

**BOARD OF TRUSTEES - ROLES AND  
RESPONSIBILITIES v1.4**

**2 DECEMBER 2021**

**DOCUMENT CONTROL**

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2 December 2021	Sue Freeman	Board of Trustees_Roles & Portfolios	V1.4	<p>Replace references to "Trustee Committee" with "Board of Trustees"</p> <p>File name changed from "Portfolio descriptions of Trustees" to "Board of Trustees_Roles &amp; Portfolios"</p> <p>Minor grammar &amp; heading edits</p> <p>Change "Fire, Health &amp; Safety" portfolio to "Fire Risk Management" only</p> <p>"Garden Manager changed to Landscaping Consultant"</p> <p>Update Communications responsibilities incl. ref to Communications Policy</p>

**TABLE OF CONTENTS**

- 1. Introduction ..... 4
- 2. Portfolio descriptions ..... 5
  - 2.1 Chairman ..... 6
  - 2.2 Vice Chairman..... 6
  - 2.3 Finance ..... 6
  - 2.4 Security ..... 6
  - 2.5 Governance ..... 7
  - 2.6 Architectural and Building Compliance ..... 7
  - 2.7 Landscaping and Gardening ..... 7
  - 2.8 Fire Risk Management ..... 8
  - 2.9 Communications Trustee..... 9
    - 2.9.1 Communication Channels and Mechanisms ..... 9
    - 2.9.2 Communications Infrastructure ..... 9

## 1. INTRODUCTION

### TRUST ME, I'M A TRUSTEE!

As an owner or prospective owner of property in Berg en Dal you may well be asking yourself: 'What exactly is a Trustee and what do they actually do?'

The powers and duties of Trustees are ultimately defined by law, but they are usually set out in some kind of trust document, in our case in the Berg en Dal Constitution. That document (which all residents should read) defines what the Trustees can and cannot do: it therefore sets out their powers as well as their duties; it also sets out how they are to be appointed and how they will run the day-to-day affairs of the estate. Any restrictions on their powers are also set out in that document.

The Trustees are the elected representatives of the Homeowners' Association (HOA). Put simply and in everyday terms, the Trustees can be seen as a Management Committee, hereinafter referred to as the Board of Trustees. Inside that Board different areas of activity are allocated to different trustees as portfolios with one or more Trustees being responsible. The roles performed by the Trustee Committee and the Portfolios are as follows:

- Chairman
- Vice Chairman
- Finance
- Security
- Governance
- Architectural & Building Compliance
- Landscaping
- Fire
- Communications

For reasons of efficiency, the limit on the number of Trustees is nine (as per the Constitution), but the trustees have the power to co-opt additional Trustees or increase the number if the need arises. Nine people, left to their own devices, will usually not be in a position to agree concerted action unless there is someone to keep them in order: that is where the Chairman comes into his/her own. In a sense s/he is the Managing Director of the organisation, or if you prefer *primus inter pares*. S/he could of course be incapacitated, so provision must be made for a deputy - a Vice Chairman.

To keep an estate like ours running smoothly many activities are essential, but undoubtedly the most essential of all is to ensure that members pay their dues and the estate has the funds to pay its way. Individual Trustees are clearly not in a position to deal with this in a professional, organised manner, so the Trustees appoint a Managing Agent to do it for them (at a cost of course); this agent will collect the levies, do the accounting involved, chase slackers, pay what we owe, arrange insurances to mention only the obvious ones. The current Managing Agent is as set out on the cover page of the Consolidated Rulebook for Owners, Residents, Third Parties and it is from them that you will receive your levy demands. Naturally someone has to ensure that the Managing Agent is performing its duties reliably, and this is where the Finance Portfolio comes in; the trustees who are responsible for it make sure that the payments are justified and that Standard Operating Procedures (SOPs) are adhered to. In other words, that your money is not being misused.

If you allow your imagination to dwell on the activities on the estate, it will not take you long to realise that these are many and varied, and that they must be supervised and co-ordinated in some way, otherwise there will be unadulterated chaos. Take as a simple example, the access controls: these require the presence

of at least two security guards at all times, and these must have specific duties allocated to them; then think about our perimeter fencing: that needs to be up and running 24/7 and this will inevitably mean repairs and maintenance. Quite apart from the fact that the Board of Trustees will lack many of the essential skills for these operations, imagine the chaos that would result if nine Trustees all tried to run their portfolios individually: that is why the estate has a MANAGER (EM). His job is to co-ordinate all these varied activities and he is responsible to the Board- in a sense he is the eyes and ears of the Board of Trustees.

