

Somerset West  
30 April 2025

## ARTICLE

### EMPOWERING HOMEOWNERS AGAINST HOA ABUSE: A CALL FOR CHANGE

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It's often said that there are four tiers of government; national, provincial, municipal, and then the unspoken fourth tier - residential governance through Homeowners Associations (HOAs). On paper, this fourth tier appears simple: neighbours managing shared spaces, acting in the common interest. But in practice, HOAs have the *power to control lives, finances, and even the psychological safety* of those living within their walls. They set rules, enforce levies, restrict voting rights, and often dictate access to amenities and property.

Despite this, HOAs are among the least scrutinised governance structures in society. They operate behind high walls -- literally and figuratively -- where power is often concentrated in the hands of a few individuals, frequently *untrained, unaccountable, and unchecked*. When governance breaks down in this space, it rarely makes headlines. But for those who live through it, the consequences are deeply personal, and in some cases, profoundly traumatic.

As a governance specialist who has worked across public and private institutions locally and abroad, I have seen many forms of dysfunction. But nothing has compared to what I've recently witnessed in a private residential estate in South Africa. The experience has been a brutal reminder that **governance is not just something for governments and corporations - it must exist wherever power is exercised.**

This is a story of failed leadership, fear-driven silence, and unchecked authority. But it's also a call to action -- for homeowners, trustees, and regulators alike -- to bring the light of accountability into the places we call home.

#### When the rules only apply to some

The foundation of any governance structure -- be it national or neighbourhood -- is fairness and consistency. Rules must apply equally to everyone. Yet, in far too many HOAs, this basic principle is routinely disregarded. The result? A culture of exclusion, favouritism, and ultimately abuse.

In many residential communities, executive committee Members (also known as Exco Members or Trustees) assume authority without fully understanding the rules they are meant to uphold. Often, voting procedures are manipulated, objections are ignored, and annual increases in levies are railroaded through with questionable legitimacy. Dissenting voices -- often made by those who understand the constitution or governance best practices -- are silenced through intimidation, legal threats, or outright hostility.

Managing Agents, who are meant to serve as independent facilitators and ensure lawful processes are followed, can also become complicit, and exacerbate tensions between Trustees themselves, including between Trustees and homeowners (Members). They tend to follow the instructions of Trustees, even when those instructions contravene the community's founding documents or applicable legislation. Their role becomes less about stewardship and more about protectionism - *shielding the powerful from scrutiny*.

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What makes this all the more troubling is that Members, especially those without financial, legal or governance experience, often assume that “this is just how it works.” They see irregularities but stay silent, either out of fear, frustration, or fatigue. Many sell and move on, creating a cycle where power becomes more concentrated and accountability even harder to achieve.

The irony is profound; HOAs exist to *protect the collective interests of their Members*. But when their constitutions are misused or ignored, they become fiefdoms where rules are selectively applied, and *power is exercised without consequence*.

### **Governance without guardrails**

In the corporate and public sectors, there are layers of checks and balances; boards, audits, regulators, ombuds, courts, including public activism and scrutiny. But within HOAs, those same layers are either absent, poorly understood, or ignored outright.

Most Trustees are volunteers; often with well-meaning intention but seldom are they trained for their fiduciary duties. They are entrusted with significant power - to collect levies, impose fines, approve budgets, manage disputes, and enforce rules that affect people's homes, finances, and dignity. Yet few are ever inducted into the responsibilities they have accepted. Fewer still are educated on their fiduciary duties, basic financial oversight, or the laws that govern the body they represent.

The result? *Governance without guardrails!*

Even when legislation does exist -- such as the Companies Act (for non-profit HOAs), the Community Schemes Ombud Service Act (CSOS Act), the Sectional Titles Schemes Management Act, or King IV™ principles -- there is no proper governance framework ensuring compliance and holding Exco Members accountable when they fail in their fiduciary duties. Oversight bodies like the Community Schemes Ombud Service (CSOS) are hamstrung by limited capacity, poor enforcement and bureaucratic delays. For many homeowners, turning to CSOS can be like shouting into the wind - heard by no one, acted upon by even fewer.

This vacuum of accountability creates dangerous precedents and Trustees may even exploit it to their favour. Accordingly, it becomes normal for HOA general meetings to be held without proper notice or quorum. It becomes accepted that levies can be increased without following the correct process. It becomes common for Trustees to make decisions outside their scope of authority (*ultra vires*), without transparency or consultation, and few homeowners question this behaviour.

Even Managing Agents, who should provide expert guidance, are often beholden to the very Trustees they should be advising independently. Without a contract that enshrines objectivity, their role is easily co-opted, *turning them into enablers of dysfunction rather than protectors of the community*.



