



ATLANTIC BEACH
ESTATE

ATLANTIC BEACH HOME OWNERS' ASSOCIATION POPIA MANUAL

**MANUAL PREPARED IN ACCORDANCE WITH THE PROTECTION OF
PERSONAL INFORMATION ACT 4 OF 2013 (POPIA)**

Home Owners' Association name: Atlantic Beach

Home Owners' Association *domicilium* address: Ground Floor Mandela Rhodes Place
Cnr Wale & Burg Streets
CAPE TOWN
8000

POPIA Information Officer name: Michael John Morey

Disclaimer

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Understanding the POPIA – Home Owners’ Associations

1. Purpose of the POPIA

The purpose of the Protection of Personal Information Act is to protect the South African Constitutional right to privacy. This is done by regulating the processing of an individual’s personal information to protect against its unlawful collection, use, disclosure and destruction. The personal information of owners, tenants, employees and trustees of a Home Owners’ Association (the Association) must be processed in accordance with the conditions for lawful processing, and the prescribed POPIA rights of these data subjects must be upheld.

2. Terms used in the POPIA (S1 of the POPIA)

- 2.1 Data subject – person to whom the personal information relates: ***the unit owner, tenant, trustee and employee.***
- 2.2 Information officer – the party responsible for ensuring that the Home Owners’ Association complies with the conditions of POPIA;
- 2.3 Operator – the person who processes personal information for the Home Owners’ Association: ***the Managing Agent.***
- 2.4 Personal information – information relating to a person including, but not limited to, an ID number, email address, physical address, telephone number, bank details, biometric information, and private correspondence sent by that person.
- 2.5 Processing – activities concerning personal information which include, but are not limited to, the collection, collation, retrieval, erasure, destruction and dissemination of personal information.
- 2.6 Responsible party – a party who processes personal information: ***the Home Owners’ Association.***
- 2.7 Record – recorded information regardless of form or medium, in the possession of a responsible party.
- 2.8 Special personal information – information concerning religious/philosophical beliefs, race, ethnicity, trade union membership, political persuasion, health, sex life, biometric information, criminal behaviour of a data subject.

3. Definitions

- a) “Association” means Atlantic Beach Home Owners’ Association;
- b) “consent” means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of personal information;
- c) “Constitution” means the Constitution, regulations and rules of the Association from time to time in force;
- d) “Member” means every registered owner of an erf or residential section;

4. Information held by the Home Owners’ Association

The Home Owners’ Association is obligated by the Companies Act 71 of 2008 and the Constitution to process owners, tenants, employees, directors and trustees’ personal information for the proper governance and functioning of the scheme.

5. **How the Managing Agent Processes Information**

The Managing Agent acts as an operator to process personal information on behalf of the Association. This is done by making use of the services of property management software companies, data hosting and information back-up service companies. Pam Golding Property Management Services ensures that all processing done by their employees and related service-providers is done in accordance with the POPIA.

6. **The Home Owners' Association POPIA obligations**

The Home Owners' Association must process personal information in accordance with the 8 conditions for lawful processing as prescribed in sections 8 to 25 of the POPIA (**Annexure A**). These conditions impose the following obligations on the Association (not an exhaustive list):

- i) The Association must obtain consent from a competent person if the data subject is under the age of 18 years;
- ii) The Association must obtain consent for the processing of any special personal information;
- iii) The Association must destroy records of personal information if it is no longer necessary to retain them for the purpose for which they were collected or the period required by law;
- iv) The Association must take steps to ensure the data subject is aware of their information being processed and the purpose for which it is being processed;
- v) The Association must take technical and organisational security measures to protect the personal information held;
- vi) The Association must maintain the safeguard measures, regularly verify that they are effectively implemented and continually updated;
- vii) The Association must ensure any Operator maintains the Association's security measures;
- viii) The Association must notify the Regulator and the data subject if there are reasonable grounds to believe there has been unauthorised access to information;
- ix) The Association must provide confirmation of personal information held and a record thereof if requested by a data subject;
- x) The Association must correct, delete or destroy personal information if reasonably requested by a data subject; and
- xi) The Association must provide a record of all third-party access to personal information if requested by a data subject;

7. **Biometrics**

Biometric information is classified as special personal information and constitutes a case where the Association or the Managing Agent must obtain the data subject's consent to process their biometric information. This consent need not be written but **Annexure F1** attached hereto may be used.

A record of data subjects' consent can be tracked using the register attached in **Annexure F2**.

