ATTORNEYS
NOTARIES
CONVEYANCERS

The Governance Gap in Phased Developments

Protecting the Asset Base of Mixed-Use Precincts

17th Annual Africa Property Investment Summit | CTICC, Cape Town | 18 September 2026

The **experience** you need.

ATTORNEYS
NOTARIES
CONVEYANCERS

Johlene Wasserman

Director | Head of Community Schemes & Compliance

Van Deventer Dowlath & Marx Incorporated

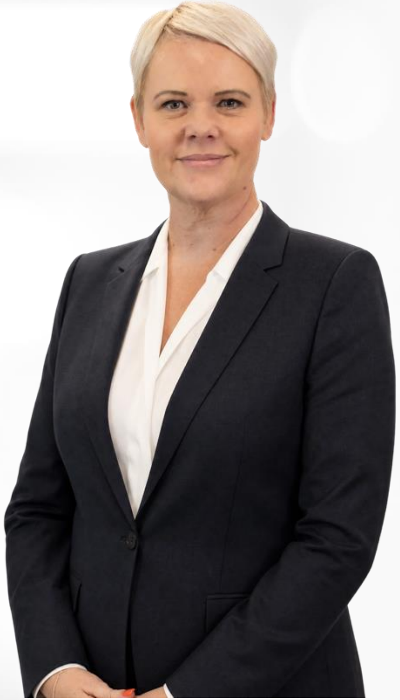
PhD Candidate, University of Cape Town — the professionalisation of scheme executives and the protection of the built-asset base

Former Senior Executive, Community Schemes Ombud Service author of many of the CSOS practice directives and the Executive Managing Agent framework

Former Executive: Licensing & Registration, Property Practitioners Regulatory Authority

Admitted attorney, conveyancer and accredited mediator; LLM (UCT); LexisNexis author

Structures and defends the governance of phased, layered and mixed-use precincts for developers across South Africa.



The asset base nobody is required to be competent to govern

R2.3 trillion

held in sectional title schemes and residential estates — about one-third of South Africa's residential property value

± 70 000

community schemes in the CSOS universe, with a further 20 000 targeted for registration by 2030

Zero

training, examination or accreditation required before a person assumes fiduciary office as a trustee or director

Sources: Lightstone residential property data; CSOS Strategic Plan 2025–2030; STSMA, Companies Act, HDSRPA — as analysed in the speaker's doctoral research (UCT).

What is the governance gap?

The distance between the governance a precinct will need over a 30-year life, and the governance its founding instruments actually deliver on the day the first register opens.

1 Designed too late

Constitutions and rules are drafted after the sales launch, by whoever is cheapest, to satisfy the Deeds Office and CSOS not to run the asset.

2 Drafted for one phase

Instruments assume a single scheme. Phase 2, the hotel, the retail strip and the second body corporate arrive with no seat at the table.

3 Dependent on the developer

Rights and commercial arrangements survive only for as long as the developer controls the vote. At handover they become negotiable.

Why mixed-use precincts are different

Master association
Estate-wide: security, roads, bulk services, brand, stabilisation levies

Precinct associations
Suites precinct, lodge precinct, retail each with its own cost centre

Bodies corporate & HOAs
Statutory schemes with elected trustees and their own CSOS rights

Layered entities
Every tier can sue the tier above it. A body corporate is a statutory litigant from the day its register opens.

Mixed levy pools
Hotel rooms, restaurants, suites and family homes in one contribution formula until someone asks why.

Rights that must outlive the developer
Extension rights, operator rights, servitudes and utility supply need a home that a future majority cannot vote away.

Multiple operators
Letting platforms, facilities managers and utility vehicles all need enforceable, registrable authority.

Three tiers, three sets of executives, one asset.

From governance gap to asset decay

The governance-to-asset-decay pathway — the conceptual model of the speaker's UCT doctoral study

Legal framework	Scheme executives	Governance processes	Built-asset outcomes
Defines the duties of trustees and directors but does not secure their competence	Lay, unpaid, unaccredited appointed by a vote, not by capability	Budgeting, reserve funding, procurement, maintenance planning, compliance	Reserve sufficiency, deferred-maintenance backlog, lifecycle-cost variance, building condition

The regime already prescribes the competent path: the ten-year maintenance, repair and replacement plan is a statutory preventive-maintenance instrument and the reserve fund is its funding mechanism. What the regime does not secure is the competence to follow that path. Where it fails, schemes default to reactive maintenance, chronic under-funding and sudden special levies and the cost lands on the owners you sold to, and on the value of the precinct that still carries your name.

The **experience** you need.

VDM ATTORNEYS NOTARIES CONVEYANCERS

Where must a right live to survive?

The instrument hierarchy: place every commercial or structural right in the highest instrument that can lawfully carry it.

A right that exists only in a rule is a right the majority can repeal. The Ombud will not certify a rule that compels owners to use one operator so the operator right has to be built above the rules, not inside them.