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When this becomes the norm, homeowners stop speaking out. Fear replaces participation. Communities become divided, disillusioned, and difficult to govern. And that is when true failure sets in, not because the laws and rules don't exist, but because **no one enforces them. The personal cost of speaking up!**

Governance, when done right, creates order, trust, and stability. But when it fails -- and when those failures are challenged -- the cost of speaking up can be painfully high. In some homeowners' associations, those who raise valid concerns about irregularities, unlawful levy increases, or outdated constitutions are not met with openness or dialogue. They are met with hostility. Personal attacks. Intimidation. Vicious attempts to muzzle them, or discredit and isolate them.

It begins subtly; being spoken over in meetings, ignored in correspondence, or conveniently 'disconnected' from virtual meetings. It escalates quickly - screaming matches, verbal abuse, and targeted harassment, even within the supposed safety of one's home. In extreme cases, it turns physical - property damage, assault and brazen threats made in front of silent witnesses.

And what's the crime? Wanting governance that works. Wanting fairness and transparency. Wanting rules to apply equally to those in power and those under it.

Some of the worst dysfunction in HOAs hides behind outdated constitutions, unclear voting procedures, and committees that exploit the legal and governance illiteracy of their Members. They operate in the shadows of misunderstanding; intentionally. Because confusion *allows control and bullying keeps people 'compliant'*.



But what Trustees fear most is someone who knows better and won't back down. That's when the real pressure begins. The character attacks. The smears. The desperate legal threats, including the misuse of Managing Agents to execute power plays. The desperate effort to preserve a toxic status quo, even if it means driving honest Members out of the community altogether.

This is *not governance, it is tyranny wrapped in bureaucracy*. And it must be called out for the sake of every person living in a scheme where fear has replaced fairness.

### **The legal grey zone**

In theory, HOAs are governed by constitutions, rules, national legislation, and codes of good governance. But what about in practice? These frameworks often crumble in the hands of those who do not understand them, or worse, those who choose to misuse them.

Many HOAs in South Africa are registered as non-profit companies, bound by the Companies Act and the King IV™ Code, or they function as common law associations with legal obligations under CSOS and related regulations. On paper, there are rules however in reality, there is a massive gap between what the law provides and *how it is applied*. Why does this happen? Because there is no consistent governance application and enforcement mechanism.

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CSOS, despite its mandate, lacks teeth. Courts are slow and expensive. Most homeowners do not have the legal literacy -- or the stamina -- to challenge unjust Trustees or rogue committees. And Managing Agents, who should act as neutral administrators, are too often aligned with the very leadership they are supposed to oversee, either by design or by pressure. When Trustees bypass dispute resolution processes, ignore requests for transparency, or dismiss calls to follow voting protocols, *they don't just bend the rules, they fracture the very trust that holds a community together*. And here lies the cruel irony; a resident who stands up for lawful governance can find themselves treated like a troublemaker, while those acting unlawfully continue unchallenged. The emotional and financial toll of pursuing justice -- when met with silence, stonewalling, or legal threats -- becomes unbearable for many and they eventually buckle in and leave.

This is the grey zone where far too many HOAs operate. A place where governance fails not because laws don't exist, but because *too few are willing to enforce or obey them*. And the result for homeowners? Schemes that are *governed not by justice, but by dominance*.

### A call for reform

Enough is enough. The stories of abuse, intimidation, and failed governance in HOAs are not isolated. They are systemic and they reveal a dangerous reality; without reform, these schemes risk becoming breeding grounds for unchecked power, financial mismanagement, and human suffering. *Reform is not just necessary; it's urgent*.

### What needs to change?

- **Constitutional overhaul:** Many HOA constitutions are outdated, ambiguous, or inconsistent with current legislation. These documents need urgent review and redrafting by independent governance experts and not Trustees with vested interests.
- **Mandatory governance training:** No one should serve as a Trustee without understanding their fiduciary duties, the legislative hierarchy they are bound by, including the ethical standards they must uphold.
- **Independent Managing Agents:** Managing Agents must be neutral facilitators and not enforcers for Exco or Trustees. Their conduct should be subject to professional regulation, with enforceable consequences for complicity in governance abuse.
- **Professionalised secretarial services:** Where Managing Agents provide company secretarial or governance-related advisory services, they must be professionally registered, committed to ongoing Continuous Professional Development (CPD), and guided by a recognised code of conduct. These roles carry significant legal and fiduciary responsibilities, and they are not merely administrative tasks. Managing Agents are critical gatekeepers to legality and due processes, and they must be competent to guide Trustees and Members with impartial, well-informed governance advice.
- **Accessible dispute resolution:** Internal dispute resolution mechanisms must be mandatory, timely, and transparent. These processes should be used without exception. And when those fail, CSOS and other regulatory bodies must act decisively, without delay or bias, and well before any legal processes are instituted.
- **Whistleblower protection:** Ideally, every HOA should have a formal, independent whistleblower hotline or reporting process, protected by law. This ensures that homeowners -- including residents -- have a secure, anonymous avenue to report misconduct - whether it involves governance failures, financial

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mismanagement, abuse, or violations of human or animal rights. If resolution through the internal whistleblowing process fails, concerns should be escalated to CSOS or other relevant authorities, such as the South African Police Services in cases of suspected theft, the South African Human Rights Commission for abuses, or the NSPCA for cases involving animal cruelty. In particular, when financial irregularities are identified, the IRBA should be involved to ensure the integrity of audits and financial statements, particularly where Chartered Accountants (CAs) have failed to identify glaring errors, undisclosed third-party transactions, or irregular expenditure.



