

# Annexure “A”

## **HERITAGE HEIGHTS HOMEOWNERS ASSOCIATION NPC (2007/020719/08)**

RULES  
FOR  
Heritage Heights

Section A            INTRODUCTION

1. The main objective of the development of Heritage Heights, is the provision of a high quality lifestyle for Residents. The intention of these Rules, the Memorandum of Incorporation of the Home Owners Association and the powers given thereunder to the Board of Directors, is the protection of this lifestyle and the architectural standards of the Complex.
2. Happy and harmonious community living is achieved when all Residents use and enjoy their private properties and the Common Property of the Complex in a manner so as not to infringe upon the other Residents use and enjoyment thereof. General consideration of all Residents for each other will ensure that these objectives are achieved.
3. To assist in this aim, the Directors, in terms of the Memorandum of Incorporation of Heritage Heights, have established these Rules. They are binding upon all Residents and other persons entering the Complex. Owners shall bear ultimate responsibility and any liability for ensuring that their family, tenants, employees, invitees, contractors and guests comply with these Rules.
4. The Board of Directors may appoint a Managing Agent to carry out certain responsibilities and functions on its behalf including the control, administration and management of the Home Owners Association.

Section B            INTERPRETATION

1. In the interpretation of these Rules, unless the context otherwise indicates:
  - 1.1 “Board of Directors” “Board” or “Directors” means the Board of Directors of the Home Owners Association as envisaged in the Memorandum of Incorporation.
  - 1.2 “Building Works” means as defined in the Memorandum of Incorporation;
  - 1.3 “Complex” means as defined in the Memorandum of Incorporation.
  - 1.4 “Common Property” means as defined in the Memorandum of Incorporation.
  - 1.5 “House Rules” , “Rules” or “Conduct Rules” means these Rules together with the Schedule of offences and fines (annexure “B”) and Architectural and Aesthetical Rules and Guidelines (annexure “C”) .
  - 1.6 “Designated colors” means for exterior walls: exterior security fences, gates and driveways, the color as referred to in the Aesthetic Rules, from time to time.
  - 1.7 “Family” means one couple, with or without their parents and with or without the children of one or the other or both of them, living together as one household.

- 1.8 “Home Owners Association”, “HOA” or “The Company” means the Heritage Heights Home Owners Association.
- 1.9 “Managing Agent” means an entity appointed by the Board of Directors to manage certain responsibilities on behalf of the Directors and the Home Owners Association.
- 1.10 “Memorandum of Incorporation” means the Heritage Heights Memorandum of Incorporation.
- 1.11 “Member” means a member as defined in the Memorandum of Incorporation.
- 1.12 “Owner” means the registered Owner of a Unit in the Complex.
- 1.13 “Resident/s” means the Owner, tenant or any other occupier of a Unit.
- 1.14 “Unit” or “property” means a dwelling as defined in the Memorandum of Incorporation.
- 1.15 Headings are used for reference purposes only and shall not affect the interpretation of these Rules.
- 1.16 Word importing the masculine gender shall include the feminine gender and vice versa.
- 1.17 Words not defined herein shall have the meaning ascribed thereto in the MOI or the Act.

Section C CONDUCT RULES

**1. Use of the streets**

- 1.1 The speed limit in the Complex is 20km per hour.
- 1.2 Pedestrians shall have right of way of all places and at all times and vehicles shall be brought to halt whenever it is necessary for same to enjoy such right of way.
- 1.3 The use of scramblers, motorbikes and similar devices causing excessive noise within the Complex is prohibited.