Strongest

1 Title conditions
Bind every successor in title; altered only by the Registrar or a court

2 Servitudes & notarial deeds
Registered real rights — solar, access, operator and utility rights

3 Constitution / MOI
Special resolution and, for an NPC, Companies Act process

4 Management & conduct rules
Repealable by the owners you sold to; subject to CSOS certification

5 Contracts & SLAs
Bind only the parties; cancellable; no successor protection

Weakest

Case study 1: the rule that did not survive

A student-accommodation sectional title scheme, Western Cape

What the developer did

- Retained the laundry and office sections as a commercial footprint
- Exempted those sections from levies in a management rule
- Required a single integrated service provider for the scheme in a management rule

What happened after handover

- Trustees moved to repeal both rules the moment the developer lost the vote
- A section 6(9) application to the Chief Ombud, a rejection on procedure, and years of dispute
- Unlawful levies, a disputed managing-agent appointment, a six-figure income loss

The lesson

- Commercial rights placed in rules are revocable by simple majority of the owners you sold to
- The developer's exit is now a negotiated sale of its own sections back to the body corporate
- The correct home was the title deed and a registered real right

Case study 2: the layered precinct under attack

A three-tier coastal resort estate, KwaZulu-Natal one of the largest mixed-use developments on the continent

The attack

- A single body corporate at the bottom tier refers the entire estate levy architecture to the Ombud
- Targets: the stabilisation contribution, the precinct cost allocation and the estate's sole utility-supply vehicle
- Claims repayment of contributions running to eight figures from a structure that has run for years
- Every other precinct's cash flow is now hostage to one adjudicator's reading of one constitution

What decides it

- Not whether the levy is fair but where the obligation was created and whether each tier had authority to impose it
- Whether the master constitution, the precinct constitution and the scheme's rules say the same thing in the same words
- Whether the purchaser was told, in the sale agreement, that a tier above the body corporate exists and levies

Forum: the Ombud and the High Court have concurrent jurisdiction (*Parch Properties v Summervale*, SCA 2025) plan for both

Case study 3: designed, not litigated

A Winelands lodge-and-residential development and a coastal suites precinct structured this year, before sales completion

1 Title conditions first

Operator, extension and utility rights placed at the top of the hierarchy registrable, successor-binding

2 Rights of extension in every sale

Section 25 rights reserved and disclosed in every purchaser agreement, with addenda before re-signing

3 One control document

Title, section 25 and 27 rights, disclosures, contributions and servitudes reconciled before lodgement

4 Function allocation by design

Precinct association functions assigned and scheduled up front; the body corporate stays statutory and simple

5 Cost centres, not one pool

Operator-owned service areas, third-party retail and residential sections contributing on a defined, disclosed basis

6 Ombud pathway planned

Rules drafted to certify first time and nothing in them that the constitution and title do not already carry

The phased timeline: when governance is decided

Where governance should be decided
cheap, binding on successors, invisible to purchasers

Where governance is usually decided
expensive, contested, and by then the vote belongs to someone else

Land use & township conditions → **Title conditions & servitudes** → First register opens → Developer control period → Handover & first AGM → Steady state (30 years)

The gap is a timing failure. Every instrument gets harder to change as you move right along this line: from a conveyancer's clause, to a special resolution, to an Ombud application, to a High Court order. The developer holds the pen only at the left-hand end and that is precisely where most precincts have not yet thought about who will govern them.

Who governs it after you leave?

Four regimes, four sources of duty, one competence requirement: none

Sectional title trustee
Fiduciary by statute — STSMA

HOA / share-block director
Companies Act codified duties; King V from 2026

Common-law HOA committee
Constitution and common law

Life-right operator
Occupation contract and HDSRPA

Identical mismanagement produces different legal consequences depending on the vehicle and the same physical consequence: a deteriorating asset. A trustee's breach of fiduciary duty has been held to fall outside the Ombud's adjudicative jurisdiction (*Ellis*), leaving owners the High Court as the forum the costliest route, funded from a scheme already depleted by the conduct complained of.

The reported case law is thin not because failure is rare, but because the forum that can hear it is out of reach.

What a developer can build in now

- Professional or independent trustee and director seats reserved in the constitution
- Managing-agent standards and reserve-fund policy hard-wired, not left to the first AGM
- A governance code and induction obligation for every incoming executive
- Maintenance and reserve reporting that the master tier can see and enforce

What the gap costs a developer

Registration paralysis
Inconsistent instruments surface at lodgement; transfers stall while the register waits for a conveyancer, a conveyancer waits for the developer, and purchasers wait for both.

Frozen levy reserves
One referral against the levy architecture and every tier's budget is provisional until an adjudicator or a judge rules often years.

Asset-class contamination
A dispute in the suites precinct is priced into the lodge, the retail and Phase 3 by every bank, buyer and valuer.

Precinct gridlock
Master, precinct and scheme executives with conflicting mandates cannot approve a roof, a lift or a security contract without a fight.

Operator rights lost
Letting, utility and facilities arrangements repealed by rule amendment after handover revenue lines gone, brand standards unenforceable.

Forum cost
Fiduciary and structural claims migrate to the High Court; the cheapest forum cannot decide the questions that matter most.

Governance by Design™: eight questions

1. Which of my commercial rights must survive handover and in which instrument does each one live today?
2. Does every tier of the precinct have a constitution that says the same thing as the tier above it?
3. Has every purchaser been told, in the sale agreement, about every tier that will levy them?
4. Are section 25 extension rights reserved, disclosed and carried in every sale for every phase?
5. Do the rules contain anything the title and constitution do not already carry?
6. Who will hold the professional or independent seat on each executive, and by what right?
7. Is the ten-year maintenance plan and reserve policy written into the instruments or hoped for at the first AGM?
8. Would this structure survive a judge, not only an adjudicator?

Governance is not the paperwork after the sale.

It is the asset after the sale.

Design it before construction. Place each right where it will survive. Decide who governs before the vote belongs to someone else.

ATTORNEYS
NOTARIES
CONVEYANCERS

Johlene Wasserman

Director | Head of Community Schemes & Compliance
Van Deventer Dowlath & Marx Incorporated

johlene@vdm.law
011 394 1606 | 079 469 4730
www.vdm.law

Cullinan Place, Block D, 2 Cullinan Close, Morningside, Sandton

Governance & Compliance Risk Assessment Toolkit™ | Precinct structuring | CSOS and High Court defence of layered structures