Your Trustees perform their duties without remuneration. They may charge expenses necessarily incurred in the performance of their duties, but they are not permitted to profit in any way from their position. Where there is a potential or actual conflict of interest they must declare this and will of course not be permitted to take part in any deliberations or decisions where that interest might enable them to derive some benefit. Each Trustee is required to sign a "Code of Conduct" to ensure that these standards are known and upheld.

The Trustees must have wide powers to be able to carry out their duties, but those powers are not unlimited. The very fact that they are elected at each AGM underlines the important point that their powers are delegated powers and therefore revocable. If HOA members are dissatisfied with the performance of Trustees (whether individually or en masse) they can call a Special General Meeting (SGM) at any time to challenge any decisions of the Board and, if desired, remove any or all Trustees.

One cannot have an estate like Berg en Dal, with its 124 members, without rules and regulations. So far as these rules are not already contained in the Constitution, it is the Board of Trustees which will need to formulate them. They will range from rules about when to put out your rubbish to what type of building you can erect. All these rules are designed to maintain and further good community relations and to protect the amenities of the estate - one of the most fundamental being the protection of views. It is important to stress that it is entirely within the discretion of the Board to decide what rules shall be promulgated and how they shall be enforced. The fact that individual owners may not like specific rules does not entitle them to flout such rules: if they object to any rules, they are entitled to follow the procedure outlined above and raise such matters either at an AGM or a SGM.

Those of you, who may perhaps be contemplating offering themselves as Trustees in the future, may be wondering how much time they will be expected to put into the job. The Constitution (Section 18) sets out the proceedings for the Board of Trustees meetings. The meetings are about 2-3 hours, generally once every six to eight weeks as agreed to at the initial meeting of the Board following the AGM. Activities and time required depends on the portfolio, and even within portfolios it can depend on the time of year. For instance, the Finance portfolio will be particularly busy around budget time. It is certainly possible to have a full-time job and still be a trustee. It is also possible to be a 'swallow' and a Trustee, assuming that residence on the estate is for at least half the year, and where a second trustee can take over in their absence.

## 2. PORTFOLIO DESCRIPTIONS

The Board of Trustees, being responsible under the Constitution for the management of the affairs of the HOA, has allocated the tasks arising from this duty to various Trustees; each designated trustee is responsible to the Board for the matters detailed in his portfolio.

The allocation of these duties to specific trustees in no way derogates from the collective responsibility of the Board for all the affairs of the HOA. This allocation is simply designed to further efficient operations.

Following are brief descriptions of the roles and portfolios that currently constitute the Board of Trustees.

## 2.1 CHAIRMAN

The Chairman shall: preside at all meetings of the Board of Trustees and all general meetings of Members; perform all duties incidental to the office of Chairman and such other duties as may be prescribed by the Board of Trustees or Members; and allow or refuse to permit invitees to speak at any such meetings, provided however that any such invitees shall not be entitled to vote at any such meetings.

The Chairman will execute contracts, orders, and other documents in the name of the HOA as its agent. The Chairman also assumes general charge of the day-to-day administration of the HOA by the Estate Manager and the Managing Agent and has the authority to order specific actions in furtherance of the board's policies. The Chairman serves as spokesman for the Board of Trustees in matters relating to general HOA business. Like all officers of the HOA, the Chairman has an affirmative duty to carry out the responsibilities of the office in the best interests of the HOA. In cases of disagreement among trustees, the Chairman will incorporate the wisdom from different viewpoints and make the final decision. The scope and limits of authority of the Chairman's role and responsibilities are described in the Constitution of the HOA.

## 2.2 VICE CHAIRMAN

The Vice-Chairman is vested with all the powers which are required to perform the duties of the HOA Chairman in the absence of the Chairman. The Vice-Chairman does not automatically possess such powers and may act for the Chairman only when the Chairman is absent or otherwise unable to act. The Vice-Chairman may assume such additional duties as are defined by the Board of Trustees. The Vice-Chairman may also chair one or more substantive committees like that of Architectural and Building Compliance.

## 2.3 FINANCE

The Finance Trustee (FT) oversees the financial functions of the Estate to ensure that the Estate remains at all times in a financially sound condition, that annual budgets are prepared, and that expenditure is both properly authorised and in terms of the approved budgets.