- 1.4 Repairs and dismantling of vehicles in the Common Property is not permitted.
- 1.5 Trailers, boats, caravans and similar vehicles must be parked in the Resident's garage and not on the Common Property or visible from the Common Property without the prior written consent of the Directors.
- 1.6 Hooters shall not be sounded anywhere within the Complex.
- 1.7 Visitors may only park their vehicles in such a manner that it shall not cause an obstruction within the common property or obstruct access to any resident's homes or garage.
- 1.8 Residents shall ensure that all their vehicles (and those of their visitors) are parked in such a way so as not to obstruct the Common Property or obstruct access to other Residents' residences or garage/s.
- 1.9 The Directors may authorise the removal of any vehicle parked on the Common Property, any undeveloped stands or unoccupied Dwellings that has not been moved for a total period of 7 (seven) days or vehicles causing an obstruction as aforementioned. All costs for towing, storage and any other associated cost shall be debited to the Member's account.
- 1.10 Members shall be liable for any damage caused by their vehicles or those of their tenants, guests, contractors or other invitees, to the Common Property howsoever arising including but not limited to oil spill damage and the shifting of paving as a result of heavy vehicles being driven within the Complex.
- 1.11 No building materials may be stored on undeveloped stands and no rubble may be dumped thereon. The Directors may authorise the removal of any building material or rubble from open stands at the costs of the offending Member or transgressor.

## **2. GOOD NEIGHBOURLINESS**

- 2.1 No Member, resident or occupier of any unit may run any business or business related activity without the prior written consent of the Directors.
- 2.2 Signs and notices: No Member, resident or occupier of a Unit shall place any sign, billboard or advertisement of any kind whatsoever on any part of the common property or a Unit, so as to be visible from outside of the unit, without the written consent of the Board of directors first having been obtained.

- 2.3 Residents must supervise and control their children and their visitors' children in order to avoid damage to the common property, unoccupied units and units under development and shall not cause inconvenience to other residents. In particular, children must not tamper with any objects in and around the common property.
- 2.4 Members will at all times be held responsible for the actions of their children and their visitors' children.
- 2.5 The volume of sound in and arising from a vehicle, a unit, tools, animals, alarms or from whatever sources, including the vehicle or unit itself, radios, television sets, musical instruments, human voices, tools, animals or telephones shall be on such a level so as not to cause any disturbance or nuisance to other residents.
- 2.6 Mechanical maintenance work, including the use of power tools, lawn mowers and similar tools, is permissible only between the hours of 08h00 and 17h00 during weekdays and 09h00 and 15h00 on weekends and Public Holidays.
- 2.7 Washing may only be hung on washing lines screened from the Common Property and neighbouring Units. No Clothing, carpets or other items may be hung over walls visible from the Common Property or outside the Complex.
- 2.8 Residents shall be responsible for purchasing their own refuse bins which shall be stored in such manner that it will never be visible from the Common Property or other Dwellings. Two standard sized refuse bags will be collected from each Dwelling on Mondays to Fridays. Any refuse collected outside these days will attract an additional fee.
- 2.9 All domestic refuse shall be placed in plastic bags, sealed and placed on the pavement outside the Dwelling on the morning of collection day.
- 2.10 No rubbish may be dumped in the common property or on the pavements.
- 2.11 No Resident may cause a nuisance, disturbance, inconvenience or annoyance to any other Resident.
- 2.12 The installation of additional outside (spot) lights to a unit should be placed in such a way as not to cause any disturbance to another dwelling.
- 2.13 Any blockage in sewers and waste pipes which serves a dwelling is the responsibility of such dwelling.

- 2.14 An Member or occupier shall keep his dwelling free from ants, rats, mice, borer and other wood destroying insects and to this end shall permit the Board of Directors, the Managing Agent and their duly authorized agents or employees to enter the premises from time to time for the purpose of inspection. Should a Member fail to eradicate any pest after written notification from the Board, the latter shall have same eradicated at the cost of the Member.
- 2.15 No fireworks of any kind may be ignited within the Complex.

