



CASH FLOW SOLUTIONS

# — STRA TA FIN —



**TVDM**  
CONSULTANTS



**SCHÜLER HEERSCHOP PIENAAR**  
Attorneys | Conveyancers | Notaries

# How the POPI Act affects Community Schemes

## Our Host

Willie has practiced as a property attorney for over 20 years

He has been involved in Sectional Title management for over 8 years

Willie started Stratafin in 2014 with the goal of assisting Bodies Corporate with their funding without catching them in a debt trap.

Stratafin strives to be a fair and equitable money provider for the Sectional Title industry.

Willie built up Stratafin from inception to today where it has debtors under management of over R300 Million

Stratafin have partnered with Medu Capital, and the PIC has invested with 45% ownership



Willie Roos  
CEO of Stratafin

# Our Speakers

Zerlinda is a specialist community schemes consultant, offering the services of legal advice in the form of consultations and legal opinions, meeting & CSOS attendance, governance documentation review & amendment, as well as being a professional trustee.

Zerlinda's background is that she is an owner & resident in an HOA & an investor owner in sectional title schemes, a previous managing agent & practising attorney.

Zerlinda lives & breathes community scheme living & loves it!



Zerlinda Van der Merwe

Co-Founder & Director of  
TVDM Consultants

# Our Speakers

Leigh-Anne holds a LLB degree from the University of Stellenbosch.

Her professional career commenced in 2014 when she was admitted as an Attorney of the High Court of South Africa.

She was a practicing attorney before she joined Trafalgar Property Management in 2017 as a Sectional Title Property Manager.

Thereafter she joined Pam Golding as a property manager where she focused on the management of Homeowners Associations and is now employed by RPA Property Administrators in the similar role focusing on commercial and residential community schemes.



Leigh-Anne Harrison  
Portfolio Manager at RPA  
Property Administrators

# Our Speakers

Rudi holds a LLB degree from the University of Johannesburg and is the director at Schuler Heerschop Pienaar Attorneys.

Rudi is also the Head of their Community Scheme Department, which specialises in all matters relating to community schemes, from registration to collections, scheme governance and dispute resolutions.

In addition and in honouring their commitment to community upliftment and education, he is actively involved in community advisory services relating to community schemes.

His firm is an affiliated member of the National Association of Managing Agents (NAMA) and Rudi is one of the preferred speaker at NAMA training and conferences, often provides seminars, articles and opinion pieces which guide and inform their clients and the community scheme industry.



Rudi Jack Heerschop

Director at Schuler  
 Heerschop Pienaar  
 Attorneys

# What is POPI?

The POPIA applies to any person or entity (Public or Private entities) domiciled within South Africa, that “processes” “personal information” by entering such personal information into a “record”.

“**processing**” means any operation or activity or any set of operations, whether or not by automatic means, concerning personal information, including—

(a) The collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;

(b) Dissemination by means of transmission, distribution or making available in any other form; or

(c) Merging, linking, as well as blocking, degradation, erasure or destruction of Information.”

# What is POPI?

“**personal information**” means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to:

- a. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person;
- b. information relating to the education or the medical, financial, criminal or employment history of the person;
- c. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier or other particular assignment to the person;
- d. the biometric information of the person;
- e. the personal opinions, views or preferences of the person;
- f. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
- g. the views or opinions of another individual about the person; and
- h. the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person;



# What is POPI?

“record” means any recorded information—

- (a) regardless of form or medium, including any of the following:
  - (i) Writing on any material;
  - (ii) information produced, recorded or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded or stored;
  - (iii) label, marking or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means;
  - (iv) book, map, plan, graph or drawing;
  - (v) photograph, film, negative, tape or other device in which one or more visual images are embodied so as to be capable, with or without the aid of some other equipment, of being reproduced;
- (b) in the possession or under the control of a responsible party;
- (c) whether or not it was created by a responsible party; and
- (d) regardless of when it came into existence;

# Who does POPIA apply to?

1. POPIA applies to any person that processes personal information.
2. Under the Definition section of POPIA – “**person**” means a natural or a juristic person.
3. Natural – individual; YOU and ME
4. Juristic – An association of people, including a company, partnership, NGO, close corporation.