- **Financial oversight and accountability:** One of the most pervasive issues in many HOAs is the unchecked, discretionary spending by Trustees. The lack of budgetary controls and oversight often leads to massive overspends and unaccounted-for expenditures, which culminate in the imposition of levies that far exceed inflation rates. Trustees must be held accountable for every cent spent, and they must operate within prudent financial management principles that protect the interests of Members.
- **The financial impact on homeowners:** Irregular and wasteful spending not only damages the HOA's financial health but also devastates homeowners financially, with exorbitant levies that far outpace inflation. The result is often that homeowners are forced to sell their properties, causing both personal and financial turmoil. It is vital that HOAs adhere to proper financial oversight to prevent the imposition of unexpected, high special levies that cripple homeowners and destroy their financial stability.
- **Real transparency:** Agendas, financials, meeting minutes, and resolutions must be accurate, timely, and accessible to all Members - not rewritten to suit certain narratives or withheld to hide the truth.
- **Community rebuilding:** Perhaps most importantly, there must be a shift in culture; from fear and silence, to open, informed, ethical dialogue. *The goal is not control, but community. Not punishment, but participation.*

### From voice to action

Every homeowner -- no matter how experienced or inexperienced in governance they may be -- has the right to live in a community free from fear, intimidation, or financial exploitation. That is not a privilege. It is a **legal and constitutional right**. However, *rights are meaningless unless they are exercised and defended*.

This is a call to action.

If you're reading this and thinking, *"This sounds like my estate"*, you are not alone. You are not powerless. And you are not crazy!

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Here's how you can begin to take back your voice and your rights:

- **Educate yourself:** Learn what legislation governs your HOA or Body Corporate. Know the difference between your Constitution and the Companies Act, the Sectional Titles Schemes Management Act, or common law principles. Knowledge is power - and protection.
- **Document everything:** Keep records of communication, meeting notes, financial reports, AGM/SGM recordings and minutes, emails, and incidents of harassment or misconduct. These documents will protect you, and they speak volumes when silence is demanded.
- **Connect with others:** You are likely not the only one with concerns. Start action through coffee chats, participate in WhatsApp group discussions, or arrange informal sessions to break down what is wrong in the governance structures of your HOA, and what needs to change.
- **Insist on transparency:** Demand copies of financials, minutes, and meeting recordings. If you're denied such records by Exco, do not stop there - raise the matter with your Managing Agent, and if necessary, with CSOS or other regulatory bodies. Attend the general meetings and verbalise your concerns. Do not be shy, nor intimidated.
- **Push for reform:** Advocate for proper constitutions, fair processes, and independent oversight. If necessary, propose amendments. If you are ignored, take the matter further. Collective action is your strongest weapon.
- **Know when to escalate:** If the internal structures fail, report these as appropriate to CSOS, IRBA, the SAHRC, SAPS, or even Parliament's Portfolio Committees. There are oversight mechanisms available; make them work for you.
- **Seek legal advice if needed:** Do not be intimidated by threats of lawyers or litigation. If you have followed the HOA's Constitution and the associated rules, documented your actions, and raised issues respectfully and in good faith, you are well within your rights to challenge poor governance.
- **Stand firm, stand united:** Even if Exco try to isolate you, keep going. The louder you are, the less they can ignore you. Your legitimate actions will be the reason others find their courage too.

### You are not alone

For every one person who stands up against abusive ExcOs or Trustees, there are ten other homeowners watching, wondering if they should also find their voice. *Your voice might be the spark that lights the fire of reform.* We cannot afford to stay silent. HOAs and sectional title schemes -- which often hold our biggest investments -- are not places where people should feel unsafe, unheard, or hopeless. We need to become more informed of our rights and restore what 'community' really means. Let us do so with ethical conviction, with dignity, with courage and most importantly, within the practices of good governance.

Justice, fairness and dignity should be experienced right where we live. Let's turn our lived pain into purposeful change. It is a call for homeowners, residents, whistleblowers -- anyone who has seen or experienced what happens when governance goes rogue in a HOA -- to *come together and push back.*

We are the ones who invest in our homes, our future, and our peace of mind. We deserve better.

I hope it is a movement in the making.

**ENDS**

Words: 2,714

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