FIDELITY INSURANCE REQUIREMENTS

IN RESPECT OF

COMMUNITY SCHEMES (INCLUDING BODIES CORPORATE)

The Community Schemes Ombud Service (CSOS) is a public entity established in 2014; primarily to resolve community scheme disputes, educate those involved in sectional title schemes, homeowners' associations and other forms of community schemes and to manage sectional title scheme documentation.

Changes to the Sectional Titles Schemes Management Act No, 8 of 2011 and The Community Schemes Ombud Services Act No, 9 of 2011 were approved and signed off by the President in October 2016 and become effective with immediate effect.

Before these changes there were no provisions in The Sectional Titles Act regulating the conduct of managing agents. The changes to the Act are in the best interests of the body corporate and provide clear guidance as to cover required in terms of Fidelity cover, Liability and also additional insurance cover.

This document will only deal with the requirements regarding Fidelity insurance.

In this summary we will focus on the changes in the regulations from an insurance point of view and explain what the new regulations require from bodies corporate.

NB. Please note all text in RED is the opinion of CIA

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Sectional Titles Management Act 2011 (Act No. 8 of 2011)

Sectional Titles Schemes Management Regulations

Section 23 (7) states the following:

A body corporate **must take out insurance** for an **amount determined by members** in general meeting to cover the risk of funds belonging to the body corporate or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by a trustee, managing agent, employee or other agent of the body corporate.

HOW DO THE MEMBERS DETERMINE THE AMOUNT AS REQUIRED ABOVE?

At CIA we believe the Community Schemes Ombud Service Act, 2011 **(see below)** gives a clear guideline as to the minimum the body corporate needs to take out. Obviously the body corporate can take out more cover depending on their individual needs.

It is important to note that the requirement below applies to all Community Schemes. Therefore it includes Bodies Corporate, Home Owners Associations, Retirement Villages etc.

When looking at the regulations there are 3 very important questions to consider.

1. Against which persons act of fraud or dishonesty must cover be taken? The Act refers to any "Insurable person". Refer to 15 (1) & (2) below.
2. What is the minimum fidelity cover required? Refer to 15 (3) below.
3. When is a Community Scheme not obliged to take out Fidelity insurance? Refer 15 to (5) below.

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Let's look at these in some more detail:

Herewith an extract from the Act:

Community Schemes Ombud Service Act, 2011 (Act No.9 of 2011)

Regulations on Community Schemes Ombud Service

PART 4

PROMOTION OF GOOD GOVERNANCE, TRAINING AND EDUCATION

The duties of scheme executives state the following:

Fidelity Insurance

15. (1) Subject to sub-regulation (5), every community scheme must insure against the risk of loss of money belonging to the community scheme or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any **insurable person.**

(2) For the purpose of sub-regulation (1), "**insurable person**" means any-

(a) scheme executive;
(b) employee or agent of a community scheme who has control over the money of a community scheme;
(c) managing agent: or
(d) contractor, employee or other person acting on behalf of or under the direction of a managing agent, who in their normal course of the community scheme's affairs has access to or control over the monies of the community scheme.

(3) **The minimum amount of fidelity insurance cover required in terms of sub-regulation (1) is the total value of-**

(a) the community scheme's investments and reserves at the end of its last financial year; and
(b) 25 per cent of the community scheme's operational budget for its current financial year.

(4) The insurance cover referred to in sub-regulation (1) must-

a) provide for payment of a loss by the insurer to the community scheme within a reasonable period after reasonably satisfactory proof of the loss has been furnished to the insurer; and
(b) not require that criminal or civil proceedings be taken or completed against the insured person before payment is made under the insurance policy.

(5) **A community scheme is not obliged to obtain fidelity cover for an insurable person if that person has delivered to the community schemes written proof that-**

(a) the monies of the community scheme are covered by fidelity insurance that complies with the requirements of sub-regulation (3) and (4); and
(b) the insurer concerned has noted the community scheme's interest in the application of the proceeds of the policy and undertaken not to cancel or withdraw cover without giving the community scheme at least 30 days written notice.

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Answers to these important questions:

1. **Insurable person:**

   The definition of who an insurable person is, is extremely wide and basically includes any person dealing with the money of the Community Scheme in any form or nature whatsoever.

   The definition of "Insurable person" under the CIA policy makes provision for all of these persons.

2. **Amount of Fidelity cover required:**

   Although this is the minimum amount required, every scheme is unique and special attention must be paid to the current investment strategy and provision. Schemes may wish to have a reserve in addition to the reserve required by law for unforeseen emergency expenses.

