

Credit Policy and Procedure of SPHOA

1. Introduction

The Constitution of the Shelley Point Home Owners' Association requires The Trustee Committee (TC) as part of its role and mandate, to take responsibility, with the support of Management, for the managing and monitoring of income (paragraph 15.2.5 of the Constitution).

Furthermore, the Constitution requires the TC to ensure the existence and regular updating of a policy and procedure framework with regard to all aspects of governance and management of the Estate, which must include, among others a policy and procedure on good financial management (paragraph 15.2.9 of the Constitution).

As part of the policy and procedure on good financial management the TC has on the 29 August 2023 resolved to introduce this Credit Policy and Procedure in respect of amounts due, owing, and payable to the Home Owners' Association. The objectives include the following:

- ensure compliance by Members in respect of their obligations towards the HOA,
- indicate to Members the way the TC (represented by the Managing Agent) will conduct the collections process in line with the Delegation of Authority Framework (paragraph 3.1.3.1) empowering the Committee to recover any Debt as defined in the Constitution (See paragraph 3.1, read with paragraph 11.8 and 12.2 of the Constitution), due and payable to the HOA.
- set a standard of conduct which is equally applied to all owners without fear or favour,
- define the responsibilities of the TC and the Managing Agent in such collections process,
- avoid disputes between Members, Trustees, and the Managing Agent in respect of the collection of amounts due, owing, and payable to the HOA,
- ensure that the collections processes are compliant with applicable legislation.

This policy will be implemented following its ratification by SPHOA Members at the 2023 AGM

2. Definitions

Unless the content otherwise indicates, the words and phrases used or referred to in this Policy will have the same meaning as ascribed to them in paragraph 3 of the Constitution (see Annexure "A" to this policy containing a copy of paragraph 3 of the Constitution for ease of reference).

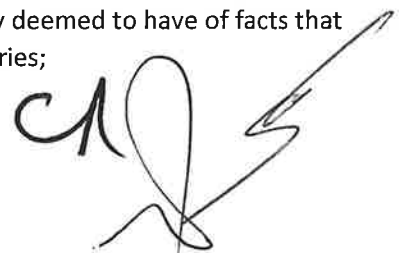
Words and phrases appearing in the Policy that are not defined in the Constitution will have the meaning as ascribed to them as indicated herein:

"Amounts due" include amounts in respect of Monthly, Special, Statutory, Penalty and Clearance Levies; fees related to the issuing of Clearance Certificates; the transgression of the provisions of the Constitution and the Rules; interest in respect of late payments of amounts due and payable to the HOA; Community Centre Services, and legal fees as well as any other amounts however arising due and payable to the HOA.

"Arrears" means amounts due that should have been paid earlier

"Credit Bureau" means a person or entity that is registered as such in terms of sec 43 of the National Credit Act 34 of 2005 and receive, compile and maintain data on credit applications and agreements.

"Deemed Knowledge" means knowledge that a person is reasonably deemed to have of facts that he would have discovered had he made the usual and proper inquiries;

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"**Due date**" means the date on which something falls due, especially the payment of an amount due;

"**Interest rate**" means the proportion of a Debt that is charged as interest to the Member, typically expressed as an annual percentage of the Debt outstanding;

"**Invoice**" means a list of amounts due, with a statement of the sum due for these;

"**Legal Action**" means legal proceedings in terms of the applicable statutory processes and procedures;

"**Legal Fees**" means the fees charged for legal services;

"**Letter of Demand**" is a formal, professional document sent by one party to another requesting payment or other action to right a wrong;

"**Payment Date**" also known as the pay date or payable date, is the date on which a Debt is payable;

"**Special Arrangements**" means an arrangement between the HOA and the Member defining changes derogating from the standard provisions in Contractual Documents or laying down special rules on Service Provision;

"**Statement of Account**" means a document that reflects all transactions that took place between the HOA and the Member for a given period of time;

3. Payments

Levies (refer to paragraph 9 of the Constitution) shall be payable on the **first day of the month** for which the Managing Agent shall raise an invoice and issue a statement on behalf of the HOA. Notwithstanding the raising and/or issuing of such invoice and/or statement of account, or not, and the receipt of such by the Member, or not, the Member is in accordance with the decisions of the Members at General Meetings and the capturing thereof in the approved Minutes, deemed to have knowledge of the Levy payable and the Monthly amount due and payable. All other debts of whatsoever nature due and payable by a Member in accordance with the Constitution and the Rules, will be debited against the Members Levy Account and communicated to the Member appropriately, and will be payable within one month from the date the account was so debited.