8. **The Information Officer**

The Association has appointed **Michael John Morey** as the Information Officer and has completed registration with the Information Regulator in terms of the POPIA. The Information Officer is responsible for:

- a) The encouragement of compliance with the conditions for the lawful processing of personal information;
- b) Dealing with requests made to the Association pursuant to the POPIA;
- c) Working with the Regulator in relation to investigations;
- d) Otherwise ensuring compliance by the Association with the POPIA; and
- e) As may be prescribed.

ANNEXURE A

Home Owners' Association Obligations – 8 Conditions for Lawful Processing

Condition 1

Accountability – The Home Owners' Association must ensure that it complies with these 8 conditions and all measures implemented to ensure the lawful processing of information at all times (S8);

Condition 2

Processing limitation – Personal information must be processed lawfully and in a reasonable manner that does not infringe on the data subject's privacy. Information must be processed in a manner that is adequate, relevant and not excessive. (S9 – S10)

The processing of personal information may only occur if:

- a) the data subject, or a competent person if the data subject is under 18 years old, consents;
- b) the processing is necessary to carry out the performance of a contract to which the data subject is a party;
- c) the processing complies with an obligation imposed by law;
- d) the processing protects a legitimate interest of the data subject;
- e) processing is necessary for the performance of a public law duty by a public body; or
- f) processing is necessary for the legitimate interests of the Association or a third party to whom the information is supplied. (S11)

A data subject has the right to object on reasonable grounds to the processing of their personal information, and must do so in the prescribed manner using the prescribed form (Annexure D1). (S11)

Personal information must be collected directly from the data subject unless:

- a) the information is derived from a public record or has been deliberately made public by the data subject;
- b) the data subject has consented to the collection from another source;
- c) the collection from another source would not prejudice a legitimate interest of the data subject;
- d) the collection from another source is necessary for the reasons states in S12(2)(d) of the POPIA;
- e) collection directly from the data subject would prejudice a lawful purpose; or
- f) collection directly from the data subject is not reasonably practicable in the circumstances. (S12)

Condition 3

Purpose specification – Personal information must be collected only for a specific, explicitly defined lawful purpose related to the function or activity of the Home Owners' Association, and a data subject must be aware of this purpose. (S13)

Records of personal information must not be retained longer than necessary to achieve the purpose for which the information was collected, unless:

- a) the retention of the record is required by law;
- b) the Association requires a record to carry out lawful functions or activities;
- c) the retention of the record is required by a contract between the Association and the data subject;
- d) the data subject has consented to the retention.

Records of personal information must be destroyed as soon as reasonably practicable after the Association is no longer authorised to retain the information. (S14)

Condition 4

Further processing – The further processing of personal information by the Home Owners' Association must be compatible with the purpose of collection. To assess whether further processing is compatible, the Association must:

- a) assess the relationship between the purpose of the further processing and the purpose for which the information was originally collected;
- b) assess the nature of the information in question;
- c) assess the consequences of further processing for the data subject;
- d) assess the manner in which the information has been collected; and
- e) assess any contractual rights and obligations between the Association and the data subject. (S15)

Condition 5

Information quality – The Home Owners' Association must take reasonably practicable steps to ensure that the personal information is complete, accurate, not misleading and updated where necessary (S16);

Condition 6

Openness – The Home Owners' Association must maintain documentation of the processing activities regarding personal information, including receipt, recording, organisation, cancellation, storage and use as well as transmission, re-formatting, merging and destruction. (S17)

The Association must take reasonably practicable steps to ensure that the data subject is aware of their information being collected, the purpose for the collection and any further information necessary. (S17-S18);

Condition 7

Security safeguards – The Home Owners' Association must secure the integrity and confidentiality of the personal information by taking reasonable technical and organisational measures to prevent loss, damage, unauthorised destruction as well as unlawful access. This must be done by identifying all risks to personal information and subsequently establishing, monitoring and updating appropriate safeguards against these risks. (S19)

Any operators processing on behalf of the Association (such as the Managing Agent) must only process personal information with the knowledge or authorisation of the Association, or if it is required by law. The operators must treat all personal information as confidential. (S20)

There must be a written contract between the Association and the operator confirming that the operator will process personal information in accordance with the Association's S 19 security measures. The operator also has a duty to notify the Association immediately if there are reasonable grounds to believe that there has been unauthorised access to or acquisition of personal information. The Association then has the duty to notify the data subject as well as the Regulator. (S21 – S22)

Condition 8

Data subject participation – The data subject has the right to request the Home Owners' Association to advise whether or not they hold personal information relating to the data subject, and to request the record of the personal information within a reasonable time and at the prescribed free (S23-24).

