



Navigating the legal landscape: Trustees' authority to permit a cosmetics business in a residential sectional title unit

The question arises whether a unit owner who had received permission or consent from the chairperson of the board of trustees of a body corporate, could conduct a cosmetics business (such as a beautician service) in a residential sectional title unit, and if the chairperson was lawfully permitted to do so.

Put another way, does the chairperson have the authority to permit such a business from being conducted in such a unit, without the rest of the trustees? Even if the chairperson does not have the relevant authority, does the board of trustees have the authority to provide consent? What considerations are applicable for trustees who are faced with such a question, and what do owners have to consider if they are asked to provide their written consent? Should consent be refused, what recourse does an aggrieved owner have? We will explore these questions below.

The rules of the body corporate

The management rules of the body corporate make provision for how the body corporate should be regulated, managed, and administered, and provides guidance on the usage of the sections in the sectional title scheme.¹ The body corporate also has specific conduct rules, that provide guidance on how the owners and occupants of sections (and visitors) in the sectional title scheme must behave and limitations on the use and enjoyment of the sections and common property.² The body corporate's conduct rules must not be irreconcilable with the Prescribed Management Rules ("PMRs"), which are the general management rules that are applicable to bodies corporate.³ There are also Prescribed Conduct Rules ("PCRs") which must be considered.⁴

The PMRs and the specific conduct rules for the body corporate (or the PCRs) must be applied equally to all the unit owners, and both sets of rules must be reasonable.⁵ These rules are applicable from the date that the body corporate was established.⁶ These rules are also binding on each unit owner and any person occupying a section.⁷

A copy of the management and conduct rules, are to be kept by the body corporate, and these rules must be readily available at trustees' meetings and unit owner meetings.⁸ A copy of the management and conduct rules must also be provided to each person who becomes an occupier or a unit owner.⁹

A member of the body corporate must also take all the necessary and reasonable steps to make sure that there is compliance with the specific body corporate's conduct rules.¹⁰ This compliance extends to any tenants, other occupiers of a section or exclusive use area.¹¹ This includes the employees of the member, guests, the member's relatives and the member's visitors.¹²

Having established that the rules of a body corporate govern the behaviour of the residents and members, visitors and employees or service providers, the functions and decision-making powers of the board of trustees of a body corporate are relevant to the question of whether a member can obtain consent for operating a cosmetics business.

¹ Section 10(2)(a) of the Sectional Titles Schemes Management Act 8 of 2011 ("STSMA").

² Section 10(2)(b) of the STSMA.

³ Section 10(2)(b) of the STSMA

⁴ See Annexure 2 to the Sectional Titles Schemes Management Regulations, 2016 ("STSMA Regulations").

⁵ Section 10(3) of the STSMA.

⁶ Section 10(4) of the STSMA.

⁷ Section 10(4) of the STSMA.

⁸ Section 10(6)(a) and (10)(6)(b) of the STSMA.

⁹ Section 10(6)(c) of the STSMA.

¹⁰ PMR 3(2) of the STSMA Regulations.

¹¹ PMR 3(2) of the STSMA Regulations.

¹² PMR 3(2) of the STSMA Regulations.



The functions, fiduciary positions and decision-making of the trustees

The trustees of a body corporate must perform and exercise their functions and powers, subject to the Sectional Titles Schemes Management Act¹³ (“the STSMA”), the management and conduct rules, and any restrictions imposed, or directions given at a general meeting of the owners.¹⁴

Trustees stand in a fiduciary relationship to the body corporate, and must act honestly and in good faith, in the best interest and for the benefit of the body corporate, and in particular should not perform their duties or exceed their powers, unless these are permitted in terms of applicable legislation and the rules.¹⁵

The trustees carry out the business of the body corporate and attend trustees’ meetings.¹⁶ The trustees exercise the body corporate’s powers and functions, that have been assigned to them in terms of legislation and the resolutions that are taken at general meetings and trustees’ meetings.¹⁷

The trustees pass trustee resolutions either by:

- (i) majority vote at trustees’ meetings¹⁸; or
- (ii) way of a round-robin vote, if a notice is sent to each trustee containing the proposed resolutions, and makes provision that the trustees may agree to the resolution by signing the resolution, and the signed round-robin resolutions must be received by the body corporate before the expiration of the closing date stipulated in the notice.¹⁹

At the start of the first meeting of trustees, after the annual general meeting at which the trustees have been elected, and whenever else that it is necessary to do so, the trustees, by majority vote, must elect a chairperson from among the trustees.²⁰ The trustees do not have a discretion in this regard.