# Introduction: the Protection of Personal Information act 4 of 2013 (“POPIA”)

1. Constitutional Right to Privacy – Section 14: “Everyone has the right to privacy”
2. POPIA was enacted to promote and protect an individual’s right to privacy.
3. POPIA commencement date – 1 July 2020. A grace period of one year was provided and parties now have until 30 June 2021 to bring themselves into compliance.
4. Where can one obtain a copy of POPIA?
  - a) <https://popia.co.za/>
5. What is the difference between POPIA & PAIA?
  - a) POPIA – relates to the protection of information
  - b) PAIA – The Promotion of Access to Information Act.
  - c) Section 32 (1) of the Constitution states that “everyone has the right of access to any information that is held by another person and that is required for the exercise or protection of any rights”.
6. Why more red tape?
  - a) The purpose of the Act is the protection of information, giving effect to an individual’s right to privacy in terms of the Constitution.

# Introduction: the Protection of Personal Information act 4 of 2013 (“POPIA”)

7. Once an owner is no longer a member of a Body Corporate, how long must their information be retained before it must be destroyed?
  - a) Information must be retained for a period of five years after the person is no longer a member of a BC.
8. Who is responsible for ensuring compliance with POPIA?
  - a) Any person who processes personal information. If POPIA applies to you, then you are responsible for compliance.
9. How does POPIA apply to an independent data storage bureau?
  - a) If the bureau processes personal information, then POPIA is applicable. POPIA prescribes how a person must process personal information; one needs to then comply with those principles.
10. Is POPIA applicable to smaller contractors and registered companies?
  - a) If the contractor or company processes personal information, POPIA is applicable to them.
11. Is POPIA applicable to a homeowner who leases his own property to a tenant?
  - a) If the homeowner processes personal information, POPIA is applicable to them.
12. What information is protected by POPIA?
  - a) Personal Information as per the definitions clause.

# Introduction: the Protection of Personal Information act 4 of 2013 (“POPIA”)

13. Can the MA be held liable for anything if the BC refuses to sign contracts with POPI clauses, or refuses to comply with POPI law?
14. Who will be responsible for ensuring regulatory compliance?
15. Should all owners and tenants sign the acknowledgment and consent form as part of the manual?
16. What should the homeowner who lease his own property comply with POPI act, how is regulated to those homeowners?
17. What effect, if any, does POPI have on PMR 27(2)?
18. Is PMR 27.4 still executable because MAs now use the Popi act to withhold info from the members?

# Conditions for the lawful processing of personal information

When processing personal information, a person must comply with **EIGHT (8)** conditions / principles:

1. Accountability
2. Lawfulness
3. Purpose
4. Further processing limitation
5. Information Quality
6. Openness
7. Security
8. Participation

# Who is the information officer in community schemes?

1. POPIA provides that the head of a private body or any person duly authorised by that person, should be registered as the information officer.
2. In terms of the Information Regulator’s *Guidance Note on Information Officers and Deputy Information Officers* (“*Guidance Note*”) published on 01 April 2021, an information officer is:
  - a) the head of an institution – which in a community scheme context would amount to the chairperson or the executive trustee or director; or
  - b) any person duly authorised by such head;
  - c) however, the information officer must be an employee of the institution to qualify.
3. Who constitutes a person “duly authorised by such head”?
  - a) In the *Guidance Note* the Information Regulator prescribes that such a person should be at an executive level or equivalent position.
  - b) In a community scheme context, this equivalent position would entail any person at the scheme considered to be at a level of management of the community scheme, being the trustees or directors.
4. What happens when all trustees decline the position of information officer and will resign if forced to take position?

# Duties of the information officer (POPIA & PAIA)

POPIA prescribed the following duties to an information officer, to:

1. perform a personal information impact analysis (or gap analysis) to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of personal information;
2. develop, implement, monitor and maintain an compliance framework;
3. develop and implement internal measures to process requests for personal information;
4. create internal awareness regarding the provisions of POPIA;
5. encourage compliance with the conditions of lawful processing of personal information as contained in part 2 of these guidelines;
6. deal with request made by both the Information Regulator and the stakeholders of the scheme;
7. assist and work with the Information Regulator in relation to investigations conducted in relation to the body; and
8. otherwise ensure the scheme's compliance with the provisions of POPIA.

PAIA prescribes the following duties to an information officer, to:

1. encourage and ensure compliance with PAIA;
2. develop, update and monitor the PAIA manual for the scheme; and
3. assessing and providing outcomes to any requests for access to information of the scheme within the applicable time periods.



