

## SCHEDULE 2

**1989: Regulations in terms of section 11 / 6. (a) Subject to paragraph (b), a developer shall, prior to the alienation of any housing interest, appoint a managing agent in terms of a management agreement, which agreement shall specify the management fee and the manner in which the managing agent shall manage the housing development scheme.**

6. (a) Subject to paragraph (b), a developer shall, prior to the alienation of any housing interest, appoint a managing agent in terms of a management agreement, which agreement shall specify the management fee and the manner in which the managing agent shall manage the housing development scheme.

(b) A managing agent shall be appointed for a year at a time, and unless the developer or body corporate in the case of a development scheme, or a share block company in the case of a share block scheme, or management association, as the case may be, notifies the managing agent to the contrary, such appointment will be automatically renewed for a year at a time from year to year.

**Note:** Regulations 7 to 14 must be read in conjunction with GN R1349 of 14 June 1991.

### **Regulations / Housing / HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT 65 OF 1988 / REGULATIONS / GNR.1351 of 30 June**

**1989: Regulations in terms of section 11 / 7. (a) With effect from the date on which a developer first alienates a housing interest to a purchaser, there shall be deemed to be established for that housing development scheme, a management association, of which the developer and such purchaser are members, and every person to whom thereafter a housing interest is alienated shall be a member of that management association.**

7. (a) With effect from the date on which a developer first alienates a housing interest to a purchaser, there shall be deemed to be established for that housing development scheme, a management association, of which the developer and such purchaser are members, and every person to whom thereafter a housing interest is alienated shall be a member of that management association.

(b) The management association shall be responsible for the enforcement of the rules, referred to in regulation 9 (1) (o), and the control and administration and management of the housing development scheme, the accommodation, the land, the common property, facilities and services for the benefit of all members.

(c) The provisions of the Companies Act, 1973 (Act No. 61 of 1973), shall not apply in relation to the management association.

(d) The management association shall have perpetual succession and shall be capable of suing and being sued in its corporate name in respect of—

- (i) any contract made by it;
- (ii) any damage done to the land, the common property or facilities;
- (iii) any matter in connection with the housing development scheme, the land, the common property, facilities or services for which the management association is responsible; and
- (iv) any matter arising out of the exercise of its powers or the performance or

non-performance of its functions under this Act or any rules referred to in regulation 9 (1) (o).

**Regulations / Housing / HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT 65 OF 1988 / REGULATIONS / GNR.1351 of 30 June 1989: Regulations in terms of section 11 / 8. (1) Subject to any restriction imposed or direction given at a general meeting of members, it shall be the duty of the management association—**

8. (1) Subject to any restriction imposed or direction given at a general meeting of members, it shall be the duty of the management association—

- (a) to insure the building or buildings relating to the housing development scheme and keep it insured to its replacement value against fire;
- (b) to insure against such other risks as the members may by special resolution determine;
- (c) to maintain the common property and all accommodation and to keep it in a state of good and serviceable repair;
- (d) to comply with any notice or order by any competent authority requiring any repairs to or work in respect of the relevant land or buildings;
- (e) To ensure compliance with any laws relating to the common property or to any improvement on land comprised in the common property;
- (f) control, manage and administer the common property for the benefit of all members;
- (g) keep in a state of good and serviceable repair and properly maintain the plant, machinery, fixtures and fittings, including elevators, used in connection with the common property;
- (h) subject to the rights of the local authority, maintain and repair, including renewal where reasonably necessary, pipes, wires, cables and ducts existing on the land and capable of being used in connection with the enjoyment of more than one accommodation or of the common property;
- (i) on the written request of any member or registered mortgagee, in respect of a housing interest to produce to such member or mortgagee, or any person authorized in writing by such member or mortgagee, the policy or policies of insurance effected by the management association and the receipt or receipts for the last premium or premiums in respect thereof;
- (j) to enforce the rules referred to in regulation 9 (1) (o); and
- (k) to keep a register of members in such manner as the management association decides.

(2) The management association shall for the purpose of effecting any insurance under subregulation (1) (a), be deemed to have an insurable interest in the replacement value of the building and shall, for the purpose of effecting any other insurance under that subsection, be deemed to have an insurable interest in the subject matter of such insurance.

