of the body corporate on the administration of the scheme. (See also PMR 28(4) below.)

Duties of exec managing agent

**PMR 28(4)**

The reports that the executive managing agent must provide to the body corporate every 4 months (see PMR 28(3)), must include at least the following details:

- proposed repairs to and maintenance of the common property and assets of the body corporate within the next four months;
- matters the executive managing agent considers relevant to the condition of the common property and the assets of the body corporate;
- the balance of each of the administrative and reserve funds of the body corporate on the date of the report and a reconciliation statement for each fund; and
- for the period since the appointment of the executive managing agent or from the date of the last report-
  - (i) the expenses of the body corporate, including repair, maintenance and replacement costs; and
  - (ii) a brief description of the date and nature of all decisions made by the executive managing agent.

Exec managing agent to provide reports

Regularity of reports

<p><b>PMR 28(5)</b></p>	<p>A managing agent may otherwise be appointed to perform specified financial, secretarial, administrative or other management services under the supervision of the trustees.</p> <p>For such an appointment, the trustees must pass an ordinary resolution or otherwise, must appoint such agent if a registered mortgagee of 25% in number of the primary sections; or a resolution of members so require.</p>	<p>Appointment of managing agent</p>
<p><b>PMR 28(6)</b></p>	<p>The agreement appointing the managing agent and/or executive managing agent must comply with the requirements set out in the regulations. See <a href="#">PMR 9</a> and PMR 28(7) below.</p>	<p>Requirements of agreement to appoint managing agent</p>
<p><b>PMR 28(7)</b></p>	<p><i>Cancellation of management agreement</i></p> <p>The management agreement may not be for longer than three years and may be cancelled, without liability or penalty, despite any provision of the management agreement or other agreement to the contrary-</p> <ul style="list-style-type: none"> <li>a) by the body corporate on two months' notice, if the cancellation is first approved by a special resolution passed at a general meeting, or</li> <li>b) by the managing agent on two months' notice.</li> </ul>	<p>Cancellation of managing agent agreement</p>
<p><b>PMR 28(8)</b></p>	<p><i>Non-renewal of agreement</i></p> <p>The body corporate or trustees may by ordinary resolution cancel the management agreement in accordance with its terms or refuse to renew the management agreement when it expires.</p>	<p>Non-renewal of agreement with managing agent</p>

CONTACT US

- CAPE TOWN Tel: 021 406 9100
- SOMERSET MALL Tel: 021 850 6400
- TYGER VALLEY Tel: 021 943 3800
- FOURWAYS Tel: 010 001 2632
- CLAREMONT Tel: 021 673 4700
- STELLENBOSCH Tel: 021 001 1170
- MENLYN Tel: 012 348 1682
- CENTURION Tel: 012 001 1546
- FISH HOEK Tel: 021 784 1580
- BLOUBERG Tel: 021 521 4000
- ILLOVO Tel: 011 219 6200
- BEDFORDVIEW Tel: 011 453 0577