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My personal information is exactly that, PERSONAL!

'Hi Alan

We really want to know how the Protection of Personal Information Act of 2013 ("POPI") is going to affect the Sectional Title industry?

An example would include a leak between two owners – are we as managing agents able to give the one owner the other owner's details without first checking with the latter owner that we may do so in writing? Given that the owner's register is available for inspection at the managing agent's office etc.

Also what sort of compliance issues does the POPI pose to a managing agent?

*Kind Regards
Mr X'*

Dear Mr X

POPI requires that ALL companies and sectors comply with its provisions as of its date of commencement, which has not yet been declared in terms of the relevant Government Gazette. All persons concerned will have 12 months to comply once date of commencement has been proclaimed.

After researching the Act and attending a course on the topic, in my opinion Sectional Title Schemes are included and are affected by the Act.

What is imperative to note about the Act is how it makes provision for even the smallest mishandling of personal information. What you may deem to be insignificant, the Act may take seriously.

For example; where an agent intends to sell immovable property belonging to another, and as a direct consequence thereof, wishes to take a picture of the property for marketing purposes. The Act requires the agent to have obtained the necessary consent from the owner, irrespective of the fact that the pictures of the said property may be available elsewhere.

The legal reasoning behind this is that the consent would enable the owner to be aware of the specific purpose/s for which the information is collected, which awareness is quintessential to the lawful processing of personal information. Once the specified purpose has been met the said information may no longer be used, furthermore it must be terminated in such a manner that it can no longer be reconstructed.

The person handling the information is therefore obliged to ensure that the information is not leaked and used for any other purpose other than that it has been collected for, and by any other person other than the person authorised to have handled the information.

So with regards to your example, the consent of the other owner would be required as there would have been a new purpose for the information i.e. different from the purposes for which the owner's register is compiled.

This is one way in which the POPI Act is going to impact on the ST industry. Therefore managing agents must henceforth ensure that they obtain the necessary consent from owners when collecting their personal information. Personal information includes race, sex, gender, mental or physical health, age, address and all other information that could lead to the identification of an owner. Furthermore, the managing agent must disclose to the owner the precise purpose for which the information is collected.

For more information on the topic contact Shoeshoe Marwa at enquiries@alattorneys.co.za or 0860 444 331.