**Regulations / Housing / HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT 65 OF 1988 / REGULATIONS / GNR.1351 of 30 June**

**1989: Regulations in terms of section 11 / 9. (1) Subject to any restriction imposed or direction given at a general meeting of members, the management association shall have the power—**

9. (1) Subject to any restriction imposed or direction given at a general meeting of members, the management association shall have the power—

- (a) to establish for administrative expenses a levy fund sufficient in the opinion of the management association for the repair, upkeep, control, management and administration of the housing development scheme, accommodation, land, common property, and the building or buildings relating thereto, including a reasonable provision for future maintenance and repairs, for the payment of rates and taxes, for the supply of electric current, gas, water, fuel and sanitary and other services to the building and land and any premiums of insurance, and for the discharge of any obligation of the management association;
- (b) to require from the members whenever necessary, to pay the levy for the purposes of satisfying any claims against the management association;
- (c) to determine from time to time the amounts to be raised for the purposes aforesaid;
- (d) to raise the amounts so determined by requiring the members to pay the levy in terms of regulation 14;
- (e) to open and operate a current account and a savings account with a banking institution or a building society;
- (f) to appoint employees as it may deem fit;
- (g) to purchase, hire or otherwise acquire movable property for purposes of the operation of the housing development scheme;
- (h) to expand the facilities and services;
- (i) to borrow money required by it in the performance of its duties or the exercise of its powers;
- (j) to secure the repayment of money borrowed by any manner permitted in law, including the cession of any unpaid levies whether due and payable or not, or by suretyship or by encumbering any property vested in the management association;
- (k) to invest any money of the fund referred to in paragraph (a);
- (l) to enter into an agreement with the local authority or any person or body for the supply to any building and the land of electric current, gas, water, fuel and sanitary and other services;
- (m) to enter into an agreement with any member for the provision of amenities or services by him to the accommodation relating to such housing interest or to the member or occupier thereof;
- (n) to do all things reasonably necessary for the enforcement of the rules referred to in paragraph (o) and the control, management and administration of the common property;
- (o) to make rules for the conduct of members, which rules shall not be in conflict with the Act or a regulation, shall be reasonable, and shall apply equally to all members in respect

of accommodation put to substantially the same use;

- (p) to appoint a committee of the management association, which, subject to the directions of the management association, shall exercise all the powers and perform all the functions conferred upon it by the management association and which committee shall meet and conduct its affairs as the committee may from time to time decide; and
- (q) to prohibit the transfer or any alienation of any housing interest unless any levy or other money due to the management association in respect of the housing interest concerned has been paid or provision has been made to the satisfaction of the said management association for the payment thereof.

(2) Any contribution levied under any provision of subregulation (1) shall be due and payable on the passing of a resolution to that effect by the management association and may be recovered by the management association by action in any court including any magistrate's court of competent jurisdiction, from persons who are members at the time such resolution is passed.

(3) The management association shall on the application of a member or any person authorised by such member certify in writing—

- (a) the amount determined as the contribution of that member;
- (b) the manner in which such contribution is payable;
- (c) the extent to which such contribution has been paid by that member; and
- (d) the amount of any rate paid by the management association and not recovered by it.

(4) The management association shall have the right to assign or cede to the managing agent any of its rights and duties in terms of these regulations.

(5) All general meetings other than the annual general meeting of the management association shall be called special general meetings and annual general meetings shall be held once every year: Provided that not more than 15 (fifteen) months shall elapse between the date of one annual general meeting and that of the next.

(6) At all meetings of the management association matters shall be determined by a simple majority vote of those present in person or by proxy and a member shall, on a show of hands have one vote, or on a poll, one vote for each housing interest alienated to such member.

(7) (a) The management association shall determine the matters relating to meetings of members and proceedings at such meetings, and until such determination the following shall apply—

- (i) at least 14 (fourteen) days notice of every general meeting, specifying the place, within the magisterial district where the housing development scheme is situated, the date and hour of the meeting, and in the case of special business the general nature of such business shall be given in that notice to all members, the developer and the managing agent:
- (ii) the following business shall be transacted at an annual general meeting—
  - (aa) the approval with or without amendment of the budget referred to in regulation 12 (1);
  - (bb) the election of the committee referred to in subregulation (1) (p);
  - (cc) any special business of which due notice has been given; and

(dd) the determination of the *domicilium citandi et executandi* of the management association.

(b) No business shall be transacted at a general meeting unless a quorum of members is present in person or by proxy at the time when the meeting proceeds to commence business, and a quorum shall be at least one member and one representative of the developer, or two members.

