



Eight Valuable Lessons for Body Corporate Trustees from the King IV Report

The [King IV Report on Corporate Governance for South Africa, 2016](#) (“King IV Report”) is a voluntary set of principles and practices that sets out a principles-based framework for good governance. While the historical series of King reports were originally conceived with companies as their primary focus, their principles have lived on and evolved to encompass a wide range of entities, including Non-Profit Organisations (NPOs), and State-Owned Enterprises (SOEs). Adherence to this code is now in some cases mandatory for certain entities such as companies listed on the Johannesburg Stock Exchange (JSE).

It is submitted that whilst adherence to this code is not mandatory for sectional title schemes, its principles and recommended practices can be applied to sectional title schemes and that trustees can benefit from the report’s guidelines on *inter alia* good governance, ethical leadership, risk management, financial management, and owner engagement.

In South Africa, sectional title schemes are a common form of property ownership, offering a unique, communal living arrangement for many owners governed largely by the Sectional Titles Schemes Management Act, 8 of 2011 (the “STSMA”), the Sectional Titles Act and the Community Schemes Ombud Services Act, 9 of 2011 (the “CSOSA”). However, governing and managing these schemes, effectively, requires knowledgeable and dedicated trustees who are committed to upholding the principles of good governance. The King IV Report offers invaluable guidance and lessons for trustees in sectional title schemes, providing a framework to ensure transparency, accountability, and the protection of the collective interests of owners and other stakeholders.

This article explores the key lessons that can be gleaned from the King IV Report to enhance the functioning of boards of trustees of sectional title schemes.

Lesson 1: Ethical Leadership and Accountability (see Principle 1 read with Principle 6)

The King IV Report underscores the importance of ethical leadership and accountability as fundamental principles of good governance. Trustees in sectional title schemes must act in the best interests of the unit owners, promote transparency, and uphold the highest ethical standards. This concept aligns with important provisions as it relates to trustees set out in the STSMA, the CSOSA and the respective regulations promulgated thereunder.

According to section 8(1) read with section 8(2) of the STSMA, every trustee of a body corporate assumes a fiduciary role towards the body corporate. This entails the duty to act with honesty and good faith. Trustees must exercise their powers in a manner that serves the body corporate’s interests and benefits while refraining from acting for personal gain and/or beyond their powers. Should a trustee have a conflict of interest, they are obliged to notify the other trustees and abstain from participating in discussions or voting on matters where such a conflict arises.

In conjunction with their fiduciary obligations, regulation 14(1)(d) of the CSOSA imposes upon trustees the responsibility to exercise an “active and independent option” when making decisions, reinforcing the concept of trustees performing as ethical leaders. Regulation 14(2) of the CSOS specifically states that the obligations of a community scheme executive in this regulation, are “in addition to and do not derogate from the fiduciary obligations of a scheme executive in terms of the common law or any applicable statute”.

Recommended Practice 26 under Principle 6 of the King IV Report suggests that at the beginning of each meeting of the governing body or its committees, all members should be required to declare whether any of the executives have a conflict of interest in respect of any matter on the agenda. This is a great practice that trustees should implement before each trustee meeting or committee meeting commences.



Lesson 2: Effective Risk Management (see Principle 11)

The King IV Report highlights the need for robust risk management practices to identify, assess, and mitigate potential risks. Trustees in sectional title schemes should be proactive in assessing risks that may impact the scheme's financial stability, security, or overall well-being. They should establish risk management frameworks, implement appropriate insurance coverage, and ensure contingency plans are in place to address emergencies or unforeseen circumstances.

This aligns closely with the STSMA and the CSOSA, which stipulate that schemes are legally obligated to secure prescribed insurance, including building replacement, public liability, and fidelity insurance.

Furthermore, bodies corporate do not exist in a vacuum. As such, trustees must understand that legislation, such as the Occupational Health and Safety Act, 85 of 1993 and the Protection of Personal Information Act, 4 of 2013 may in certain circumstances affect the scheme and non-compliance could result in fines or penalties. The CSOSA underscores this through regulation 14(1)(a) which requires scheme executives (therefore trustees) not only to familiarise themselves with sectional title legislation but also to acquaint themselves with the regulatory framework under which the scheme functions.

Some of the recommended practices that body corporate trustees could implement under Principle 11 of the King IV Report:

- Periodically evaluating prospects and vulnerabilities concerning the body corporate;
- Viewing risk as an inherent positive and/or negative factor in decision-making;
- Establishing the body corporate's risk appetite;
- Evaluating risks and prospects emerging from the triple context within which the body corporate functions and the capital it uses and impacts;
- Formulating and executing strategies concerning risks;
- Pursuing external verification of the body corporate's risk management procedures.

Lesson 3: Owner Engagement and Communication (see Principle 16)

Engaging owners and maintaining effective communication channels are vital for the success of a sectional title scheme. Trustees should encourage active owner participation, hold regular general meetings (at the minimum, the annual general meeting as required in terms of the STSMA), and provide clear and timely communication on matters that affect the scheme. By fostering a culture of inclusivity and transparency, trustees can ensure that owners are well-informed and have a platform to voice their concerns and opinions.