### **3. ENSURING A PLEASING STREETSCAPE**

- 3.1 Every Member shall maintain the area between the street kerb and his Unit. This area shall be maintained and planted in such a way that it is in keeping with the standard of the gardens in the Common Property
- 3.2 Should the Member fail to comply with a request from the Directors to do so, the Directors may arrange for such maintenance, landscaping and planting to be undertaken on behalf of the Member, the cost of which shall be debited to the Member's account.
- 3.3 The Member shall ensure that plants, whether inside or outside his Unit, do not obscure the vision of motorists or damage the walls of the Common Property. Plants and trees must be trimmed to ensure that they do not overhang the electric fence. The Directors may arrange for any plants and trees to be cut or removed and any damage repaired. The cost thereof shall be debited to the relevant Member's account.
- 3.4 All other gardening on the Common Property may only be undertaken by persons authorised to do so by the Directors unless otherwise agreed to by the Directors.
- 3.5 Flora in the Common Property may not be removed, cut or damaged.
- Members are expected to regularly maintain the exterior of their Unit including garage doors, gates and walls visible to the Common Property and other Units, to ensure an aesthetic standard in keeping with the Common Property.
- 3.6 Should the Member fail to comply with a request from the Directors to do so, the Directors may arrange for such maintenance and painting to be undertaken on behalf of the Member, the cost of which shall be debited to the Members' account.

- 3.7 Building material and garden refuse shall not be dumped in the Common Property, undeveloped stands or the pavements inside or outside the Complex under any circumstances.
- 3.8 Garage doors shall be kept closed, except insofar as it is necessary to provide egress or ingress.
- 3.9 Residents must utilise their garage/s and or driveway for parking their vehicles. Parking space in the Common Area is to be utilised by visitors only.
- 3.10 Units, including all walls visible to the Common Property and any other Unit must be painted in either one or a combination of the Designated Colours, per the aesthetic rules and guidelines, in keeping with the appearance of the Common Property. Should Members use any other colours, the Directors may arrange for the repainting in the correct colours to be undertaken on behalf of the Member, the cost of which shall be debited to the Members' account.
- 3.11 Garages may not be used for purposes of habitation, under any circumstances.
- 3.12 No Air Conditioning units or decorations visible from the Common Property may be installed without the written permission of the Directors.
- 3.13 No sheds, zozo huts, jungle gyms are to be kept, stored or erected except with the prior written consent of the Board of Directors.
- 3.14 No awnings are to be installed either temporary or permanent without the prior written consent of the Board of Directors.
- 3.15 Members shall be responsible for informing their estate agents and any other marketers that advertisement signs in respect of "For Sale", "Sold" and "To Let" may only be displayed at the entrance to the Complex on Sundays only. No other advertisement or publicity material of any kind may be exhibited or distributed otherwise than specified herein, without the written consent of the Directors. The Directors shall have the right to arrange for the removal of any material exhibited in contravention of this.

#### **4. ENVIRONMENTAL MANAGEMENT**

- 4.1 All building rubble and garden refuse shall be removed by the Member at his own cost.
- 4.2 Littering on the Common Property is prohibited.

- 4.3 Residents shall ensure that declared noxious flora is not planted or growing in their gardens.

## **5. SECURITY**

- 5.1 Residents and other persons entering the Complex shall not interfere with the performance by security guards of their duties. They may under no circumstances be abused and Residents and such other persons shall treat the security guards courteously and co-operate to ensure the performance of their duties.
- 5.2 Security protocol at the gate shall be adhered to at all times and as may be notified to Residents and amended from time to time by the Directors.
- 5.3 Any criminal activity must be reported to the Managing Agent as soon as possible after the occurrence of any incident.
- 5.4 All members are required to keep the area surrounding the electric fencing of and on their property free of any obstruction within a one meter radius on either side of the electric fencing.
- 5.5 If a member fails to comply with 5. 4 above:
- 5.5.1 written notification will be given requiring compliance with in 24 hours, failing which the directors will be entitled to gain access to the member's dwelling and to remove such vegetation/ obstacle at the member's expense; and
- 5.5.2 The directors will notify the Member in question of the date and time that they intend to enter his dwelling for this purpose.
- 5.6 All attempts to burgle or to gain access to any property should be reported to the Managing Agent.
- 5.7 Pedestrian Security:
- 5.7.1 Only pedestrians with access cards will be allowed automatic access. These cards are to be handed to the pedestrian on entering and returned on leaving.
- 5.7.2 If there is no access card the unit to be visited will be contacted telephonically, In which event the resident in question will have to his permission prior to access and failing such permission, no access.