Summarised responsibilities:

1. Develop and maintain a working relationship with the appointed Managing Agent in terms of the SLA.
2. Prepare annual budgets and cash flow projections
3. Propose/recommend annual levy to the Board
4. Authorise payments and allocations
5. Review monthly accounts, monitor cash flows, working capital items and reserve compliance
6. With Managing Agent, ensure annual audit carried out and present final accounts to the Board.
7. Review the Estate insurances annually
8. Review and update the Estate capital replacement reserve annually
9. Review the Estate annual tax return
10. Report to AGM on financial results and position

## 2.4 SECURITY

The trustee for security will assume – always in close co-operation with the Estate Manager – the following duties on behalf of the Board:

1. To ensure that existing security measures are always fully operational. Where they are not, to take measures to ensure that they are.
2. To ensure that residents, their visitors, and contractors abide by the relevant rules relating to access.

3. To ensure that the organisation tasked with guard duties carries out those duties according to contract and provides value for money.
4. To keep abreast of the latest developments in the field of security and where appropriate, propose improvements to the Board.
5. To oversee the work of the Estate Manager where it relates to security matters.
6. To keep the Board informed about security incidents as well as measures taken to avoid future events.
7. To propose an annual expenditure budget relating to security.
8. To authorise security expenditure, provided it is within budget.
9. To ensure expenditures are within budget; where they are not, to provide explanations for the Board
10. On an annual basis, to present to the Board a review of security and proposals for future strategy.

## 2.5 GOVERNANCE

The mandate of the Governance Trustee is to ensure good management and the effective running of the Estate. Good Governance refers to effective leadership characterised by the ethical values of responsibility, accountability, fairness, and transparency. It also refers to promoting effective and constructive meeting management, positive relationships among the Trustees, and adherence to the Trustees Code of Conduct. With this in mind, the Governance Trustee works in concert with all members of the Board to ensure that existing policies and practices are in accordance with the HOA Constitution and standards established by the governing documents, and to modify or create new policies and practices to address the changing conditions on the Estate. The overall aim is the promotion, advancement, and protection of the common interests of the members of the Homeowners' Association and to ensure that Berg en Dal maintains its beauty and privileges and the value of homeowners' investment.

The Governance Trustee ensures that all governing documents are accurate and updated as the need arises and that all residents have access to the documents via the Berg en Dal website or by special request.

## 2.6 ARCHITECTURAL AND BUILDING COMPLIANCE

The primary function of trustees holding this portfolio is to monitor all planned and operational building activities relative to the relevant current Estate controls, namely the architectural regulations, and rules governing the activities of building contractors.

This involves communication and interaction with homeowners' architects, the Estate Architect, homeowners, and contractors, in conjunction with the Estate Manager.

Compliance trustees will endeavour to encourage homeowners to adhere to the published documents governing building activities and advise procedure in the event of departures being identified or requested.

Such interactions and communications will, at all times, be made visible to the Chairman.

Authority is limited to confirming compliance or advising on procedure in the event of non-compliance. The Compliance Trustee is not authorized to agree to any departure before the processes set out in the Regulations have enabled approval of such departures to be confirmed.

## 2.7 LANDSCAPING AND GARDENING

The following functions are the main role of the Landscaping Portfolio:

1. To monitor the estate overall condition on a regular basis, preferably weekly, to ensure that the gardeners are carrying out the regular maintenance properly and in keeping with the annual garden calendar and report any discrepancies to the Estate Manager and Landscaping Consultant.

2. To identify any areas of the estate that could, potentially, do with up-grading or modification to enhance the overall aesthetic quality of the estate and discuss the feasibility of such up-grades with the Landscaping Consultant/Estate Manager on a technical basis.
3. To liaise with the Landscaping Consultant and Estate Manager to produce a monthly schedule of work to be carried out, both by the GM and by the Gardeners, including general maintenance and any up-grade projects.
4. To produce, in consultation with the Estate Manager and the Landscaping Consultant, an annual budget proposal, for submission to the Trustees, to include Labour costs, General maintenance costs, Equipment Capital Expenditure and Up-grade Project costs.
5. To maintain an accurate cost analysis of the Garden Maintenance and any Project(s) to ensure that the portfolio remains within the budget agreed by the Trustees. If it appears that the portfolio will exceed its budget, and the overspend cannot be clawed back via discussions with the Estate Manager and the Landscaping Consultant, to report the facts to the Trustees for their assessment.
6. To review the Alien and Invasive Management Plan in consultation with the Landscaping Consultant, on an on-going basis and ensure that the gardeners / contractors work strictly to the plan while carrying out their duties
7. To attend any disciplinary hearings and or any performance evaluations of the gardener's, at the request of the Estate Manager.