All payments by members must be received by the Managing Agent in the nominated bank account and shall be deemed to be a Debt in arrears if not received by the time/s as specified. Any delay caused by the Member, or his or her bank, or any other person, which is not attributable to the HOA or any person acting on its behalf, shall not absolve the Member from his or her obligation to have made a payment to be received by the Managing Agent on time.

Payments are payable by a Member without deduction, sett-off or exchange, and free of bank charges.

The obligation of a Member to pay a Levy shall cease upon him ceasing to be the registered owner of an Erf, without prejudice to the HOA's right to recover arrears.

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4. Debit Orders

Members signing Debit Order Mandates for the collection of Levies, streamlines the Levy-collection Process and facilitate the reconciliation of all Levy payments more efficiently.

Members are encouraged to use Debit Orders Mandates, as it assists in automating the levy payment processes to a larger degree, enabling the quick allocation of payments and the reduction of accounting costs.

5. Interest

Should any person or entity fail to pay any Debt on the due date then such person or entity shall pay interest thereon of not more than the publicly quoted prime rate of interest plus two percent, calculated from the due date of payment until the actual date of payment as determined in paragraph 11.8 of the Constitution.

6. Final Demand

A Letter of Demand which serves as a Final Notice served on a Member to pay a Debt due and payable to the HOA before the account of the Member is handed over for Legal Action, shall be sent to a Member. Should said Member fail to comply with the terms of the Demand, or fail to conclude satisfactory payment arrangements with the HOA or its delegates, the HOA reserves the right to commence with Legal Action against the Member to recover any unpaid Debt so referred to in the Demand.

7. Legal Action

The Constitution deals with the above under paragraph 11. Should any debtor fail to pay a Debt on the due date and remain in default for more than 7 days after being notified the HOA shall be entitled to institute legal proceedings against such debtor for payment of the debt, without prejudice to any other right or remedy which the HOA or any other Member may have in law, including the right to claim damages. The Managing Agent is authorised in terms of the Delegation of Authority framework and will instruct an Attorney from the panel as agreed with the Trustee Committee from time to time, to proceed with such action.

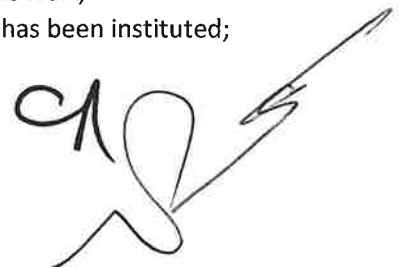
8. Legal Fees

Paragraph 11.6 of the Constitution states that subject to the ruling of a competent court and the taxation of costs, as applicable, the HOA shall be entitled to recover from the Member all legal costs incurred on the scale as between attorney and client, and to debit the amount to the Member's Levy Account.

9. Allocation of Payments

In the interest of Members and to streamline the legal process and be more cost effective all payments received by the HOA from the Member shall be allocated in the following manner:

- Firstly to costs incurred by the HOA in collection of a Debt;
- Secondly to interest accrued to a Debt;
- Thirdly to the most recent Levies or other amounts due to the HOA;
- Fourthly towards the amounts owing for which Legal Action has been instituted;

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10. Special Arrangements

If a Member is unable to pay the Debts due and payable to the HOA as specified, the onus rests with the Member to submit written proposals regarding the payment of the Debt to the Managing Agent, representing the HOA, before the commencement of Legal Action by the HOA (See clause 7 above), with the view to entering into a written agreement with the HOA (Special Arrangement) for the payment of the Debt. If so required, the Managing Agent shall refer the repayment proposal to the Trustee for Debtors who in collaboration with the Chairperson and Trustee for Finance will take a decision as to accept or reject the proposed Special Arrangement.