ANNEXURE B

NOTIFICATION OF DATA SUBJECTS' RIGHTS IN TERMS OF S5 OF THE PROTECTION OF PERSONAL INFORMATION ACT NO. 4 OF 2013 (POPIA)

Rights of Data Subjects (S5 of the POPIA)

Data subjects have the right to:

1. Have their personal information processed in accordance with the POPIA conditions for lawful processing;
2. Be notified that personal information about them is being collected;
3. Be notified that personal information has been accessed or acquired by an unauthorised person;
4. Establish whether the Home Owners' Association holds their personal information and to request access to it;
5. Request, where necessary, the correction, destruction or deletion of their personal information;
6. Object on reasonable grounds to the processing of their personal information;
7. Object to the processing of their personal information for purposes of direct marketing;
8. Not have their personal information processed for purposes of direct marketing;
9. Not be subjected to a decision based solely on the automated processing of their personal information;
10. Submit a complaint to the Information Regulator regarding interference with the protection of their personal information;
11. Institute civil proceedings regarding interference with their personal information.

Processing of Data Subject's Personal Information (S5 of the POPIA)

The data subject is hereby informed that personal information about them is being collected and processed in accordance with the POPIA. The Home Owners' Association is obligated by the Companies Act and its Constitution to process information for the proper functioning and governance of the scheme.

ANNEXURE C**FORM FOR THE HOME OWNERS' ASSOCIATION TO RECORD ACCESS TO DATA SUBJECT'S INFORMATION (S23 OF THE POPIA)**

The data subject has the right to request the Home Owners' Association to:

1. Advise, free of charge, whether it holds the data subject's personal information;
2. Provide the record or a description of the personal information held;
3. Provide information about the identity of all third parties who have had access to the personal information;
4. In terms of S23(1)(b)(2) of the POPIA, the data subject making a request in terms of 2 and 3 above will be required to pay a prescribed fee to the Home Owners' Association, at the rate determined by the PAIA.

Third party access record in terms of S23 of the POPIA				
Date	Data subject unit number	Third party name	Personal information provided	Reason for provision of information

Signed at _____ this _____ day of _____

Signature of data subject/designated person

ANNEXURE D2 – Form 2

**REQUEST FOR CORRECTION/DELETION OF PERSONAL INFORMATION OR
DESTRUCTION/DELETION OF RECORD OF PERSONAL INFORMATION IN TERMS OF SECTION 24(1)
OF THE PROTECTION OF PERSONAL INFORMATION ACT NO. 4 OF 2013**

REGULATIONS RELATING TO THE PROTECTION OF PERSONAL INFORMATION, 2018

[REGULATION 3]

Note:

4. Affidavits or other documentary evidence as applicable in support of the request may be attached.
5. If the space provided for in this Form is inadequate, submit information as an Annexure to this Form and sign each page.
6. Complete as is applicable.

Mark the appropriate box with an “X”.

Request for:

- Correction or deletion of the personal information about the data subject which is in possession or under the control of the responsible party.
- Destroying or deletion of a record of personal information about the data subject which is in possession or under the control of the responsible party and who is no longer authorised to retain the record of information.

A	DETAILS OF THE DATA SUBJECT
Name(s) and surname/registered name of data subject:	
Unique identifier/Identity Number:	
Residential, postal or business address:	
Contact number(s):	
Fax number/E-mail address:	
B	DETAILS OF RESPONSIBLE PARTY
Name(s) and surname/registered name of responsible party:	
Residential, postal or business address:	
Contact number(s):	
Fax number/E-mail address:	

C	INFORMATION TO BE CORRECTED/DELETED/DESTROYED
D	<p>REASONS FOR CORRECTION OR DELETION OF THE PERSONAL INFORMATION ABOUT THE DATA SUBJECT IN TERMS ON SECTION 24(1)(a) WHICH IS IN POSSESSION OR UNDER THE CONTROL OF THE RESPONSIBLE PARTY ; and or</p> <p>REASONS FOR DESTRUCTION OR DELETION OF A RECORD OF PERSONAL INFORMATION ABOUT THE DATA SUBJECT IN TERMS OF SECTION 24(1)(b) WHICH THE RESPONSIBLE PARTY IS NO LONGER AUTHORISED TO RETAIN.</p> <p><i>(Please provide detailed reasons for the request)</i></p>

Signed at _____ this _____ day of _____

Signature of data subject/designated person

ANNEXURE E**NOTIFICATION TO DATA SUBJECT THAT PERSONAL INFORMATION HAS BEEN CORRECTED, DELETED OR DESTROYED AS PER A REQUEST IN TERMS OF S24(4) OF THE PROTECTION OF PERSONAL INFORMATION ACT NO. 4 OF 2013 (POPIA)**

To _____

Date ____/____/____

Notification to Data Subject in terms of S24(4) of the POPIA

This note serves to inform you that the personal information you requested to be corrected/deleted or destroyed has been corrected/deleted or destroyed.