- 5.7.3 Any visitors with permission to enter is to receive a visitors' card and to be signed into the visitor's book.
- 5.8 Vehicle Security:
  - 5.8.1 Only vehicles with access cards will be granted access.
  - 5.8.2 If no access card, the unit being visited shall be contacted via telephone and the resident in question has to grant permission and absent permission, no access.
  - 5.8.3 No deliveries or pick- up vehicles are permitted to enter unless the resident in question is contacted and has given permission.
  - 5.8.4 Any visitor with permission to enter shall be signed into the visitor's book and abide by all changes to the security protocol.

**6. RESIDENTS, TENANTS, VISITORS, CONTRACTORS, AND DOMESTIC STAFF.**

- 6.1 Members shall not use their Unit or permit their unit to be used for any purpose which is injurious to the reputation of the Complex or keep, do or permit to be done anything which will or may increase the rate of the premium payable on any insurance by the Home Owners Association.
- 6.2 No unit may be used as a commune. A unit may not be occupied by more than one Family, subject to a maximum occupancy of 2 persons for every bedroom in the unit.
- 6.3 Members shall ensure that no narcotic / hallucinatory drugs are stored, indulged in or sold anywhere in the complex and the consumption of alcohol is kept at a purely social level and not sold within the complex.
- 6.4 No subletting will be allowed unless prior approved in writing by the Board of Directors.
- 6.5 If an Member leases his Unit, changes tenants or allows any other occupier to take possession thereof, he shall inform the Managing Agent accordingly, and shall provide the Managing Agent with the name, business, postal address, and contact telephone numbers, as well as the nature of the employment of the tenant or occupier as the case may be and the duration of the lease, prior to the tenant taking occupation of the Unit. .

- 6.6 Staff employed by the Home Owners Association may only be employed to do work for Residents for their own account outside of their designated working hours. Such staffs are not obliged to perform extra work for Residents.
- 6.7 Each Member is obliged to notify the Managing Agent of his current Residential, business and postal address and contact telephone and if a corporate entity the same details of each Trustee, member or director.

## **7. AESTHETICS AND BUILDING ALTERATIONS**

- 7.1 Since all buildings / improvements in the Complex have been completed according to the architectural standards of the Complex and the intention of these Rules is, *inter alia* to protect such standards, all future building activity and Building Works will only be allowed under the following circumstances:
- 7.1.1 All proposed Building Works or alterations shall comply with the local authority's requirements in respect of, *inter alia* the submission and approval of building plans, and any other requirements the local authority may stipulate from time to time. The onus is on the Member to establish the parameters of such requirements;
- 7.1.2 The Directors' written consent is required for all Building Works, including but not necessarily limited to boundary wall alterations, building or swimming pools, and installation of antennae. This consent shall not be unreasonably withheld;
- 7.1.3 A Member proposing Building works (including but not limited to work to an exterior wall and/or the roof of a building) must follow the procedure set out in paragraph 7.1.4 below. Failure to do so may result in *inter alia* the levying of a fine or an interdict to remove the illegal structure.
- 7.1.4 The Member proposing Building works ("the Building Owner") must:
- 7.1.4.1 obtain written consent for such Building Work from his neighbors (a neighbor is a Member of a unit either (a) sharing a boundary wall with the building owner's unit or (b) sharing a boundary wall corner with the building owner's unit, or (c) located directly across a road from the building owner's unit); and
- 7.1.4.2 Obtain the Directors' written approval. To obtain such approval, the Building Owner shall submit to the Directors (a) a copy of the building plans detailing the Building Works, details of how building material will be delivered to the building Owner's Unit and where it will be stored and all the necessary

consents contemplated by paragraph 7.1.4.1 above and pay a non refundable scrutiny fee, as determined by the Directors together with a refundable, non-interest bearing deposit (to be determined by the Directors) within 7 (seven) days of the Directors' request for such payment. This deposit will be used, if necessary to repair any damage to the Common Property and/or infrastructure of the complex that may result from the Building Work.

- 7.1.5 The Directors or a committee appointed by them will, in writing approve or reject the Building Owner's proposed Building Work within 1 (one) calendar month of fulfillment of the requirements set out herein. Neither the Home Owners' Association nor the Directors shall incur any liability to any person as a result of such rejection.

