

# the practical health + safety

newsletter for the south african business owner + consumer

| volume | three

| twenty | sixteen

sectional title + hoa

| residential + commercial |

## | Fire Safety is not Health & Safety |

At some point, a big disservice was done to the Sectional Title market. For someone brought about a half-a-truth, and in the absence of facts, everyone fell for the same inaccuracy.

Hardly a Managing Agent, Body Corporate or even Home Owners Association exist, where the confusion between Fire Safety and Health & Safety is not blatantly evident at the top of every staircase, the end of every hallway, and the entry of every complex.

Fire hydrants bear the stickers, extinguishers are marked and cleaned, and every now and again you would even find a half decent emergency evacuation plan. Health & Safety done!

Not by a long shot.

Fire Safety is a mere fraction of the ambit of Health & Safety. Fire Safety is regulated in large by the following National Standards: SANS 10400; SANS 1475 part 1 and SANS 10105. By-laws may also apply or expand on these.

Health & Safety is governed by the Occupational Health & Safety Act, a myriad of National and Provincial Regulations, hundreds of National Standards (SANS), a long list of other relevant Acts, Ordinances and By-laws.

## | Electrical Compliance Leaves You Cold |

On a good day, one may encounter a Sectional Title Scheme where a valid Electrical Certificate of Compliance, as required and prescribed by the General Electrical Installations Regulations, is available. But only on a good day. This is somehow regarded as the ultimate in compliance for Health & Safety. Again, not by a long shot.

The requirements for compliance goes a lot further than either Fire Safety and/or Electrical Compliance.

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## | risk assessment is key |

As with any Health & Safety Compliance - everything starts and ends with a proper risk assessment.

This will allow you the opportunity to identify all the risks involved with that specific scheme.

You need to take in consideration risks like, traffic,



pedestrians, access control, pest and rodents, waste management, air / noise / water pollution, environmental impacts, play areas, swimming pools and other recreational facilities, parking areas.

You also have to focus on future involvement of contractors, be it plumbers, painters, electricians, builders, with the respective risks, like working at heights, power tools, hot work and permit to work systems.

Then you have to take cognisance of installations, electrical and machinery and others, electric fences, sprinkler systems, alarm systems, emergency evacuation procedures, security risks.

And that is only for the residential portion.

If you also have commercial units on the same premises, or even an commercial-only scheme, all of the above needs to be taken into consideration plus a whole lot more.

Safe work procedures, possible high risk installations, food safety, biological and medical waste management, cash-in transit services and risks, stormwater system integrity, maintenance records, ergonomics, smoking laws, all form part of an almost endless list of criteria to keep in mind.

## | tenants rights |

We have dealt with the Health & Safety requirements for residential properties in our earlier publication with the same name, so we will in this focus on the Health & Safety requirements which are resting on the shoulders of the BC only.

In terms of the Rental Housing Act, and the subsequent amendments and Regulations, it is common cause that all residential rental property has to comply to Health & Safety. But in the event of a Sectional Title Scheme (STS) or a Home Owners Association (HOA), this is expanded even further.

It has long been held that the tenant of a dwelling in a STS or HOA is, equally so, renting access & use to all common-use areas, all facilities offered by the STS or HOA, as part and parcel of such rental.

It is therefore critical for the common use areas to comply to Health & Safety as much as the actual residential unit has to comply.

This entails the compliance of pool areas, the pool itself, the handling of chemicals for the pool, the gardening service, regardless whether this is contracted or not, as was discussed in one of our other publications dealing with liability.

But also, so to does the electrical installations of the



common area has to comply separately from those of the residential units, pathways, electric gates, and pest control and rodent bait stations.

The manner in which the refuse is handled, and by whom, is a huge concern, as this is excellent breeding room for all kinds of illnesses and infections, pests and rodents.

As is the case with own-title residential rentals, the validity of the contract comes into play when there is no Health & Safety compliance, as per the Act and Regulations.



What differs in the case of the STS or HOA, is that where the owner of the own-title has no-one to blame or recuperate his losses from - here he or she can claim this from the STS or HOA, as the non-compliance is their responsibility, and he has no control over it. Non compliance is negligent, and thus open the way for legal claim.

And as was explained in the Trustee Liability publication of this series, such claims could even be directed directly at the individuals, not necessarily at the body. As this directly impacts on the Fiduciary Duty of the office bearers.

## | mixed use risks |



This is further compounded by having commercial units in the same complex as well.

Businesses like a veterinary clinic or medical practise give rise to biological hazards and waste, which has to be handled in a very well legislated manner. The same can be said for other medical waste, like “sharps”, and they would need to comply in their own right as well.

Coffee shops, give rise to food safety and hygiene in specific, the operations of a coffee shop kitchen is not that far removed from same in a restaurant or hotel, albeit a smaller scale, but the same requirements are set.