Any breach of the terms and conditions of the Special Arrangement, shall be regarded as material, entitling the HOA, without further notice, to recover the full amount of the Debt remaining, and to take any appropriate action to recover such, inclusive of engaging the process and procedure described in clauses 6 and 7 above. The decision made by the Trustees regarding Special Arrangements shall be final and binding until set aside by another competent authority.

11. Clearance Certificates

In terms of paragraph 11.7 of the Constitution and subject to the Provisions of paragraph 22.4 thereof the HOA shall not issue any Clearance Certificate unless all Levy related Debts due and payable to the HOA have been paid in full, regardless of any dispute that may exist regarding the respective Debts.

12. Information contained in the Membership Register

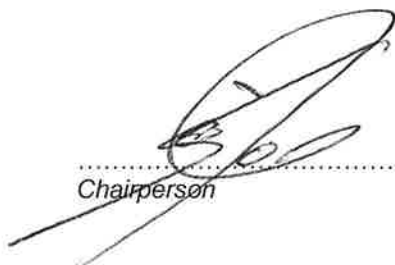
Paragraph 8.11 of the Constitution place an obligation on each Member to provide the HOA with the information required to maintain and update the information contained in the Membership Register, and the onus in this regard rests solely upon Members. Among the information required will be details of the service address for physical service (of documents among others) and an E-mail address for e-mail service (paragraph 8.14).

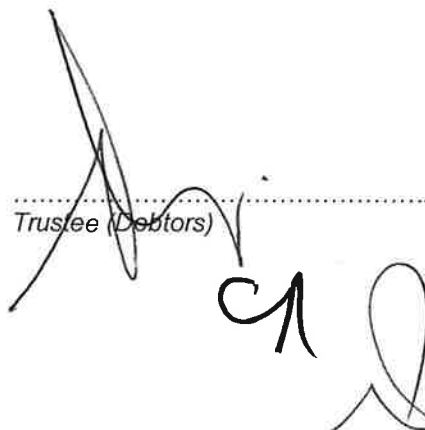
If any of this information is inaccurate or not updated, the HOA will make use of the registered Credit Bureaus to obtain the latest information available at such.

13. Domicilium

For the purpose of the serving of documentation pertaining to legal action, the HOA will regard the physical address of the Erf or Unit Erf of the Member as the domicilium citandi et executandi of the Member. If the Member wishes to change the physical address of serving this needs to be in accordance with paragraph 8.15 of the Constitution.

Approved at the AGM held on the 21 December 2023


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Chairperson


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Trustee (Debtors)

Annexure A

Transcript from the SPHOA Constitution

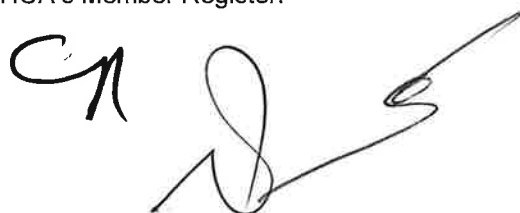
3. DEFINITIONS

3.1 The following words shall, unless the context clearly indicates a different meaning, have the meaning assigned to it in this paragraph:

1985 Ordinance	means the Land Use Planning Ordinance, 1985 (No 15 of 1985).
2014 Act	means the Western Cape Land Use Planning Act, 2014 (No 3 of 2014).
2015 By-law	means the Saldanha Bay Municipality By-law on Municipal Land Use Planning published in the Extraordinary Provincial Gazette (No 7468 of 13 August 2015) to take effect when the 2014 Act comes into operation in the Saldanha Bay Municipal Area.
Annual Budget	means the document tabled annually by the Committee at the AGM for consideration and approval, containing an appropriate exposition of the expected income and expenditure of the HOA for the following financial year, with appropriate comparisons with the income and expenditure of previous financial years, significant movements of funds, or any other report reflecting on matters affecting the future financial sustainability of the HOA.
AGM	means the Annual General Meeting of the Members of the HOA as contemplated in paragraph 17 of the Constitution.
Approval of 6 December 1994	means the approval by the Premier of the Western Cape of the rezoning and subdivision of Erven 1, 2 and 3, St Helena Bay (Phase 1, Shelley Point) in accordance with the relevant provisions of the Land Use Planning Ordinance, 1985 (No.15 of 1985) and the Municipal Ordinance, 1974 (No 20 of 1974).
Amending Approval of 14 March 1996	means the amendments approved by the Premier of the Western Cape to the Approval of 6 December 1994.
Attorney	means a legal practitioner who is admitted and enrolled as such under the Legal Practice Act, 2014, as amended.
Auditors	means a firm of auditors appointed by the HOA as prescribed in this Constitution, consisting of a person or persons accredited to perform an audit in terms of the Auditing Professions Act, 2005, as amended.
Building Design and Construction Rules	means the Rules pertaining to the matters contemplated in paragraph 10.1.2.
Business Day	means weekdays other than Saturdays, Sundays, and South African Public Holidays.
Chairperson	means the Chairperson of the Trustee Committee, duly elected in accordance with this Constitution.
Clearance Certificate	means, subject to the provisions of paragraph 22.4, a written certification by the HOA that the owner of an Erf or Unit Erf has paid in full all Debts due and payable to the HOA (inclusive of any such additional amount/s the HOA may determine in the instance of the transfer of an Erf or Unit Erf), and that the owner has complied with the provisions of this Constitution and the Rules pertaining to the transfer of properties situated within the perimeter of the Estate.
Clearance Fee	means an additional amount, over and above the Clearance Levy imposed by the HOA, to cover administrative costs associated with the issuing of a Clearance Certificate.