The changes have been recorded in the attachment hereto.

Signed by the Information Officer on behalf of the Home Owners' Association

ANNEXURE F1

BIOMETRICS CONSENT FORM IN TERMS OF S26 OF THE PROTECTION OF PERSONAL INFORMATION ACT NO. 4 OF 2013 (POPIA)

I, the undersigned _____ (full name), Unit Number _____ by my signature below give consent to the Home Owners' Association to process my biometric information.

Signature

____/____/____

Date

GUARDIAN'S CONSENT

If the data subject above is under the age of 18, a competent person must give consent in terms of S35 of the POPIA.

I, the undersigned _____ (full name), Unit Number _____ by my signature below give consent to process the biometric information of _____.

Signature

____/____/____

Date

ANNEXURE G**AUTHORISATION OF THE INFORMATION OFFICER**

(In terms of the Promotion of Access to Information Act 2 of 2000)

I, the undersigned, _____ (full name of the default Information Officer) hereby appoint _____ (full name of authorised Information Officer) to be the Information Officer of _____ (insert BC/HOA name), and authorise _____ (full name of authorised Information Officer) to exercise any of the powers, duties and responsibilities conferred or imposed on me by the Protection of Personal Information Act, 2013 and the Promotion of Access to Information Act, 2000.

I reserve my right to exercise any of the powers, duties and responsibilities conferred herein, as well as the right to amend and/or withdraw any of those powers, duties and responsibilities.

_____	_____
Default Information Officer (name)	Signature

By my signature herein below, I hereby accept the authorisation to be the Information Officer of the above-mentioned scheme.

(Full name of authorised Information Officer)

Date: _____

ANNEXURE H**DESIGNATION AND DELEGATION OF AUTHORITY TO THE DEPUTY INFORMATION OFFICER**

(In terms of section 56 of the Protection of Personal Information Act No. 4 of 2013 (POPIA) and section 17(1) of the Promotion of Access to Information Act No. 2 of 2000 (PAIA).)

I, the undersigned, _____ (full name of Information Officer) hereby designate _____ (full name of person being designated) as the/a Deputy Information Officer of (insert BC/HOA name), the Responsible Party.

Furthermore, I hereby delegate to you the following powers, duties and responsibilities, as conferred or imposed on me by POPIA and PAIA, specifically all the duties required of the responsible officer as set out in par 6 of the Guidance Note on Information Officers and Deputy Information Officers issued by the Information Regulator on 01 April 2021.

Please be advised that I reserve the right to exercise any of the powers, duties and responsibilities conferred herein, as well as the right to amend and/or withdraw any of those powers, duties and responsibilities.

Information Officer

(Name and signature)

By my signature herein below, I hereby accept the delegation and designation as the Deputy Information Officer.

(Name of designate)

Date: ____/____/_____

ANNEXURE I

**AGREEMENT IN RESPECT OF THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF
2013**

We confirm that _____ (insert service provider's name) , the Operator, processes personal information on behalf of _____(insert HOA name), the Responsible Party.

1. "Personal information" shall have the meaning ascribed to it as in the Protection of Personal Information Act (POPIA).
2. The Operator hereby undertakes as follows:
 - 2.1 The Operator will secure the integrity and confidentiality of the personal information provided by the Responsible Party. This will be done by taking appropriate, reasonable technical and organisational measures to prevent the:
 - 2.1.1 loss of, damage to or unauthorised destruction of personal information; and
 - 2.1.2 unlawful access to or processing of the personal information.
 - 2.2 In furtherance of the obligation set out in clause 2.1 above, the Operator will undertake reasonable measures to:
 - 2.2.1 identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control;
 - 2.2.2 establish and maintain appropriate safeguards against the risks identified in terms of clause 2.2.1 and any security measures established by the Responsible Party;
 - 2.2.3 regularly verify that the safeguards established in terms of clause 2.2.2 are effectively implemented;

2.2.4 ensure that the safeguards established in terms of clause 2.2.2 are continually updated in response to new risks or deficiencies in previously implemented safeguards;

2.2.5 have due regard to generally accepted information security practices and procedures applicable or required in terms of specific industry or professional rules and regulations;

2.2.6 process personal information only with the knowledge or authorisation of the Responsible Party;

2.2.7 notify the Responsible Party immediately where there are reasonable grounds to believe that the personal information of a data subject has been accessed or acquired by any unauthorised person.

3. The Responsible Party confirms that it authorises the Operator to process personal information, provided by the Responsible Party, on the Responsible Party's behalf.

Name: _____

Title: _____

Who warrants their authority for:

(insert service provider's name)

Signature: _____

Name: _____

Title: Information Officer of HOA

Signature: _____