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A NEW ERA OF HOA GOVERNANCE: TRANSPARENCY, ACCOUNTABILITY AND WHAT IT MEANS FOR TRUSTEES

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It's often said there are three tiers of government in South Africa: *national, provincial, and municipal*. But there's an unspoken fourth tier, namely *residential governance* through Homeowners Associations (HOAs). On paper, HOAs appear straightforward and the pamphlets that advertise the idyllic lifestyle depict friendly neighbours collectively managing shared spaces and interests. In reality, however, it can be the exact opposite. HOAs wield significant power over people's homes, finances, their well-being and often, the promise of a lifestyle filled with peace and tranquillity is simply not the case.

Many HOAs have long operated in a governance shadow zone - informal, unstructured, and lacking transparency or accountability. To be clear, not all HOAs fall into this category, and legislation does exist that sets out clear obligations and standards for these bodies. However, in practice, it is likely that this legislation is neither widely known nor actively promoted among trustees or members. Since writing an article covering this topic in April this year -- and read by thousands of concerned homeowners in gated estates in South Africa -- the troubling circumstances and consequences of this governance vacuum have been exposed, shining a spotlight on the intimidation, abuse of power, and exclusion of dissenting voices.

Recent developments, most notably the **Community Schemes Ombud Service** ('CSOS') Directive of 18 July 2025, mark a legal and governance turning point. Trustees and managing agents now face clear personal liability, including the risk of criminal prosecution under South African law, for failing to fulfil their fiduciary duties. This is a wake-up call not just for HOAs but for governance across private, corporate, and public sectors.

Why HOA governance matters beyond the gate

Poor HOA governance is not just a local inconvenience, it has profound financial, emotional, and social impacts. Trustees who act without proper oversight impose excessive levies, enforce unfair rules, and silence those who challenge the status quo. Many homeowners feel powerless, watching their biggest investment turn into a source of distress.

Some believe HOA governance is "different" from corporate or government boards, and that the same rules or frameworks do not apply. I heard this firsthand; "*We're not a corporate, so these governance principles don't apply here.*" The CSOS Directive and the South Africa's Companies Act 71 of 2008 (as amended) underpin that this mindset is outdated and risky.

The CSOS directive and Companies Act: Raising the stakes

The CSOS Directive explicitly warns trustees and managing agents to comply with their legal obligations or face penalties including fines and imprisonment of up to 10 years.

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In HOAs established as Non-Profit Companies (NPC) under the Companies Act, individuals often referred to as “trustees”, are actually, in legal terms, directors of the NPC. This means that the Companies Act’s provisions -- including Section 162 which allows courts to declare a director delinquent for serious misconduct or breaches of fiduciary duty -- can apply directly to those serving on HOA boards.

Just as a trustee’s misconduct in an HOA can damage their prospects in the corporate or public sector, it stands to reason that a history of delinquency or governance failures elsewhere should be a red flag when appointing trustees to an HOA board. Similar to the Companies Act, the CSOS Directive makes it clear that trustees carry real fiduciary responsibilities, with real consequences. It therefore follows that HOAs should also introduce structured appointment processes, including formal declarations by candidates of any prior governance sanctions or adverse findings, and independent checks where feasible. Without such due diligence, HOAs risk placing decision-making power in the hands of individuals whose past conduct could undermine the community’s governance and reputation from the outset.

HOA trustees can no longer claim ignorance or casual voluntarism. Their actions carry real legal weight and personal risk. As fiduciaries, they must act with honesty, care, skill, and in the best interests of their gated communities. Importantly, they must be willing to be held accountable for their actions.

Disclosure and vetting: The missing link in trustee appointments

While enforcement mechanisms focus on addressing failures after the fact, an equally important step is often overlooked: the disclosures a trustee should make before accepting the position of leadership within an HOA.

Too many HOAs still appoint trustees informally, without vetting or requiring candidates to declare past misconduct, delinquency, or criminal convictions. This gap exposes communities to further risk and undermines trust. HOAs should adopt a more structured nomination and vetting process -- akin to those in corporate and public boards -- requiring full disclosure from trustee candidates. This transparency is essential to ensure that only those qualified and with clean governance records serve in these positions. Failure to disclose prior governance issues, including delinquency in the business sector, should be grounds for immediate removal. Failing to do so, may expose individuals and HOAs to legal and reputational harm, amongst other unintended consequences.

Broader implications: Reputational risk and career impact

This new era of accountability has repercussions beyond the HOA gate. Trustees found delinquent or prosecuted face reputational damage and such action can affect their private sector careers and eligibility for future board appointments in the corporate or government spheres.

The King IV™ (and its replacement King V™) governance code stresses integrity, transparency, and accountability as foundational for all governance roles. Trustees ignoring these principles risk being excluded from broader leadership opportunities. As Warren Buffett famously said, *“It takes 20 years to build a reputation and five minutes to ruin it.”* For HOA trustees, this could not be more true. Those aware of these personal liabilities will be far more discerning before accepting such positions, especially if they are flanked by inexperienced or inept colleagues.

A call to action: Raising governance standards across the board

HOA homeowners, trustees, and managing agents must collectively raise the bar. Education about legal duties, demand for transparency, and professionalising governance frameworks are essential, and this is much the same for the corporate and government sectors.

Managing agents should seek professional governance and secretarial qualifications aligned with corporate standards. HOAs should insist on proper vetting, training, and the ongoing development of trustees. Members must be empowered to hold leadership accountable not just for compliance, but for ethical stewardship of their communities.

The standards South Africa is setting through these HOA reforms offer valuable insights for governance globally, highlighting that good governance is not a privilege reserved for corporations or governments alone, but a fundamental right in all spheres where power is exercised.

A governance movement in the making

The CSOS Directive, read alongside the Companies Act provisions heralds a new chapter for HOA governance; one of transparency, accountability and professionalism. Serving as a trustee is no longer a casual volunteer role as many may have believed, but a position with significant legal and ethical responsibilities.

Homeowners deserve communities governed with fairness, dignity and respect. Trustees must rise to the challenge, armed with knowledge, integrity, and a commitment to good governance. This is not just reform. It is a movement towards reclaiming the true meaning of community for the place we call home.

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