The essence of a sectional title scheme lies in its democratic nature, which is highlighted by the legislative requirements for owner input in various decisions. These decisions are made by way of ordinary, special or unanimous resolutions taken during general meetings. Trustees have a responsibility to operate within their designated powers. For matters that necessitate owner participation and fall outside of the trustees' existing authority, trustees must send out the necessary notices to owners (for example, 30-day notices for reasonably necessary improvements to common property as outlined in Prescribed Management Rule ("PMR") 29(2)) and/or arrange general meetings to enable discussions and voting on such matters, thereby ensuring owner involvement is properly facilitated.

Lesson 4: Financial Management and Reporting (see Principle 5)

Sound financial management is crucial for the sustainability of a sectional title scheme.

Principle 5 of the King IV Report advises that the trustees should ensure that the financial reports issued by the body corporate are such that the owners and other stakeholders can make **informed assessments** of how the body corporate is doing in the short, medium and long term.

This ties into the PMR 26 which contemplates the scheme's financial management and the various analyses required in the preparation of the annual financial statements of the scheme. By aligning these principles and rules, trustees can glean valuable insights from the King IV Report, guiding them toward effective financial stewardship and sustaining the financial health of the sectional title scheme.



Lesson 5: Conflict Resolution and Dispute Management (see: Principle 16)

Disputes and conflicts can arise within any community, and trustees play a pivotal role in resolving them effectively in sectional title schemes. To quote the King IV Report– “A *dispute resolution process should be regarded as an opportunity not only to resolve the dispute at hand but also to maintain and enhance social and relationship capital of an organisation.*” Sectional titles schemes are communities and happy neighbours lend themselves to happy communities.

The key stakeholders of a body corporate are its owners, tenants, trustees, managing agents, employees, the CSOS, and service providers.

The CSOSA does provide a dispute resolution ombud service for community schemes in South Africa, however, the CSOSA may not always be the correct forum (depending on the nature of, and parties to, the dispute). And if it is the correct forum, the CSOSA does specify that all internal dispute resolution processes should have been exhausted before approaching the ombud service.

The King IV Report advises that the governing body should ensure that there are formal mechanisms for engagement and communication with stakeholders, including dispute resolution processes. Trustees should establish clear, fair, and impartial, internal conflict resolution procedures for addressing disputes, and promote open dialogue, before resorting to CSOS or litigation through the court system. Trustees need to prioritise the overall harmony and well-being of the sectional title scheme while addressing conflicts in a timely and fair manner. It is advisable that the conduct rules of the scheme set out a clear and fair dispute resolution process as well as a credit policy (given that many disputes are because of the non-payment of levies).

Should trustees require assistance with drafting new conduct rules and obtaining advice as to the correct procedure to amend their conduct rules – then feel free to contact [Sectional Title Solutions' Legal Advisory department for assistance.](#)

Lesson 6: Sustainable Development (see Principle 3)

King IV reiterates that organisations should strive to be “responsible corporate citizens” and it is submitted that bodies corporate should also aim to be a “responsible corporate citizen”. Bodies corporate are the governing bodies of micro-communities that do not live in isolation in our society. As such, trustees should consider the principles of sustainability and incorporate them into decision-making processes. This could involve promoting environmentally responsible practices such as recycling, conserving resources (fixing that leaking tap in the clubhouse bathroom timeously, for example) and ensuring the long-term viability of the sectional title scheme.

Sectional Title Solutions offers two fantastic solutions to empower bodies corporate to be environmentally responsible including [Efficient Energy Solutions](#) and [Outdoor Advertising Solutions](#) on common property infrastructure made from fully recycled materials.

Lesson 7: Technology and Innovation (see Principle 12)

Embracing technology and fostering innovation can enhance the efficiency and effectiveness of managing the sectional title scheme. Trustees should explore digital solutions, automation, and innovative approaches to improve governance practices, communication, and service delivery. Sectional Title Solutions offers Smart Technology Solutions including [Fibre to the Home, Visitor Management, Remote Security and Surveillance Solutions.](#)

Lesson 8: Continuous Learning and Improvement (see Principle 7)

Principle 7 of King IV addresses the composition of the governing body and emphasises the importance of having a board that possesses the necessary skills and knowledge to fulfil its responsibilities.

Although there are no specific prerequisites for trustees to join the board, such as a minimum level of education or experience (for example, a matric certificate) it is essential to consider that regulation 14(1)(a) of the CSOSA requires



that a trustee MUST “*take reasonable steps to inform and educate himself or herself about the community scheme, its affairs and activities and the legislation and governance documentation in which the community scheme operates*”.

The guidance provided in King IV highlights the importance of the governing body possessing appropriate knowledge. Trustees should prioritise continuous learning and professional development to ensure a comprehensive understanding of sectional title legislation, stay updated on the evolving legislative landscape, and remain well-informed about governance principles, regulations, and best practices. [TRACS is here to help support trustees – check out their free community scheme courses here.](#)

As can be seen from the above analysis, the King IV Report provides valuable lessons for trustees of sectional title schemes. Arguably, all scheme executives of any community scheme would do well by considering these lessons in their journey on the board of executives for their respective community schemes. By embracing the principles of King IV as discussed above, scheme executives have a better chance of creating and curating well-governed, harmonious communities. It is important to note that while the King IV Report provides comprehensive guidelines and best practices, its adoption is voluntary. However, many entities choose to implement its recommendations to enhance their governance practices and build stakeholder trust.

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