On this basis alone, we know that a chairperson of a board of trustees of a body corporate does not have the authority to pass trustee resolutions without the other trustees. Therefore, if a chairperson, without the authority of a trustee resolution authorises an owner or resident to operate a cosmetics business, that authorisation is invalid and unenforceable. The board of trustees of the body corporate are the executive decision-making organ, in a sectional title body corporate. The body of owners are said to be the legislative decision-making organ.

When the board of trustees is faced with the question of whether to grant permission to an owner or resident to conduct a cosmetics business in the residential sectional title unit, there are additional and further aspects that must be considered in relation to such a business. Considering that the business in question is a cosmetics business and may operate or require the handling of flammable materials or liquids, there are specific additional concerns that should be addressed.

In relation to the storage of flammable materials, the owners or occupiers of a section are not permitted to store substances that are flammable in a particular section or in the common use areas, unless the substance is intended for domestic usage, without the written consent of the trustees.²¹ But that is not all that must be considered. The body corporate has additional regulatory obligations, which as a statutory function, it must enforce.

¹³ Act 8 of 2011.

¹⁴ Section 7(1) of the STSMA.

¹⁵ Section 8(1) and (2)(a)(i) and (ii) of the STSMA.

¹⁶ PMR 9(a) of the STSMA Regulations, 2016.

¹⁷ PMR 9(b) of the STSMA Regulations.

¹⁸ PMR 14(4)(a) of the STSMA Regulations.

¹⁹ PMR 14(4)(b) of the STSMA Regulations.

²⁰ PMR 12(3) of the STSMA Regulations.

²¹ PCR 6(1) of the STSMA Regulations.



The body corporate's and owner's obligations related to the usage of sections and the common property

The body corporate must take the necessary steps to ensure that members of the body corporate and the occupiers of a section or exclusive use area do not:

1. use the common property in such a way that causes unnecessary interference to those people that are lawfully entitled to be on the premises;²²
2. use the section or exclusive use area in such a way that will cause a nuisance;²³
3. causes a contravention of any law, or by-laws in relation to the use of the section or an exclusive use area;²⁴
4. causes a contravention of a license in relation to the use of the premises or common use areas, or the conducting of a business on the premises;²⁵
5. causes a contravention of title which is applicable to the various sections of exclusive use areas;²⁶
6. make changes to a section or exclusive use area, that will cause instability at the premises or cause interference to the usage and enjoyment of the other sections, common use areas or other exclusive use areas;²⁷
7. do something that will negatively impact the value or use of the other sections or exclusive use area;²⁸ and
8. make use of a section or exclusive use area for a different purpose than what was intended, which can either be express or implied from the registered sectional plan or approved building plans,²⁹ from the provisions of the town planning by-laws, applicable rules of the body corporate³⁰ or can be ascertained from the construction, layout and amenities that are available in the area.³¹

Therefore, prior to granting any consent sought by a unit owner who wishes to use their section as a cosmetics business, the trustees and owners would need to consider the above limitations on the use of the section. And in any event, if there would be a contravention of any of the above, and consent was given, it may be impugned later. Granting such consent is not so simple.

The owners also have obligations which must not be ignored in this context. In relation to the behaviour of occupiers and visitors in the various sections and the common use areas, noise that will cause interference to others is not permitted, as same will disturb the peace of other persons. It is also the owner's or occupier's duty to ensure that the necessary steps are taken for their visitors not to make noise and ensure that they are not causing a disturbance to other members at the body corporate.³²

The unit owners also cannot use, or permit the use, of their section or exclusive use area for any other purpose than what is expressly permitted or implied by a registered sectional plan.³³ There is, however, an exception, that would grant the unit owner the necessary permission, which is after written consent has been granted by all the other unit owners.³⁴ This written consent would grant the unit owner permission to use their section or exclusive use area, for the purpose as specified in the written consent from all the unit owners.³⁵ This would be a very difficult consent to acquire in larger sectional title schemes, but not impossible.