## **2.8 FIRE RISK MANAGEMENT**

The Trustee for Fire Risk Management will assume, always in close co-operation with the Estate Manager, the following duties on behalf of the Board:

1. To ensure that existing Fire measures are implemented on the Estate.
2. To ensure that residents, their visitors, and contractors abide by the relevant rules relating to Fire.
3. To ensure that the organisations tasked with annual bush clearance and fire break maintenance do a satisfactory job and provide value for money.
4. To keep abreast of the latest developments in the field of Fire and where appropriate, propose improvements to the Board.
5. To oversee the work of the Estate Manager where it relates to Fire matters, which includes Estate Manager monthly spot checks on equipment.
6. To keep the Board informed about Fire incidents as well as measures taken to avoid future events.
7. To keep abreast of Fire developments in Cape Town and liaise with the relevant Fire organisations.
8. To propose an annual expenditure budget relating to Fire.
9. To authorise Fire expenditure, provided it is within budget and where they are not, to provide explanations for the Board.
10. On an annual basis, to present to the Board a review of Fire, and proposals for future strategy.



## 2.9 COMMUNICATIONS TRUSTEE

The Communications trustee supports the Estate Manager in ensuring that effective and efficient communication occurs between Estate Management (including the HOA Board of Trustees) and Berg en Dal owners and residents.

### 2.9.1 COMMUNICATION CHANNELS AND MECHANISMS

The communications trustee is charged with looking at the various channels with which we stay in touch with owners and residents and putting together a workable system that meets the needs of the Board of Trustees and the Estate Manager to disseminate and gather information as and when required whilst adhering to prevailing data protection laws. These include:

1. Our website: [www.bergendalestate.co.za](http://www.bergendalestate.co.za)
2. Our residential community management system/portal
3. Any other channels in line with the Communications Policy (Addendum F to the Consolidated Rulebook for Owners, Residents and Third Parties)

[Note: Administrative communications with members of the HOA, such as monthly invoices, formal notifications of changes in levies, Special Levies, etc. are handled by the Managing Agent]

The Trustee should:

1. In collaboration with the Estate Manager and the Managing Agent maintain an up-to-date record on the community portal of all members' and long-term tenants' email addresses and telephonic contacts, taking into account changes in ownership and changes in long-term tenants.
2. In collaboration with the Estate Manager, ensure that up-to-date details are kept on the community portal of domestic workers, gardeners, pets, and vehicles linked to the individual properties.
3. In collaboration with the Board of Trustees and the Estate Manager, communicate relevant news and information as required including the publication of newsletters at least 3 times per annum.
4. In collaboration with the Board of Trustees and Estate Manager, conduct surveys amongst owners and residents as required.
5. In collaboration with the Estate Manager, establish virtual meeting and e-voting practices/procedures.
6. Jointly with the Estate Manager and in liaison with the Board of Trustees, arrange for the Berg en Dal Estate webmaster to maintain and update all static and dynamic information on the site (including rules and policies, news, photo gallery, etc.); receive and respond where necessary to member postings on the website.
7. Jointly with the Estate Manager, maintain any approved information on social media (e.g., Facebook page).

### 2.9.2 COMMUNICATIONS INFRASTRUCTURE

The trustee should:

1. Support the Estate Manager in ensuring that the fibre network infrastructure for Internet services and television services in the estate are always fully operational. Ensure that the organisation tasked with maintaining and supporting the fibre network carries out those duties according to contract and provides value for money. Review SLAs and Service Providers as necessary.
2. Keep abreast of the latest developments in the field of digital communications and where appropriate, propose improvements to the Board and update the Communications Policy accordingly.
3. Oversee the work of the Estate Manager where it relates to the fibre network and digital communications matters.

4. Propose an annual expenditure budget relating to the fibre network and digital communications.
5. Authorise fibre network and digital communications expenditure, provided it is within budget.
6. Ensure expenditures are within budget; where they are not, to provide explanations for the Board.
7. On an annual basis, present to the Board a review of fibre network and digital communications, and proposals for future strategy.