
VILLA BULLETIN 5

Nuusbulletin van/News bulletin of Bougainvilla Aftree-oord/Retirement Village

Nr 5 20 Nov 2018

Onduidelikhede oor Akte opgeklaar, word nou aan SAV voorgelê

Spesiale vergadering op 27 November

Onduidelikhede wat daar nog was is op 'n onlangse Inligtingsessie opgeklaar en verdere toeligting oor die Akte van Oprigting (AvO) is deur mnr Elmo Stuart van EYS Prokureurs gegee. Hy was vir die opstel van die dokument verantwoordelik.

Die Spesiale Algemene Vergadering om die opgedateerde Akte van Oprigting goed te keur, vind op Dinsdag 27 November om 14:00 in die Gemeenskapsaal plaas.

Dis noodsaaklik vir Bougainvilla se eienaars om, ter wille van goeie bestuur, die nuwe AvO goed te keur. Daarmee sal die Huiseienaarsvereniging (HEV) se sake in ooreenstemming met veranderde wetgewing gebring word. Die AvO is 'n belangrike dokument wat die bestuurstruktuur en die regte en verpligtinge van die HEV-lede uiteensit.

MOI: Resolution to be adopted

Special General Meeting on 27 November

It is in the interest of each owner to attend the Special General Meeting (SGM) to be held at 14:00 on 27 November 2018 in order to finalise the matter. If you are unable to attend the meeting, you are kindly requested to complete the proxy form which was attached to the notice of the SGM and return it as soon as possible prior to the meeting.

A Memorandum of Incorporation (MOI) is a memorandum defining the powers, responsibilities and duties of the Board of Directors as well as the relationship between the Company and its Members (owners). The proposed MOI is essentially the same as the original MOI currently applicable, but amended to comply with current legislation.

It is therefore important that the amendments contained in the proposed MOI are accepted, not only to comply with legislation but also to ensure that your investment within the Village is secured.

(See also the letter on page 2 from EYS Attorneys for further explanation in this regard).

Motion to be passed at SGM

The following motion is to be passed at the Special General meeting, with or without amendments:

To approve the MOI, as tabled at the Meeting and initialled by the Chairperson, for identification purposes, and to adopt and incorporate as the MOI of the Association in substitution of the existing Memorandum of Association, Articles of Association and Rules.

Portfolios

Chairperson and Contracts:
Gerrie van Vuuren.

Vice-Chair and Kitchen; Frail Care; Welfare; Social; Library:

Colleen McGillivray
Security; Health; Safety:

Ellek Wiese

Marketing: Chris Höll

Finance: Johan Coetzee

Committee: George Grewar

Infrastructure and technology:

Klasie Basson

Committee: Jan Buter

Villa Bulletin

Tensy anders vermeld is woorde en uitleg deur Johann Lemmer

Stuur kommentaar aan lemmerj@mweb.co.za

Lees en bêre asseblief vir toekomstige verwysing

Letter from Elmo Stuart (EYS Attorneys)

The MOI is the constitutional document of the HOA

Mr Elmo Stuart wrote: As requested I would like to assist with clarity on the question why there is need for your members to adopt a new Memorandum of Incorporation for your Company.

This is the document in terms of which the relationship between the Company and its members and the members *inter se* are governed.

The MOI sets out the rights and responsibilities of the parties concerned, as well as the powers and authority of the Company and its Directors.

Good governance dictates that the provisions of your MOI, and therefore the powers and functions of the Company, must align with the specific needs of your members and the Management of the Company.

Your current MOI was adopted under the new Companies Act, Act 71 of 2008, at the time when the drafters thereof were not familiar with all of its provisions or the interpretation of various Sections and of the interaction between all pieces of legislation applicable to the management of your Retirement Village.

There are various pieces of legislation applicable, such as the Companies Act, Act 71 of 2008, the Sectional Titles Act, Act 95 of 1986, the Sectional Titles Scheme Management Act, Act 8 of 2011 and the Community Schemes Ombud Service Act, Act 9 of 2011, to mention just a few.

Other legislation such as the Older Persons Act and the Housing Development Schemes for Retired Persons Act, etc. are applicable.

Although ownership comprises Sectional Title and members of the Company are registered owners of Units in the Scheme, the management of your Company is in terms of the Companies Act and the Company Rules and not in terms of the Management- and Conduct Rules prescribed under the Regulations of the Sectional Titles Scheme Management Act.

It is not clear from your current MOI how the legislation referred to interacts and rights and responsibilities of members and the management of the Company are not clearly defined.

It is therefore necessary, not only for good governance but to safeguard your investment in the Retirement Village, that the affairs of your Company should be aligned with legislation and that your MOI should set out the governance structure and the rights and responsibilities of the members, Directors, etc.

The proposed amendments to your MOI define how and in terms of what legislation the Company is managed and where, when and how other legislation such as the Sectional Titles Act and provisions of the Sectional Titles Scheme Management Act become relevant.

Hoekom 'n Huiseienaarsvereniging en nie 'n Raad van Trusteers nie?*

Wanneer 'n ontwikkelaar aansoek doen om die opening van 'n deeltitelregister en die registrasie van die deelplan, kan hy en die plaaslike owerheid bepaalde voorwaardes stel. So het die Tshwane Metro in die Provinsiale Koerant van 1 Februarie 2013 o.a. bepaal dat Bougainvilla Aftreeoord 'n Maatskappy (MSW) moet wees. Die funksies van die Regspersoon/Beheerliggaam, ingevolge Regulasie 30(2) van die Deeltitelwet van 1986, is by die opening van die deeltitelregister, toebedeel (*assigned*) aan die "Assosiasie" (Huiseienaarsvereniging). Die Reëls in Bylae 8 is dan nie van toepassing nie en word vervang deur Reëls in die Akte van Oprigting (AvO).

Die Titelaktes van deeltiteleienaars van Bougainvilla Aftreeoord bevestig dat alle funksies van die Regspersoon/Beheerliggaam by die opening van die deeltitelregister aan die HEV toebedeel is asook dat elke eenaar by registrasie lid word van die HEV. Dit is ook in ooreenkoms met die Koopkontrak wat deur die Ontwikkelaar met die Koper gesluit het. Toe die eerste Raad van Direkteure in 2014 verkies is, het hulle die stelsel soos hierbo uiteengesit geërf en sedertdien voortgegaan om die Oord ingevolge die bestaande Akte van Oprigting te bestuur.

Dis vir die Direksie belangrik dat eienaars se belange beskerm word en Bougainvilla se strukture aan wetlike vereistes voldoen. By die Inligtingsessie wat op 14 November gehou is, het eienaars onbeperkte tyd gehad om vrae oor die AvO te vra en onduidelikhede op te klaar. Daar is ook 'n aantal nie-wesentlike wysigings van die AvO voorgestel wat met goedkeuring van die Spesiale Algemene vergadering aangebring sal word.

***In Ieketaal geskryf**