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Clearance Levy	means an amount, representing the total of at least 3 (three) Monthly Levies, payable in advance to the HOA before the issuing of a Clearance Certificate.
Coastal Public Property	means the property contemplated in section 7 of the National Environmental Management: Integrated Coastal Management Act, 2008 (No 24 of 2008), as amended (2014).
Committee	means, unless the context clearly indicates differently, the Trustee Committee of the HOA, consisting of the Trustees duly elected by the Members at the AGM and the Trustees duly co-opted by the Trustee Committee in accordance with the provisions of this Constitution.
Communal Property	means property of the HOA which may be used by Members, residents, and the public, subject to the provisions of this Constitution, the Rules, and the restrictions applicable to the Public Servitudes within the perimeter of the Estate.
Communal Facility	means a facility of the HOA situated on Communal Property which may be used by Members, residents, and the public, subject to the provisions of this Constitution and the Rules.
Constitution	means the Constitution of the HOA.
CSOS	means the Community Scheme Ombud Service Act, 2011 (No 9 of 2011) and the Regulations promulgated in terms of the Act, as amended from time to time.
Day	means weekdays.
Debt	means any amount, howsoever arising, owed and payable to the HOA, including but not limited to amounts in respect of Monthly, Special, Statutory, Penalty and Clearance Levies; fees related to the issuing of Clearance Certificates; the transgression of the provisions of the Constitution and the Rules; late payment of amounts due and payable to the HOA; Community Centre services; and legal fees.
Delegate (HOA)	means the delegation of authority by the HOA to the Committee and mandating the Chairperson, or in his absence the Deputy Chairperson, or in his absence any member of the Committee authorised by the Committee to act in accordance with the delegated authority.
Delegate (Committee)	means the delegation of authority by the Committee to the Chairperson, or the Deputy Chairperson, or a committee of the Committee, or the Estate Manager to act in accordance with the delegated authority.
Delegation Framework	means, subject to the provisions of the Constitution prohibiting the delegation of certain actions, the approved document of the HOA containing a clear and detailed exposition of delegated authority and the associated restrictions, taking into account, among others, the reporting responsibilities of the delegated authorities and officials, the legal obligation to comply with the processes and procedures embedded in PAJA, PAIA and the principles of natural justice, and the imperative not to unduly restrict the authority of the Chairperson to represent the Committee as Chairperson in any matter, and the Estate Manager to act in accordance with the authority assigned to the position of Estate Manager.
Deliver	means the delivery of any Notice, either physically or electronically, to a Member in accordance with the addresses captured in the HOA's Member Register.

