

POPIA IS HERE – NOW WHAT?

A PRACTICAL GUIDE TO THE IMPLEMENTATION OF THE ACT

Leigh-Anne Harrison | RPA Property Administrators
Advocate Louis Nel | Louis-the-Lawyer



www.tvdmconsultants.com



info@tvdmconsultants.com



061 536 3138



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Summary – Part 1

- What is the POPIA - The Protection of Personal Information Act 4 of 2013
- The purpose of POPIA – the promotion and protection of an individual’s **right to privacy**
- Cut off date for compliance – **30 June 2021**
- Who is POPIA applicable to? Any **person** who **processes personal information** (including a community scheme – BC or HOA)
- There are **eight (8) conditions** that a person has to comply with when processing personal information
- **Importance** of compliance and **consequences** for a breach in terms of POPIA (**fine, imprisonment, damages claim**)
- **What are the next steps??**

Five Practical Steps – Compliance with POPIA

1. Information Officer
2. Personal Information
3. Security Measures
4. Direct Marketing
5. Procedures & Training

1. Information Officer

- **Identify an Information Officer**

- They are responsible for ensuring compliance with POPIA and will be held liable should a breach occur

- Head of an Organisation – Building / Estate Manager OR Chairperson or Trustee

- **Register the Information Officer** with the **Information Regulator** via the online portal (<https://justice.gov.za/infoereg/portal.html>) or via email (registration.IR@justice.gov.za)

- Link to the guidance note released by the Information Regulator

- <https://www.justice.gov.za/infoereg/docs/InfoRegSA-GuidanceNote-IO-DIO-20210401.pdf>

- Role of the Managing Agent?

Role of the Managing Agent

- We have established that a BC or HOA processes personal information, thus POPIA is applicable.
- What is the role of the MA??
- A community scheme delegates their responsibilities from an administrative, financial and compliance perspective to the Managing Agent BUT the scheme is ultimately still the one responsible to its members
- That is why the scheme is the one that **processes personal information**, and not the Managing Agent.
- **The responsibility is delegated, but first and foremost it rests on the scheme**

2. Personal Information

- Assess what Personal Information is held, how it is held and why it is held
- In order to collect and process information lawfully, you need to show that you are acting **lawfully, reasonably** and in a manner that **doesn't infringe on a data subject's privacy**.
- You must show that you are **processing information for a specific purpose only** related to your business activities only and can only be retained so long as you legitimately need to or are allowed to keep it.
- A person's **POPIA manual** highlights the above and is required – POPIA states that a person must develop a framework / manual that guides compliance
- A **Privacy Policy** must also be developed and placed on a person's **website**
- document contained on a website that explains how a website or organisation will collect, store, protect, and utilise personal information provided by its users

3. Security Measures

- One **MUST** take reasonable **technical and organisational measures** to prevent loss of, damage to, unauthorised access or destruction of personal information
- POPIA doesn't prescribe HOW, just that you **MUST** secure personal information
- Brainstorm with your team all possible vulnerabilities and patch them
- Any actual or suspected breaches must be reported “as soon as reasonably possible” to **both the Information Regulator and the data subject/s involved.**

Consequence – trust relationship with client and future business

4. Direct Marketing

- Direct marketing - any approach to a data subject for the direct or indirect purpose of promoting or offering to supply, in the ordinary course of business, any goods or services to the data subject
- Example - emailing or WhatsApping a client about a product, service or a special offer
- Requirements:
 - One can market to existing customers in respect of “similar products or services”
 - one must be “opt-out” at any stage
 - potential new customers can only be marketed with their consent, i.e. on an “opt-in” basis.

5. Procedures & Training

- In an organisation, identify and assess how information is collected, stored, for how long and for what purpose.
- One is much less likely to have a POPIA problem if everyone in an organisation understands the Act and its applicability.
- This is a complex topic – there is no substitute for tailored professional advice



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