

LEGAL AUTHORITY VESTS IN MANDATE

What happens when an agent represents one of the parties to a tenancy dispute

LANDLORD-TENANT disputes can be resolved between parties themselves and should be encouraged.

Where an “agent” (e.g., an attorney, community organisation, estate agent or an individual) acts for a party, it is incumbent that the agent places the interest of the client above its own. The agent must have a specific mandate or instruction within which decisions can be taken to end a dispute.

What happens when an agent that represents a party without proper authorisation enters into negotiations, and even concludes an agreement?

Does the agent then have the right to represent a party, or to carry out an instruction?

Let us look at a few examples to understand the serious implications of an incorrect mandate or a fraudulent misrepresentation.

Example one:

A body corporate terminates a lease agreement and then proceeds to evict the tenant. The landlady, who is the owner of one of the units (flat), was informed that her tenant has become a nuisance and the other owners and tenants have had enough.

However, the landlady does not terminate the lease agreement; neither does she instruct the body corporate to act on her behalf.

The landlady could have taken action by placing the tenant on terms, allowing the tenant to rectify the breach.

She could have cancelled the lease because of the tenant’s failure to remedy the breach, and thereafter proceed with eviction. The body corporate cannot act as the landlady, unless specifically mandated to do so.

The body corporate can take action against the landlady-owner for not adhering to the provisions of the Sectional Titles Act and specifically the

Annexure to the Regulations dealing with conduct rules.

Example two:

An organisation represents a group of tenants regarding maintenance and rental disputes.

After concluding an agreement, the landlord is unable to enforce the terms because not all the tenants mandated the organisation to act for them. During negotiations the landlord should have requested from the organisation's spokesperson proof of representation.

Mandate

What is required is a written document with an instruction from tenants, with their details and signature. The extent of the mandate is also important, that is to say, parties are informed that the representative can take decisions and even finalise a settlement agreement or the restrictions under which the representative is mandated.

Attorneys do not require a written mandate and can act under verbal instructions.

However, an attorney's authority to act can be challenged, he/she could be required to produce proof.

A municipality, as a party to a mediation or a hearing, cannot be represented by an attorney who is a councillor (Rule 52 of the Magistrates' Court Act).

Resolution or minutes of a meeting

A **company** or **close corporation** is a legal entity or a legal persona and its directors or members, respectively, must give permission (through a resolution or minutes of a meeting) to a person to enter into a lease contract, if it intends to take legal action or lodge a complaint with the Rental Housing Tribunal or defend any legal action.

A **trust** is not a legal persona, but trustees have to follow legal procedures²⁵. If a trust is the landlord or tenant the trust deed is central to powers

of trustees and how decisions are to be made.

Steyn CJ affirms that a trust is not a legal entity: "[A] trust, if it is to be clothed with juristic personality, would be a persona or legal entity consisting of an aggregate of assets and liabilities. Neither our authorities nor our Courts have recognised it as such a persona or entity... It is trite law that the assets and liabilities in a trust vest in the trustee," (*in Commissioner for Inland Revenue v Macneillie's Estate* 1961 (3) SA 833 (A) at 840).

A **municipality** must pass a proper resolution for an individual to represent it at proceedings. Patel AJ (*in Kritzingen v Newcastle Local Transitional Council and Others* 2000 (1) SA 345 (N) at 349) explained this point quite concisely: "It is a trite proposition of our law that artificial persons must duly authorise their employees either to institute or defend proceedings. An authority to act on behalf of an artificial person like a company or a municipality is, according to the best evidence rule, established by a resolution of the entity concerned."

A municipality cannot become a party to legal proceedings unless a proper resolution is taken empowering a particular individual to act on its behalf.

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