

**TRUSTEES COMMITTEE**

**CODE OF CONDUCT**

**VERSION 1.2**

## DOCUMENT CONTROL

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<b>REQUESTED BY</b>	HOA Board of Trustees
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## 1. THE LEGAL STANDING OF BERG-EN-DAL HOMEOWNERS ASSOCIATION (HOA)

Bergendal Estate was established in terms of Section 29 of The Land Use and Planning Ordinance (LUPO), number 15 of 1985. LUPO is a unique piece of legislation relating to the Western Cape that specifically applies to "Enclosed Estates". In the context of LUPO, a "body corporate" is a generic term for a single legal entity in contrast to the Body Corporate of Sectional Titles or a Company, i.e. NPC. Berg-en-Dal Homeowners Association is a body under common law, a "voluntary association" which is governed by its constitution, regulations and by-laws of the Association.

**Background:** There are over 1500 walled estates in South Africa, with over 200,000 residents and R480bn assets under management (ARC publication: Compliance Hub newsletter). Furthermore a total levy income of over R5bn is collected per annum, which places a huge fiduciary responsibility on the trustees who are elected to this position.

Therefore it is essential that Trustees recognise the scope of their authority and responsibility, as well as appreciate that they have been entrusted with the care of millions of rand in real estate in the form of members' homes. Homes and vacant land on Bergendal itself are valued at R515 mn. In a time of accountability, there is now a body of legislation in South Africa for good corporate governance that is applicable to Estate management and governance.

**Good corporate governance** is essentially about effective leadership characterized by the ethical values of responsibility, accountability, fairness and transparency. The Trustees need to be aware of their responsibilities in terms of the Governance principles applicable to the Estate.

**The Board of Trustees** is the non-executive body that provides leadership to the HOA. It forms policies, determines strategy and direction, oversees implementation, appoints management and acts as a check and balance for the performance of management. The Trustees ensure adherence to the governing regulations of Berg-en-Dal community to resolve conflicts in managing the Estate. In addition, the Trustees recognise the need to build a strong sense of community among residents, and to ensure that the estate looks attractive, remains safe and has a strong financial standing and maintains property values.

**The Board of Trustees** are the people to whom the members of the Homeowners Association (HOA) give their trust; they will expect them to act in their best interests and to safeguard their property investments and lifestyles. Residents will also expect a high level of integrity and honesty. It is imperative that Board Members are fully aware of the implications and responsibilities of the job that they have accepted. Corporate Governance provides checks and balances against abuse of power and ensures that integrity

and honesty are maintained in providing good stewardship in the management and sustainability of the HOA.

## **2. SCOPE AND NATURE OF THE DUTIES OF THE TRUSTEES**

Trustees are elected by the HOA to manage the affairs and represent the interests of the members of the Association. As such, a trustee is placed in a fiduciary position and is required by law to exercise the powers conferred on him/her in the utmost good faith. In order to be able to do this, a Trustee must ensure the following:

### **A. Integrity and Honesty:** Trustees will

- Avoid conflicts of interest. If there are any, they must be declared.
- Take no part in reaching decisions where he/she has a personal interest.
- Always act in the interests of the community he/she represents putting his own interests aside.
- Show no favouritism to any individual member of the community
- Derive no personal profit from his activities
- Take no payment for his/her services other than legitimate expenses
- Act within the limits of his/her portfolio
- Treat all matters dealt with by the Board as confidential, even if no longer a Trustee.
- With other trustees, take all reasonable steps to secure and preserve the property of Members
- Take all reasonable care to ensure that no other trustees commit breaches of trust

### **B. Corporate Governance:** Trustees will

- Ensure that he/she is fully informed, understands, and is knowledgeable of the binding documents for the Berg-en-Dal Homeowners Association and to which all residents are accountable. These include the HOA Constitution, Homeowners Booklet, Architectural and Building Rules, Regulations governing Building Contractors, Consent to use an adjacent erf.
- Be properly informed about relevant legislation applicable to Estates in the Western Cape, including but not limited to Land Use and Planning Ordinance Act (LUPO), Section 29, No 15, 1985, New

Companies Act (May 2011), re best practices; Labour Relations Act, National Environmental Management Act.

- Refuse to support actions deemed not in conformity with the HOA Constitution or general law.
- Take professional advice when necessary

**C. Relationships and Communication:** Trustees will

- Strive toward building relationships built on respect, trust, co-operation and care, recognising they are part of the same team.
- Commit to achieving common goals, maintaining good relationships and continually striving to improve the process of decision making and performance as a team.
- Set an example of humility and demonstrate the value of respect for others in behaviours, language, manners, tone of voice and all forms of communications, where ideas are examined and criticised, not people.
- In cases of disagreement among trustees, strive toward consensus, incorporating the wisdom from different viewpoints and accept the leadership and decisions of the Chairman
- Accept that the Board operates by majority decision and that individual trustees must be prepared to support such decisions in public.
- Satisfy himself/herself that adequate management controls are in place
- Where specific portfolios have been allocated to individuals, to run that portfolio in accordance with accepted good business practice.
- Not to delegate tasks allotted to him/her, unless special skills are required
- Furnish information as requested by Members

Trustees are not required to be experts in any particular area in which they operate, unless they have the relevant professional skills; if they have, they will be judged according to that professional standard, but if not, the standard will be that of the reasonable man.

### 3. DECLARATION BY TRUSTEE

I \_\_\_\_\_ the undersigned, have read and understood the above document and hereby declare that I will be bound by it in the execution of my duties as a Trustee of the Berg en Dal Home Owners' Association.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_