# The registration of an information officer

1. Registration of the information officer should occur via:
  1. Email: [registration.IR@justice.gov.za](mailto:registration.IR@justice.gov.za);
  2. Postal: P.O. Box 31533, Braamfontein, Johannesburg, 2017; or
  3. Registration portal:  
<https://www.justice.gov.za/infoereg/portal.html>.
2. The registration of the information officer should be accompanied by the Information Officer's Registration Form as contained in the [Guidance Note](#).

## The deputy information officer

1. The information officer is entitled to delegate any functions and/or duty prescribed by POPIA and PAIA, as aforementioned.
2. However, the accountability cannot be delegated to the deputy information officer.
3. The registration of the deputy information officer, should be accompanied by the prescribed:
  - a) Designation and delegation of authority to the deputy information officer from; and
  - b) Authorisation of information officer form, as contained in the Guidance Note.

# Consequences of non-compliance with POPIA

1. Fine or penalty not exceeding R10 Million
2. 12 months imprisonment
3. Damages claim
4. What must one do if a scheme is of the opinion that POPIA does not apply to them?

It has been established that POPIA is applicable to community schemes and there are serious consequences for non-compliance. The scheme must be advised of these consequences.

# The information regulator

1. The Information Regulator is a new regulator created by the POPIA. The Information Regulator has extensive powers to investigate complaints submitted for alleged breaches of POPIA.
2. What are the responsibilities of the Information Regulator?
  - a) Provide education;
  - b) Monitor and enforce compliance;
  - c) Consult with interested parties;
  - d) Handle complaints;
3. The Information Regulator must investigate complaints received from persons regarding any interference with the protection of their Personal Information.
4. Interference consists of:
  - a) Any breach of the conditions for the lawful processing of Personal Information set out in POPIA;
  - b) Non-compliance with any obligation created in terms of the POPIA; and
  - c) A breach of the provisions of a code that has been issued by the Information Regulator.

# What to do and where do I start?

1. Seek guidance externally – training, office audit, consulting with specialists for specific company / organisation
2. Appoint an Information Officer & register with the Information Regulator
3. Develop a framework / manual that guides compliance - POPIA & PAIA manuals
4. Should Trustees create the BC's POPIA manual, or can the Managing Agent do so on their behalf? Does it need to be approved by all Members?
5. The Trustees or managing agent can create the manual but it is advisable that it be outsourced to a service provider with POPIA knowledge. Member approval need not be obtained as Trustees are responsible for ensuring that a BC is compliant with applicable legislation.

# What to do and where do I start?

## 6. Must a BC and MA be trained to implement POPIA?

It is advisable that both parties seek external guidance from a service provider well versed in the POPIA legislation.

## 7. Is it a requirement that each individual community scheme have their POPIA and PAIA manual?

Yes, POPIA requires that every person comply have their own manual.

## 8. Is an NDA signed by an attorney sufficient to ensure that they are complying with POPIA?

Yes, the only requirement is that each party undertakes to comply with the Act. The way they do so is up to them and the policies they put in place for the protection of information.

## 9. Must a Managing Agent have their own POPI manual?

As a MA processes personal information, it is a requirement that they also comply with the provisions of POPIA.

**Zerlinda and Leigh-Anne will be hosting a webinar on this topic tomorrow at 10am**

# Whatsapp, Facebook, CCTV and Security

1. Regarding Whatsapp groups in community schemes how does this affect us because all the Owners numbers and details can be seen?
2. How do access control system to buildings (security, biometrics, registers) need to adapt to POPIA?
3. May a visitor refuse to have their driver's license and/or car license photographed to gain entry to a complex/estate?
4. Biometrics may be more POPI friendly than paper access control but it is not COVID friendly. How does one reconcile the two?
5. What is the impact of the POPI Act on CCTV Cameras in a Sectional Title Scheme?

## 1. Who is exempt from POPIA?

- POPIA does not apply to the processing of personal information in the course of a purely personal or household activity.

## 2. Who is exempt from PAIA?

- Natural and Juristic Persons
- There are no exemptions granted to any natural or juristic person from the requirements to compile and file a manual.
- This means that no matter how small a business, trade or profession concerned and irrespective of turnover or number of employees, both are obliged to compile and file a manual.





QUESTIONS?

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