3. **Cover provided under the Managing Agent's Fidelity policy:**

   Special care must be taken by the scheme before accepting the cover provided by the Managing Agent's policy.

   The following should be considered:

   a. Does the policy provide cover for all the "Insurable persons"?
   b. Is the amount of cover provided by such a policy sufficient to cover the collective value of all the money administered by the Managing Agent of all the schemes they administered?
   c. Due care must be taken by the scheme executive to ensure on a continuous basis that the policy is still in force. An onus must be placed on the insurer of the Managing Agent similar to a Mortgagee Clause that the insurer can be held responsible should the insurer fail to advise the scheme of the cancellation of the policy.

Trustees will need to, with the assistance of their managing agent or intermediary, look at their existing covers and determine the minimum amounts required by the Act and immediately arrange these covers. If their existing policy does not provide the required covers additional cover must be arranged.

The **CIA FIDELITY AND COMPUTER CRIME** policy has been written taking the requirements of the Acts into consideration offering the body corporate and managing agent peace of mind by complying with the new regulations.

This product is available to our existing community scheme policy holders and is also available as a standalone product where the community scheme is not insured with CIA.

WHAT ARE THE MAIN FEATURES OF THE CIA POLICY

Standard Fidelity Guarantee policies as typically found in the old MMIII type wordings, are mostly outdated and have not kept up to date with the latest ever increasing exposures.

Where standard MMIII type Fidelity Guarantee policies have been extended to include the word "managing agent" the cover is limited any in most instances will not comply with the Act with regard to the definition of "Insurable persons"

The standard limits of e.g. R25 000 will be inadequate to cover the Scheme's exposure.

Just think of the risk of exploiting an insured's financial position by the accessing of the insured's computer systems – whether such an act is committed by employees or third parties.

The CIA policy is comprehensive in that it addresses most of the potential criminal acts that a Community Scheme faces.

These acts include:

Internal crime (Employee dishonesty)

Being any theft, fraudulent or dishonest act committed by an “Insurable person” acting alone or in collusion with others.

External crime (Computer fraud)

Being any fraudulent or dishonest act committed by a third party, acting alone or in collusion with others of theft, forgery, fraudulent alteration, counterfeiting, computer crime.

Remember in respect of Internal and External crime, because the Insurable person includes the Managing Agent, not only are their employees covered but also the hacking of their computer systems or networks – which results in the loss of the insured money.

Fraudulent transfer instructions (Part of External crime)

If someone purports to be the insured and issues written or electronic instructions to a financial institution requesting that they fraudulently transfer funds out of the insured’s account.

Data protection

Community schemes that hold members data or other sensitive information within their networks have a legal obligation to protect and safeguard this information. Schemes who suffer a privacy or security breach which results in the compromise of this data often end up with significant and costly obligations imposed under data protection legislations, regulatory issues, and fines and penalties imposed by regulatory bodies. The implementation of the Protection of Personal Information Act increases the onus of care required by custodians of personal information, as well as broadening the scheme’s exposure to litigation and penalties, resulting from data breaches.

EXTRA COVER

The following Extra Cover is included, in addition to the sum insured.

Contractual penalties

Any legally imposed penalty imposed on the insured following an insured event -such as the failure to meet a deadline following an act of fraud or theft.

Cost of recovery

If the insured sustains a loss in excess of the limit of indemnity, we will pay the costs and expenses necessarily incurred to recover such amounts up to R 10, 000. Such costs can only be incurred with our prior written consent.

Extortion

Where employees are coerced into committing acts of theft or fraud by a perpetrator who threatens to cause harm to themselves or their families.

Reinstatement of office records

Cover is provided up to R 10,000 for the cost necessarily incurred by the insured in replacing or restoring office records, both electronic and paper.

KEY DIFFERENCES BETWEEN THE CIA POLICY AND THE TRADITIONAL FIDELITY POLICY

INSURED EVENT	CIA	TRADITIONAL FIDELITY POLICY
Insurable Person definition	Included	Not Included
Employee Dishonesty	Covered	Covered
Managing Agent	Covered	Not Covered
Computer Fraud	Covered	Normally Not Covered
Third Party Computer Fraud	Covered	Normally Not Covered
Electronic Data Loss	Covered	Normally Not Covered
Extortion	Covered	Normally Not Covered
Contractual Penalties	Covered	Normally Not Covered
Fraudulent Transfer Instruction	Covered	Normally Not Covered
Unidentifiable Employees	Covered	Normally Not Covered

NB. This is only a summary of the cover and not a legal and binding document. We suggest that you read the entire document in conjunction with the policy wording and policy schedule. If there are any discrepancies between this document and the policy wording and schedule, the policy wording and schedule always takes preference.