## **8. PETS**

- 8.1 The local authority by-laws, as may be amended from time to time relating to pets will be strictly enforced. Where a conflict exists between the provisions of such by-laws and these Rules, these Rules shall take precedence.
- 8.2 Should a Resident, after a written request from the Directors fail to remedy a nuisance caused by his pet/s, the Directors may require that the resident finds an alternative home for such pet.
- 8.3 No more than a maximum of two pets (eg. One dog and one cat) per unit shall be allowed without the written approval of the Directors.
- 8.4 No tomcats may be kept in the Complex. Any tomcats currently living in the Complex as at the date of coming into force of these Rules shall be neutered within a period of thirty days from the date thereof.
- 8.5 No poultry, pigeons, aviaries, wild animals or livestock may be kept within the Complex.
- 8.6 Residents shall ensure that their pets do not cause any nuisance or disturbance of the peace or roam the Common property unless leashed and properly controlled when on the common property.
- 8.7 The Owner of any pet shall procure the immediate removal of any excrement deposited by such pet on the Common Property.
- 8.8 Every pet shall wear a collar with a tag indicating the telephone number and Unit number of its Owner.

- 8.9 The Directors may, after having requested a Resident in writing to keep his dog/s within the Unit, arrange for any such dog/s found roaming the Common Property to be caught and handed over to the SPCA.
- 8.10 Residents, who have guests with pets, must inform them of the established pet Rules.
- 8.11 Any Member who has more pets than allowed by these rules, at the date of filing hereof will be allowed to keep such additional pets until it dies.

## **9. ADMINISTRATION AND PENALTIES**

- 9.1 All contributions, levies, fines and charges towards the administration of the Complex are due and payable on the first of each month.
- 9.2 The directors may determine the interest rate payable on all accounts in arrears.
- 9.3 The Directors may take such action, including legal proceedings, as they may deem necessary to collect any outstanding amounts.
- 9.4 The defaulting Member shall be responsible for all legal costs, including all disbursements such as (but not limited to) tracing costs, administration fees and legal fees incurred on an on an attorney and own client basis, due to the Home Owners Association.
- 9.5 Fines may be imposed by the directors, over and above any costs debited to the Member's account, to remedy any breach of the Memorandum of Incorporation or these Rules.
- 9.6 The schedule attached to these rules as Annexure "B" containing a list of transgressions and the fines and/or penalties that will be imposed in respect thereof and any increases or amendments thereto, which shall apply after same has been filed at the Commissioner for Companies and Intellectual Properties.
- 9.6 The procedure to impose fines and or penalties:
  - 9.6.1 The directors will first have to pass a resolution that they have satisfied themselves that the Member in question (or his family member / occupant / guest/ invitee where applicable) has transgressed the rules or provisions of the Memorandum of Incorporation.
  - 9.6.2 Written notice will then be delivered to the Member in question, informing him of:
    - a) A full description of the alleged transgression; and

- b) The act, rule or clause in the Memorandum allegedly transgressed; and
- c) The date of transgression; and
- d) The possible fine or penalty that may be imposed; and
- e) The fact that he is entitled to invoke the provisions of clause 8.3 of the Memorandum of Incorporation within 20 (twenty) business days after receipt or deemed receipt of the notice of transgression. (Clause 8.3 entitles the Member to require a committee of three Directors to be appointed by the Chairman of the Board of Directors, whom shall attempt to mediate upon the issue at such times and in such manner and according to such procedure as the Chairman may direct.)
- f) Should the Member not wish to avail himself of this opportunity he will have 20 (twenty) business days from receipt or deemed receipt of the notice of transgression, to declare a dispute with the Company in terms of these rules.

9.6.3 It is hereby confirmed that an arbitration tribunal cannot levy fines or penalties. The only dispute that can be referred to an arbitrator is merely the question as to whether the Member in question has transgressed the rules, or not.

9.6.4 A Member who receives written notice, as provided for in 9.6.2 above and who has not in writing demanded mediation or arbitration, within 20 business days from receipt of the notice shall become liable to pay the fine or penalty mentioned in the notice, without further ado.

