Can a group of farmers create a landowners' association?

Body Corporates

Firstly, many of you will know the existence and operation of body corporates linked to sectional title schemes. Sectional title schemes are typically used to develop a townhouse or an apartment complex.

When the developer opens the sectional title scheme, a body corporate is automatically created per the operation of the Sectional Titles Act, 1986. In other words, a developer cannot open a sectional title scheme without forming a corporate body.

It is sometimes said that a certain sectional title scheme does not have a body corporate. That is not correct. Each sectional title scheme by law has a body corporate, as explained. However, sometimes the body corporate is not operational. In other words, no trustees are elected in terms of the Act or are not doing their job.

The body corporate is responsible for managing the common property in the sectional title scheme, which includes any areas that all unit owners, such as the main entrance, parking areas, gardens, and swimming pools, share. The body corporate should cater for and manage the complex's security: security entrance gates, security fences and/or walls and employment of a security company. The body corporate is also responsible for collecting levies from the unit owners to cover the cost of maintaining and managing the common property.

The body corporate is governed by a set of rules in the Sectional Titles Act.

The Sectional Titles Act also caters for conduct rules covering various aspects of living in a sectional title scheme, including using the common property, noise levels, and keeping pets. The body corporate has the power to enforce the conduct rules and can impose penalties on unit owners who breach them.

The body corporate is managed by a group of trustees who the unit owners elect. The trustees are responsible for making decisions on behalf of the body

corporate, such as approving the budget, hiring service providers, and enforcing the conduct rules. The trustees must act in the best interests of the body corporate and are accountable to the unit owners.

Homeowners' Associations

Secondly, a homeowners' association ("HOA") for a full title estate (as opposed to an estate with a sectional title scheme) has a similar purpose and operation as a body corporate. In other words, the association maintains the common property, collects levies, and enforces conduct and other rules.

The major difference between the two is that a body corporate is created per the Sectional Titles Act, 1986, as explained above. On the other hand, a HOA is created by way of a constitution signed by the landowners joining the HOA. Therefore, the Law of Contract is the legal basis of a HOA.

To ensure that the landowners' successors in title are also bound to the HOA's constitution, a condition is added to the title deed of the relevant portion of land, obliging transferees of the land to become members of the HOA. The effect of such a title deed condition is that the deeds office will not register a property transfer without proof that the transferee has indeed become a member of the HOA.

The title deed condition can be added with the transfer of a property, alternatively through a notarial agreement endorsed against the title deed.

As soon as a landowner is a member of the HOA, he is bound to the constitution obliging him to, amongst others, pay levies and follow conduct rules. On the other hand, the membership entitles the landowner to vote for the trustees of the homeowners association. Furthermore, he may use the common property and will enjoy the benefits of living in an orderly and secure estate.

Landowners' Associations

Thirdly, a landowners' association ("LOA"), created by a group of farmers living in a particular area, for example, also has a similar purpose and operation as a body corporate and a HOA. In other words, the association maintains the common property (such as roads and bridges used by all the landowners), collects levies, manages the security of the area (security entrance gates, security fences and/or

walls and employment of a security company) and enforces conduct and other rules.

Furthermore, a LOA is created in the same way as a HOA is. In other words, the founding landowners initially sign the LOA's constitution. The constitution is a form of a contract binding all landowners to follow the terms and rules of the constitution. Also, the constitution caters for a condition to be endorsed against each portion of our land's title deed obliging successors in title to become members of the LOA.

A transferee will consequently not be able to take transfer of a portion of land covered by the constitution without becoming a member of the LOA.

Final comment

The trustees of a body corporate, HOA or LOA may decide to employ a managing agent, who should preferably specialise in the relevant field of law and the work, to manage the affairs of the body corporate, HOA or LOA.

In my opinion, a well-managed body corporate, HOA, or LOA

- can be very beneficial for the owners in terms of the quality of living in the relevant estate or area;
- will increase the value of the units or the portions of land.

Volker Krüger, Van Velden-Duffey Inc