Should you have a laundromat for instance, then you need to deal with Air Pollution - as the “fluff” released from dryers can be harmful if breathed. The same dryers may also cause excessive heat issues if their exhaust systems exit near to residential intakes like doors or windows.

Any play-areas for children in such a scheme would require specific compliance in terms of the SANS created for that specific purpose. But, as was shown in the case of **Skhosana v Eskom**, even normal or other installations on a premises

needs to be safeguarded, failing which liability will rest with the STS or HOA. Equally so it was shown in **Serfontein and Another v Spoornet**, where Spoornet was held liable despite the fact that the claimant was trespassing on Spoornet property at the time of the accident, that the liability can extend well beyond allowed use - the STS or HOA may well end up liable for injury sustained as a result of unauthorised use, or trespassing on their property.

## | the construction risk |

Despite construction Safety not being the only requirement for Health & Safety Compliance, as explained earlier, it is still a factor which has to be included and dove-tailed to the rest of the Safety Management System for any Body Corporate and or HOA.

The requirements to be met has been gradually increased over time, the first real amendment came with the 2007 Construction Regulations, which has subsequently been replaced by the 2014 Construction Regulations.

The legal definition of construction work has been amplified dramatically in the course of these amendments.

The current definition for construction work is: **“construction work”** means any work in connection with-

- (a) the construction, erection, alteration, renovation, repair, demolition or dismantling of or addition to a building or any similar structure; or
- (b) the construction, erection, maintenance, demolition or dismantling of any bridge, dam, canal, road, railway, runway, sewer or water reticulation system; or the moving of earth, clearing of land, the making of excavation, piling, or any similar civil engineering structure or type of work;

Read with the definition for a contractor: **“contractor”** means an employer who performs construction work;

as well as having regard for the following definitions from the said Regulations: **“fall arrest equipment”** means equipment used to arrest a person in a fall, including personal equipment, a body harness, lanyards, deceleration devices, lifelines or similar equipment;

**“fall prevention equipment”** means equipment used to prevent persons from falling from a fall risk position, including personal equipment, a body harness, lanyards, lifelines or physical equipment such as

guardrails, screens, barricades, anchorages or similar equipment;

**"fall protection plan"** means a documented plan, which includes and provides for-

- (a) all risks relating to working from a fall risk position, considering the nature of work undertaken;
- (b) the procedures and methods to be applied in order to eliminate the risk of falling; and
- (c) a rescue plan and procedures;

**"fall risk"** means any potential exposure to falling either from, off or into;

**"health and safety file"** means a file, or other record containing the information in writing required by these Regulations;

**"health and safety plan"** means a site, activity or project specific documented plan in accordance with the client's health and safety specification;

**"health and safety specification"** means a site, activity or project specific document prepared by the client pertaining to all health and safety requirements related to construction work;

The above makes it very clear the legislator has intentionally included all and any work to be performed to any building as construction. Equally so, with the definition of "Fall Risk" it is made abundantly clear that even working on a ladder require specific compliance.

The compliance needs are set out fully in the definitions of the various Health & Safety references in the

If you found this newsletter interesting you may also want to look at some of our other property related publications

**Residential Rental Housing**  
**Lifestyle Estates: Managing Both**  
**Commercial Estates- all about money**  
**Industrial Property Pitfalls**

Vlame (SA) is a Health & Safety group, established as far back as 2005. While it was focussing mostly on construction related matters in the early days, it changed hands in 2008, and immediately the focus shifted to non-construction business.

Over the last 8 years thousands and thousands of new and unique documents, like this one, and many other industry specific requirements were developed - to be better able to assist clients over a much broader spectrum than mere construction.

We have become absolute experts on Health & Safety in fully functioning, running businesses across most industries in South Africa. Our clients include the likes of Hotels, Office blocks, Lifestyle Estates, Body Corporates and Home Owner Associations,

Regulations as well as in a number of sections of the same Regulations.

It is therefore absolutely impossible to perform the normal duties as a Body Corporate or Home Owners Association without having to comply fully with the requirements of both Health & Safety and the Construction Regulations of 2014.

## | the final solution |

The need for full and absolute compliance to Health & Safety by the BC or HOA is therefore without doubt.

Unfortunately so, so is the liability which will follow the Trustees of the BC or Directors of the HOA, as was set out in our other publication in the same series.

There is no quick fix available, and no room for circumventing the legal obligation, but the costs of continued compliance, especially so with regards to the construction activities, is often prohibitive, and this need not be the case. The BC or HOA can designate an employee or member to be trained in the requirements set, which can dramatically reduce the cost of professional involvement from a Health & Safety firm, and such, enabling the BC or HOA to comply, without placing a huge financial burden on itself. The Health & Safety firm can be appointed for quarterly audits only, guiding the process and assisting the BC or HOA to remain in compliance, and keep their members from harms way, but more importantly, to limit legal liability, both civil and criminal.

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