## **SECTION D      LETTING AND SELLING**

- 1. No Member shall let or otherwise part with occupation of his Unit, whether temporarily or otherwise, unless:
  - 1.1 He has concluded an agreement, for the benefit of the Home Owners Association with the proposed occupier of the Unit, which agreement stipulates that such occupier undertakes to adhere to these Rules, the Memorandum of Incorporation and undertakes to ensure that his family, invites and staff adhere to such Rules, and Memorandum of Incorporation; and

- 1.2 He has provided the occupier with a copy of these Rules and the Memorandum of Incorporation.
2. Should a Member wish to sell his Unit through an estate agent, he shall be obliged to provide such Agent with a copy of these Rules and the Memorandum of Incorporation, who in turn shall be obliged to provide a copy thereof to the purchaser, failing which the Member shall provide a copy to the purchaser.
3. No Member shall be entitled to transfer Ownership of or any other interest in his Unit without a clearance certificate issued by the Managing Agent, which shall be pre-approved by the Directors (such approval not to be unreasonably withheld), in which it is certified that:
  - 3.1.1 The Member is not indebted to the Home Owners Association in any way in respect of contributions and charges or other amounts which the Home Owners Association may, in terms of these Rules or the Memorandum of Incorporation, be entitled to claim from him;
  - 3.2 The buyer has signed an agreement in terms of which he agrees to become a Member of the Home Owners Association and agrees to abide by its rules, as may be amended from time to time.
  - 3.3 The written agreement of sale between the Member and the buyer has been submitted to the Managing Agent, which has satisfied itself that the required clauses referred to in paragraph 4 below are contained in the said agreement.
4. The Member selling a Unit in the Complex, or an interest in such Unit, shall ensure that the written agreement of sale contains the following clauses:
  - 4.1 *"The purchaser acknowledges that he is required upon registration of the property into his name, to become a member of the Home Owners Association and agrees to do so subject to the Memorandum of Incorporation of the Home Owners Association.*
  - 4.2 *The purchaser acknowledges that he has received a copy of the MOI and Rules of the Home Owners Association and, for the benefit of the Association, agrees to be bound by such Rules from the date of transfer until such time that he ceases to be an Owner.*
  - 4.3 *The agreement is subject to the suspensive condition that the Managing Agent, as required in paragraph 3 above issues a clearance certificate.*

4.5. All Estate Agents are to register with the HOA and shall notify the Directors of all the Dwellings that they are marketing. Estate Agents will only be allowed to operate within the Complex if they have been so registered and the Directors may refuse to register an Agent who is unable to provide satisfactory proof that it has been issued with a valid fidelity fund certificate by the Estate Agency Affairs Board.

## **SECTION E         DIRECTORS**

1. Save as otherwise provided herein, all decisions of the directors shall be taken by a simple majority of those elected to hold office.
2. The Directors shall ensure that a cash reserve account is maintained, separate from that of the general account of the Home Owners Association.
3. A balance of no less than 10% of the annual total levies for that financial year must be maintained in this reserve account. Should the reserve account fall below this amount, the Directors shall prioritise the replenishment of the reserve account to the correct balance, prior to the incurring of further expenditure in respect of non essential items.
4. Funds standing to the credit of the reserve account may only be utilised for unexpected non budgeted expenditure. Where the credit balance is in excess of this amount, such amount may be transferred to the general account and utilised for budgeted items.
5. The Directors may not in any financial year incur expenditure for budgeted items in excess of 20% but in any event must ensure that the reserve account is fully funded prior to incurring such expenditure.
6. Decisions by the Directors to incur expenditure of no more than R5,000.00 in respect of the day to day operations of the Complex, need only be approved by any two Directors of which one has to be the finance director.