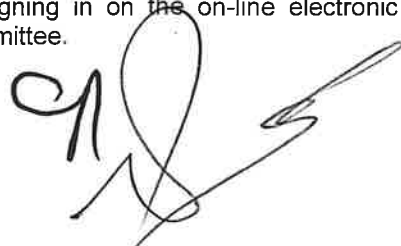


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Designated Coastal Access Land	means the designated strips of land providing access to Coastal Public Property which are automatically subject to public servitudes, as contemplated in section 18 of the National Environmental Management Integrated Coastal Management Act, 2008 (No 24 of 2008), as amended (2014).
Developer	means Britannia Bay Developers (Pty) Ltd, and BBD shall have a cognate meaning.
Entitled to Exercise Membership Rights	means Members Eligible to Vote, participating in the formal activities of the HOA.
Erf	means an Erf and/or a Unit, depending on the context, regardless of its zoning, situated within the perimeter of the Estate.
Estate	means all the Phases of the development of the Shelley Point Estate, duly established in accordance with the provisions of the Land Use Planning Ordinance, 1985 (No.15 of 1985), the Western Cape Land Use Act, 2014 (No 3 of 2014), as amended, and any other relevant statutory provision, to be managed in accordance with the terms and conditions of the applicable approved Town Planning and Resource Use Permits.
Estate Manager	means a person appointed as an employee by the HOA in the position of Estate Manager, or a position with a similar status, as the case may be, in accordance with the approved management structure and related delegation frameworks to undertake certain administrative and management functions of and on behalf of the HOA and the Committee, and includes any person duly appointed to act in the capacity of Estate Manager.
General Meeting	means any properly constituted Meeting of Members contemplated in paragraph 17 of the Constitution.
General Rules	means the Rules pertaining to the matters contemplated in paragraph 10.1.1.
HOA	means the Shelley Point Home Owners Association, established in accordance with the provisions of the Land Use Planning Ordinance, 1985 (No.15 of 1985), read with the Western Cape Land Use Act, 2014 (No 3 of 2014), as amended.
Levy	means an amount payable by a Member to the HOA as a Debt, determined from time to time by the Committee, and/or the Members at a General Meeting, and/or a Statutory Body, and, depending on the context, refers to Monthly, Special, Statutory, Penalty and Clearance Levies.
Levy-related Debt	means a Debt arising from the non-payment of Monthly, Special, Statutory, or Penalty Levies, inclusive of the interest on such Levies.
Local Authority	means, depending on the context, the West Coast District Municipality and/or the Saldanha Bay Municipality.
Management	means the Estate Manager or his delegate.
Managing Agent	means a person or entity providing certain agreed governance, management, administrative and related support services to the HOA, for reward, whether monetary or otherwise, who is not an employee of the HOA.
Member	means the owner, or collectively, the co-owners, of an Erf, or a Unit Erf, situated within the perimeter of the Estate and reflected as an owner or co-owner in the records of the Deeds Registry concerned in accordance with the provisions of the Deeds Registries Act, 1937 (No 47 of 1937), as amended.

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Member Eligible to Vote	means, except regarding the veto right of the Developer in accordance with paragraph 9.21 of this Constitution, read with paragraph 9.15 to 9.18, a Member who has paid in full all Debts due and payable to the HOA and who's membership has not been suspended by the HOA after following due process.
Membership Register	means the document and the information prescribed in paragraph 8.10. to 8.14 of the Constitution.
Membership Rights	means the rights of Members embedded in this Constitution.
Month	means a calendar month.
Monthly Levy	means a monthly amount payable by a Member to the HOA as a Debt, determined by the Members at a General Meeting, and payable in accordance with the provisions of paragraph 9 of the Constitution.
Municipality	means the Saldanha Bay Municipality situated within the West Coast District Municipality, established by Notice PN484/2000 issued in terms of the Local Government: Municipal Structures Act, 1998 (No 117 of 1998), as amended.
Notice	means any Written communication from the HOA or its authorised delegates or agents and Notified shall have a cognate meaning.
Office	means, depending on the context, the administrative office of the HOA or the Offices of its Managing Agent.
Officials of the Committee	means the Chairperson and the Deputy Chairperson elected in accordance with the provisions of paragraph 14.11.
PAIA	means the Promotion of Access to Information Act, 2000 (No 2 of 2000), as amended.
PAJA	means the Promotion of Administrative Justice Act, 2000 (No 3 of 2000), as amended.
Penalty	means, depending on the context, an additional amount payable to the HOA as a Debt, arising from the non- and/or late-payment of any Levy, or the transgression of the provisions of the Constitution or the Rules, calculated in accordance with the Schedules of Transgressions and Penalties contained in the Rules.
Penalty Levy	means an additional amount payable by a Member to the HOA as a Debt for the transgression of the provisions of the Constitution, or the Rules as indicated in the Notice Delivered to a Member and calculated with reference to the amount of the Monthly Levy.
POPIA	means the Protection of Personal Information Act, 2013 (No 4 of 2013) and the Codes and Regulations promulgated in terms thereof, as amended from time to time.
Present at a Meeting	means a Member Eligible to Vote: <ul style="list-style-type: none"> (a) who is present at the meeting in person, or can participate in the meeting by signing in on the on-line electronic facility provided by the Committee; (b) who, in instances of legal entities or co-ownership, is duly represented in person at the meeting as contemplated in this Constitution, or the designated representative can participate in the meeting by signing in on the on-line electronic facility provided by the Committee; (c) who is represented by way of a properly prepared and signed proxy by the person or entity designated in the proxy who is present in person at the meeting or can participate in the meeting by signing in on the on-line electronic facility provided by the Committee.



