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To:

The President and Presidential Hotline

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The Minister of Cooperative Governance and Traditional Affairs

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The Acting Chief Ombud

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PROPOSED AMENDMENT OF DISASTER MANAGEMENT REGULATION 11B (1) (a) (i)

I respectfully request that the Minister of Cooperative Governance and Traditional Affairs issue a Directive confirming that the phrase "place of residence" in Regulation 11B(1)(a)(i) is not intended to apply so as to restrict a person or family to a physical dwelling in a community scheme that has common areas that are designed to be used in conjunction with the dwelling and which can be used safely.

Where this view is being uniformly applied to all common areas, including those that could be used subject to social distancing and other safety provisions, this is causing unnecessary isolation and hardship for people during lockdown. Particularly for those on their own, for the elderly and the infirm who are not being allowed out of their residential buildings to exercise or walk on the common areas they jointly own, this issue needs to be clarified urgently.

If the Minister is unable to issue the requested directive, I respectfully request that she consider the amendment that is described and motivated in the attached Schedule, with suggestions for the implementation of safe use timetables. The Schedule has been drafted with the assistance of Prof. C.G. van der Merwe, who was also a lead consultant to the government in drafting the Sectional Titles Schemes Management and the Community Schemes Ombud Service Acts. For this purpose I received appeals and substantial input from a wide range of lawyers, community scheme owners, trustees and managing agents.

I thank you for giving this request your attention.

Yours faithfully,

GRAHAM PADDOCK

Graham John Paddock BA LLB (University of Cape Town),
Ané de Klerk BA (Law) LLB (Stellenbosch) | Auren Freitas dos Santos LLB (University of North West) LLM (ISDE)

SCHEDULE
PROPOSED INSERTION IN DISASTER MANAGEMENT REGULATION 11B (1) (a) (i)

11B. (1)(a) For the period of lockdown-

(i) every person is confined to his or her place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant, or seeking emergency, life-saving, or chronic medical attention; provided that:

a. in a community scheme that includes common areas, the term “place of residence” is not to be interpreted so as to confine a person to a single private area; and

b. the terms “community scheme”, “executive committee”, “private area” and “common area” in this proviso must be interpreted as defined in the Community Schemes Ombud Service Act of 2011;

Note 1: The underlined text is a proposed insertion into the existing wording.

MOTIVATION FOR AMENDMENT, WITH PROPOSALS FOR APPROVAL AND IMPLEMENTATION OF A SAFE USE TIMETABLE

1. The common areas in any community scheme are private property, owned either by the community scheme or its members.
2. The executive committee of a community scheme has the right and obligation to manage and administer the common areas.
3. During a lockdown period the executive committee of a community scheme remains responsible to manage and administer the common areas and, unless these issues are dealt with in its governance documents, is entitled to decide which common areas should be closed to residents because they cannot be safely used, and which common areas can be safely used.
4. Before making such a decision, the executive committee should first invite resident input and take whatever advice it considers necessary before deciding which, if any, of the common areas must be closed to resident use and which, if any, can be safely used.
5. Where an executive committee decides that a common area can be safely used by residents and has ascertained which of them wish to make use of it, the executive committee should as soon as reasonably possible approve and publish a use timetable for resident use and impose reasonable conditions in order to ensure resident safety.
6. The residents who choose to make use of a common area in terms of a use timetable should be obliged to comply strictly with any applicable conditions and be responsible for their own safety and that of any minors who accompany them.

Note 2: It is suggested that community schemes include in their rules / governance documents appropriate provisions to regulate the issue of closure and/or safe use of common areas during future lockdowns.

Note 3: The definitions referred to in the proposed amendment b. above are:

“**community scheme**” means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner’s association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing co-operative as contemplated in the South African Co-operatives Act, 2005 (Act No. 14 of 2005) and “scheme” has the same meaning;

“**executive committee**” means the executive body of a community scheme, including but not limited to the trustees of a sectional title body corporate, the board of directors of a share block company and the management association of any housing scheme for retired persons;

“**private area**” means any area in a community scheme set aside for private occupation or ownership, excluding any common area;

“**common area**” means any part of land or building in a community scheme which is intended for common use by occupiers;