## **SECTION F        GENERAL**

1.        Should any damage of whatever nature be caused to the Common Property by a Member, his Family, tenant, visitors or pets or those of his Family, tenant, or his visitors, the Member shall be liable to reimburse the Home Owners Association for the cost of repairing such damage.
2.        These Rules have been established in terms of the Memorandum of Incorporation. It is applicable to every person in the Complex, as is any decision of the Directors in interpreting these Rules.
3.        Any interpretation of these Rules by the Directors is final and binding.
4.        In the event of disputes between Residents arising from annoyance or nuisance, the involved parties should attempt to settle the matter amicably between themselves, exercising tolerance and consideration. Where the dispute cannot be resolved, the matter should be brought to the attention of the Directors for settlement.
5.        Any suggestions, complaints, violations of these Rules or any other cause for concern should be addressed in writing to the Directors or the Managing Agent, who is obliged to bring same to the attention of the Directors within 7 (seven) days of receipt of same.
6.        No failure or delay by the Directors to enforce any rule herein shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.
7.        If at any time any provision hereof is or becomes illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

## **SECTION G        DISPUTE RESOLUTION PROCEDURE AND COLLECTION OF OUTSTANDING AMOUNTS**

- 1.1        Levies and all other amounts owed to the HOA by Members may be recovered by the HOA by action in any Court (including any Magistrate's Court) of competent jurisdiction from the Member concerned.
- 1.2        The non payment or withholding of levies and other amounts due to the HOA shall not *per se* constitute a dispute. A dispute shall only arise if the levies and other amounts claimed are disputed by the Member in question and the procedure, provided for in rule 1.3 has been complied with by either party to the dispute.



- 1.3 A dispute shall only arise if:
- 1.3.1 The aggrieved party has notified the other affected party or parties in writing of the dispute by delivering copies of the notification to declare a dispute on them; and
  - 1.3.2 The dispute has not been informally resolved within 14 days of such notice.
- 1.4 Once the parties have been unable to informally resolve the dispute, within 14 days from the notice referred to in 1.3.1 above, either party shall be entitled to demand Arbitration.
- 1.5 Any dispute between the HOA and a Member or between Members arising out of or in connection with or related to the Memorandum or these Rules, including the collection of outstanding amounts but save where an interdict or any form of urgent or other relief may be required or obtained from a Court having jurisdiction, shall be determined by Arbitration.
- 1.6 A party shall only be entitled to rely on this clause and may only require a matter to be referred to Arbitration if it has complied with rule 1.3 above.
- 1.7 The provisions of the Arbitration Act, 1965 (Act 42 of 1965), shall, in so far as those provisions can be applied, apply *mutatis mutandis* with reference to Arbitration proceedings under these rules.
- 1.8 Having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved in the adjudication thereof, the parties may appoint an arbitrator who shall be an independent and suitable experienced and qualified person as may be agreed upon between the parties to the dispute.
- 1.9 If the parties cannot agree as to the arbitrator to be appointed in terms of 1.8 within 7 days after the arbitration has been demanded, either party to the dispute may approach the president of the Law Society of the Northern Provinces to appoint a suitable Arbitrator, whose decision shall be final and binding on the parties.
- 1.10 The Arbitration shall be held informally or otherwise as the parties may agree and failing agreement, the Standard Rules for conduct of Arbitrations (The Association of Arbitrators (South Africa)) shall apply, save where these rules specifically provide to the contrary.
- 1.11 The Arbitrator shall have the right to demand that the party demanding the arbitration furnish the Arbitrator with security for payment of the costs of the Arbitration in such amount and form as the Arbitrator may determine, failing which the Arbitration shall not be proceeded with. Where possible, the Arbitration shall be concluded within 60 days after the matter has been referred to Arbitration.
- 1.12 The Arbitrator shall make his or her award, where possible within 14 days from the date of the completion of the Arbitration and shall, in making his or her award, have regard to the principles laid down in terms of the Act, the Memorandum and these Rules.
- 1.13 The Arbitrator must determine that the costs of the arbitration be paid by any one of the disputing parties or any of them jointly or in such shares as he or she may determine, and as he

or she, in his or her discretion, may deem appropriate having regard to the outcome of the Arbitration, which costs shall be on the attorney and client scale.

- 1.14 The decision of the Arbitrator shall be final and binding and may be made an order of the High Court upon application by any party to or affected by the arbitration, subject to the right of either party to review or appeal the decision on lawful grounds including but not limited to an error in law.