²² PMR 30(a) of the STSMA Regulations read with section 13(1)(d) of the STSMA.

²³ PMR 30(b) of the STSMA Regulations read with section 13(1)(e) of the STSMA.

²⁴ PMR 30(c)(i) of the STSMA Regulations.

²⁵ PMR 30(c)(ii) of the STSMA Regulations.

²⁶ PMR 30(c)(iii) of the STSMA Regulations.

²⁷ PMR 30(d) of the STSMA Regulations.

²⁸ PMR 30(e) of the STSMA Regulations.

²⁹ PMR 30(f)(i) of the STSMA Regulations read with section 13(1)(g) of the STSMA.

³⁰ PMR 30(f)(ii) of the STSMA Regulations read with section 13(1)(g) of the STSMA.

³¹ PMR 30(f)(iii) of the STSMA Regulations read with section 13(1)(g) of the STSMA.

³² PCRs 7(1) and (3) of the STSMA Regulations.

³³ Section 13(1)(g) of the STSMA.

³⁴ Section 13(1)(g) of the STSMA.

³⁵ Section 13(1)(g) of the STSMA.



Should an owner be dissatisfied because they were not able to obtain consent for the operation of a cosmetics business in a residential unit of a sectional title scheme, they could, theoretically, challenge such refusal to grant consent with the Community Schemes Ombud Service (“CSOS”).

Dispute Resolution at CSOS

A unit owner who is of the view that another unit owner has refused to provide their written consent, in such a way that causes unfair prejudice, or the refusal seems unjust or is not equitable, may then within six weeks after the allegedly unreasonable refusal to provide written consent by the other unit owner and / or owners, make an application to the CSOS.³⁶

There is also further relief possible to obtain from CSOS. For example, an order can be provided declaring that a trustees’ resolution that was passed at a meeting of the executive committee members, or at a general meeting is either void or invalid.³⁷ This relief could be used if the trustees, or if the owners in general meeting, resolved to refuse consent to use the unit for the purpose requested. Further relief could be related to an order that would declare a trustees’ resolution void because it caused unreasonable interference to the rights of an individual owner, occupier or the rights of more than one occupier.³⁸ However, depending on the merits of each case, we submit that there are limited prospects of success if the owners and/or trustees have refused consent based on concerns, or possible contraventions in terms of the above.

In conclusion, having considered the necessary authorities, consents, additional factors to be brought to bear on such proposed decisions, in relation to the request for consent to conduct a cosmetics business inside a residential unit, we can see that there are multiple considerations, and it may not be so easy to get this consent. We also see that even if consent is obtained, it may be challenged if the trustees or owners who gave their consent failed to consider all areas of concern.

While we have dealt with a cosmetics business, a similar analysis would arise in respect of conducting a remote office business (such as working from home on office work or research), where a unit owner or occupier is working quietly inside their unit and their engagement for purposes of conducting their business, is by virtual means. Why would this type of business be a problem, especially considering the accelerated move to work-from-home circumstances for thousands of people in South Africa, following the Covid-19 pandemic? A cosmetics business has customers coming in and out of the complex, and potentially dangerous chemicals are used, whereas quiet office-type work without physical meetings may not be such a nuisance. Having said that, we are sure that there have been instances when frequent virtual meetings by some residents have caused a nuisance, especially if you are a neighbour perpetually bound to hear the words “you are on mute”. Therefore, having good neighbours who are cognisant of their behaviour towards others, creates a homely community.

WRITTEN BY:

**MAIN AUTHOR JUSTINA CHIRWA AND
CO-AUTHOR FAUSTO DI PALMA
SECTIONAL TITLE SOLUTIONS (PTY) LTD
30 MAY 2023**

*****END OF ARTICLE*****

³⁶ Section 13(2) of the STSMA.

³⁷ Section 39(4)(c)(i) and 39(4)(c)(ii) of the Community Schemes Ombud Service Act 9 of 2011, (the “CSOSA”).

³⁸ Section 39(4)(e) of the CSOSA.