Be cautious when handing over management of an ST scheme to an executive managing agent

By Michael Bauer

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In the past, if a sectional title scheme appointed a managing agent, the trustees would still have to be actively involved in the decision making and management of the scheme. The Sectional Title Schemes Management Act (STSMA), however, makes allowance for a new type of managing agent - the executive managing agent - which could almost be seen as putting the scheme under voluntary administration.

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Prescribed Management Rule 28 (1) in the STSMA Regulations specifies that, “The body corporate may, by special resolution, appoint an executive managing agent to perform the functions and exercise the powers that would otherwise be performed and exercised by the trustees.”

This goes on to specify in detail what the managing agent and executive managing agent’s full duties and responsibilities are, so they are guided and bound by these to safeguard sectional title schemes in terms of the Act.

Executive managing agent can replace that of administrator

This is beneficial in cases where the trustees feel they cannot perform the duties required of them effectively, or if it is found that they are incapable of doing so. The position of the executive managing agent can replace that of a court appointed administrator if it is found that a sectional title scheme is not being managed properly. Instead of the long and costly process of placing it under administration, the trustees may apply to the Community Schemes Ombud Service to appoint a managing agent to assist. The benefit of doing this is that they have the freedom to appoint a managing agent, and to remove him/her if necessary. Whereas, if placed under administration, the courts will decide how long the scheme will be managed by a third party.

This does impose a huge burden on a managing agent, as he takes on a fiduciary role within the scheme. On the other hand, the trustees and owners will lose control of the decision-making and handling of monies within the scheme – which might not be in their interests.

Trustees managing their own schemes is always first choice, as they have a vested interest in the financial health of their scheme. They will tend to want to look after their investments as well as they can, and will often want to take care of their living environment. Employing someone else to do so does not always mean that they will have the same interests or do the job as well as someone who has invested money in their scheme.

If an executive managing agent is to be employed, the trustees must do so with great caution in the appointment. Always check at least three or four references of schemes he/she has managed and speak to trustees from these schemes, not just rely on letters of recommendation.

ABOUT THE AUTHOR

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