Property of the HOA	means the property registered in the name of the HOA in the relevant Deeds Registry and which the HOA is statutory obliged to maintain, such as streets, parking areas, and all other open areas outside the cadastral boundaries of private property within the perimeter of the Estate, and the golf course, excluding any Coastal Public Property and Coastal Access Land (See paragraph 3.1 of the Amending Approval of 14 March 1996).
Public Servitude	means, depending on the context, a servitude registered on the Property of the HOA (automatically by law, or otherwise) for purposes of service delivering to the Estate by relevant authorities, or as Designated Coastal Access Land in accordance with section 18 of the National Environmental Management: Integrated Coastal Management Act, 2008, as amended (2014), or as public coastal access routes in accordance with the Approval of 6 December 1994, the Amending Approval of 14 March 1996, or any other applicable approved Town Planning and Resource Use Permit.
Rules	means the General Rules and the Building Design and Construction Rules made, amended, repealed, interpreted, and aligned by the HOA and the Committee, as contemplated in paragraph 10 of this Constitution, and include the HOA approved governing guidelines and "constitutions" of constituent parts or sub-divisions of the HOA.
Schedules of Transgressions and Penalties	means the information contained in the Rules, describing possible transgressions of the provisions of the Constitution and the Rules, and indicating the remedial actions the HOA is entitled to impose.
Special Levy	means an amount payable by a Member to the HOA as a Debt, approved by the Members at a General Meeting with the view to financing special capital and other approved projects, and payable as determined by the Members at the Meeting.
Special Resolution	means a decision of the Members taken in accordance with the provisions of paragraphs 17.2.2, 17.8.5 and 17.8.6 of the Constitution.
Statutory Levy	means an amount payable by a Member to the HOA as a Debt, arising from a statutory obligation of the HOA and/or the Member.
Trustee	means one of the members of the Committee.
Trustee Committee	means the Committee consisting of the Trustees duly elected by the Members at the AGM and the Trustees duly co-opted by the Trustee Committee in accordance with the provisions of this Constitution.
Unbudgeted Expenditure	means expenditure not approved in the Annual Budget, totalling more than 5% of the Annual Budget, and/or an overspend exceeding R100 000 or 10%, whichever is the greater, of a budgeted line item, which the Committee is only permitted to incur with the pre-approval of the Members at a General Meeting, save in the case of expenditure necessitated by an Urgent Matter, or imposed on the HOA by a Local Authority, or otherwise prescribed by law, in which instances Members shall be advised in Writing of the decision of the Committee within 3 Business Days.
Unit	means a Unit defined and registered in accordance with the Sectional Titles Act, 1986 (No 95 of 1986), as amended
Unit Erven	means the erven, regardless of their zoning, registered in the name of the Developer in the Deeds Registry concerned in accordance with the provisions of the Deeds Registries Act, 1937, as amended.

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Urgent Matter

means a matter, which, if not addressed before the next General Meeting, could cause irreversible harm or prejudice to the Estate, the Members, or the residents, and include, among others, the emergencies and disasters contemplated in paragraph 10.6.

Written

means hand-written, type-written, printed, lithographed, electronically processed, or any other process producing words in a visible form.

Year

means a calendar year.

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