(c) The chairman of the committee envisaged in subregulation (1) (p) shall preside at every general meeting of the management association.

**Regulations / Housing / HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT 65 OF 1988 / REGULATIONS / GNR.1351 of 30 June 1989: Regulations in terms of section 11 / 10. A developer shall convene a meeting of the members of the management association, not later than 60 (sixty) days after the establishment of the management association, at which meeting he shall furnish the members with a certificate from the local authority within whose jurisdiction the land is situated, to the effect that all rates and taxes due in respect of the land up to the date of the establishment of the management association have been paid.**

10. A developer shall convene a meeting of the members of the management association, not later than 60 (sixty) days after the establishment of the management association, at which meeting he shall furnish the members with a certificate from the local authority within whose jurisdiction the land is situated, to the effect that all rates and taxes due in respect of the land up to the date of the establishment of the management association have been paid.

11. As from the date of establishment of the management association the rights and obligations of the developer arising from the management agreement shall be deemed to have been assigned to the management association.

**Regulations / Housing / HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT 65 OF 1988 / REGULATIONS / GNR.1351 of 30 June 1989: Regulations in terms of section 11 / 12. (1) The management association shall prepare, or cause to be prepared, for each fiscal year of the management association, a detailed budget of expected income and expenditure of the management association, in connection with the proper control and operation of the relevant housing development scheme, for the following year, including a reasonable provision for future maintenance and repairs, and shall have such budget approved at the management association's annual general meeting.**

12. (1) The management association shall prepare, or cause to be prepared, for each fiscal year of the management association, a detailed budget of expected income and expenditure of the management association, in connection with the proper control and operation of the relevant housing development scheme, for the following year, including a reasonable provision for future maintenance and repairs, and shall have such budget approved at the management association's annual general meeting.

(2) The budget for each fiscal year shall be made available to all members of housing interests at least 14 (fourteen) days prior to the date of the management association's annual general meeting.

**Regulations / Housing / HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT 65 OF 1988 / REGULATIONS / GNR.1351 of 30 June 1989: Regulations in terms of section 11 / 13. The rate of interest for the purposes of section 8 (1) (a) (i) of the Act, shall be the rate of interest prescribed from time to time in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).**

13. The rate of interest for the purposes of section 8 (1) (a) (i) of the Act, shall be the rate of interest prescribed from time to time in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975).

**Regulations / Housing / HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT 65 OF 1988 / REGULATIONS / GNR.1351 of 30 June 1989: Regulations in terms of section 11 / 14. (a) Subject to paragraphs (b) and (c), the liability of a member to pay the levy for the purposes of regulation 9 (1) (a), shall be a percentage, expressed to 4 decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the accommodation, but the floor area, correct to the nearest square metre, of all the accommodation in the housing development scheme.**

14. (a) Subject to paragraphs (b) and (c), the liability of a member to pay the levy for the purposes of regulation 9 (1) (a), shall be a percentage, expressed to 4 decimal places, and arrived at by dividing the floor area, correct to the nearest square metre, of the accommodation, but the floor area, correct to the nearest square metre, of all the accommodation in the housing development scheme.

(b) A developer shall be entitled to make rules in terms of which the liability of a member to pay the levy, as envisaged in paragraph (a), is changed: Provided that—

- (i) such change shall be a percentage expressed to 4 decimal places;
- (ii) such change is made by the developer before alienating any housing interest in the housing development scheme for the first time;
- (iii) the developer shall disclose the change in the contract; and
- (iv) where the developer fails to make such disclosure, levies for the purposes of regulation 9 (1) (a) shall be paid in accordance with paragraph (a).

(c) The developer shall on the basis set out in paragraphs (a) or (b), as the case may be, pay levies from the date of establishment of the management association on all housing interests which are owned by the developer and have not yet been alienated by him.

**Regulations / Housing / HOUSING DEVELOPMENT SCHEMES FOR RETIRED PERSONS ACT 65 OF 1988 / REGULATIONS / GNR.1351 of 30 June 1989: Regulations in terms of section 11 / 15. Where a housing development scheme is operated pursuant to or in connection with membership of or participation in any club, association, organisation or other voluntary association, then in such case the constitution or contract or other agreement**

**governing or regulating such club, association, organisation or other voluntary association, shall be drafted in terms of these regulations, as if such club, association, organisation or other voluntary association were the management association.**