

MART ATTORNEYS INC



MART ATTORNEYS INC
MATHADA A. RAMETSE T

BALANCING COMPETING INTERESTS

POPI POLICY

1. DEFINITIONS

- a) **DATA SUBJECT** means the person to whom personal information relates to.
- b) **POPIA** refers to the Protection of- Personal Information Act 4 of 2013.
- c) **PROCESSING** means any operation or activity or any set of operations, whether by automatic means, concerning personal information, including:
 - ❖ the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation, or use.
 - ❖ dissemination by means of transmission, distribution or making available in any other form; or
 - ❖ merging, linking, as well as restriction, degradation, erasure, or destruction of information.
- d) **RECORD** means any recorded information, regardless of form or medium, including any of the following:
 - i.
 - ❖ writing of any material.
 - ❖ information produced, recorded, or stored by means of any tape-recorder, computer equipment, whether hardware or software or both, or other device, and any material subsequently derived from information so produced, recorded, or stored.
 - ❖ label, marking or other writing that identifies or describes anything of which it forms part, or to which it is attached by any means.
 - ❖ book, map, plan, graph, or drawing.
 - ❖ photograph, film, negative, tape or other device in which one or more visual images are embodied to be capable, with or without the aid of some other equipment, of being reproduced.
 - ii. in the possession or under the control of a responsible party.
 - iii. whether or not it was created by a responsible party; and
 - iv. regardless of when it came into existence.
- e) **RESPONSIBLE PARTY** means a public or private body or any other person which, alone or in conjunction with others determines the purpose of and means for processing personal information.
- f) **PERSONAL INFORMATION** means information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to:
 - i. information relating to the race, gender, sex, pregnancy, marital status, national, ethnic, or social origin, colour, sexual orientation, age, physical or mental health, wellbeing, disability, religion, conscience, belief, culture, language, and birth of the person.
 - ii. information relating to the education or the medical, financial, criminal or employment history of the person.
 - iii. any identifying number, symbol, e-mail address, physical address, telephone number, location information, online identifier, or other assignment to the person.
 - iv. the biometric information of the person.
 - v. the personal opinions, views, or preferences of the person.
 - vi. correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence.
 - vii. the views or opinions of another individual about the person and,

- viii. the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person.

- g) **INFORMATION OFFICER** means the person who is responsible for ensuring Mart Attorneys' compliance with POPI Act.

2. PURPOSE OF THIS POLICY

- a) The primary purpose of this policy is to provide guidance to Employees and temporary Employees with regards to requirements and guidelines of processing and storing data subject's personal information.
- b) Management will therefore ensure that each employee carries out their duties in accordance with the guidelines and performs their duties in accordance with this policy and procedures of the Protection of Personal Information Act. Employees are to maintain and undertake their duties and instructions in line with the applicable South African Privacy Laws.
- c) This document will therefore be of assistance in regulating the primary functionalities of balancing the right to privacy and the right to access of information. This policy will further assist employees to establish and understand the conditions that must be adhered to when processing and storing client's personal information.
- d) This document will further assist employees to help remedy any errors or mistakes that are made when processing personal information that is not in accordance with the Act.

3. SCOPE AND OBJECTIVE OF THE POLICY

- a) This policy is applicable to all Employees of Mart Attorneys, including all Fixed Term- and / or temporary Employees, contractors, suppliers, and any persons acting on behalf of the Mart Attorneys.
- b) They abovementioned personnel are required to familiarise themselves with the policy's requirements and undertake to comply with the stated processes and procedures.

4. RIGHTS OF DATA SUBJECTS

- a) A Data subject has the right to have his / her / its personal information processed in accordance with the conditions for lawfully processing or personal information which includes the right to:
 - i. Being notified when personal information is collected and when his / her / its personal information has been accessed or acquired by an unauthorised person.
 - ii. To establish whether a responsible party holds personal information of a specific data subject and to request access to his / her / its personal information.
 - iii. To request, where necessary, the correction, destruction, or deletion of his / her / its personal information.
 - iv. To object, on reasonable grounds that relate to his / her / its situation to the procession of his / her / its personal information that has been provided.
 - v. To object to the processing of his / her or its personal information being used for:
 - ❖ Purposes of direct marketing; or
 - ❖ Direct marketing by means of unsolicited electronic communications.
 - vi. To not have his, her or its personal information for purposes of direct marketing by means on unsolicited electronic communications.

- vii. To not be subject, under certain circumstance, to a decision which is based solely based on the automated processing of his, her or its personal information intended to provide a profile of such person.
 - viii. To submit a complaint to the Regulator regarding the alleged interference with the protection of the personal information of any data subject or to submit a complaint to the Regulator in respect of a determination of an adjudicator as provided for in the Act.
 - ix. To institute civil proceedings regarding the alleged interference with the protection of his, her or its personal information.
- b) Should an employee of Mart Attorneys be requested access to their personal information, such request should be made on a Personal Information Request Form which is attached hereto marked as Annexure "A".

5. PURPOSE FOR COLLECTING AND PROCESSING INFORMATION

Mart Attorneys collect personal information for a number of reasons, including the following:

- to provide services to clients;
- to comply with legal or regulatory obligations;
- if a data subject has provided their consent; or
- if the processing is allowed by law.

MART Attorneys processes personal information for various purposes including for –

- Fulfilling its contractual obligations to its clients and client contacts;
- Attending to the legitimate interests of data subjects;
- In connection with legal proceedings.
- Facilitating transactions with data subjects;
- Collecting data for statistical purposes to improve its services;
- Engaging in various forms of direct marketing;
- Complying with the provisions of statute and regulations;
- Identifying prospects for enhanced service delivery and business sustainability;
- Tracking data subject activity on the website and its links as well as their transactions with us;
- Confirming and verifying data subject's identity or verifying that they are authorised users for security purposes;
- Conduct market or customer satisfaction research;
- Audit and record keeping purposes;

6. CONDITIONS FOR LAWFUL PROCESSING OF PERSONAL INFORMATION

All employees and persons acting on behalf of Mart Attorneys will always be subject to, and act in accordance with, the following guiding principles:

a) ACCOUNTABILITY

- i. Mart Attorneys' employees are to ensure that personal information is lawfully processed in accordance with POPI Act at all times.
- ii. As the responsible party, Mart Attorneys is required to audit the processes used to collect, record, store, disseminate and destroy personal information.
- iii. Mart Attorneys is to ensure the integrity and safekeeping of personal information that is in its possession or under its control.
- iv. Mart Attorneys is to take steps to prevent data subject's information from being lost, damaged, or unlawfully accessed.

- v. All employees of Mart Attorneys must ensure that all processing conditions under this heading are complied with when determining the purpose and means of processing Personal Information.

b) PROCESSING LIMITATION

- i. Lawfulness of processing:
 - ❖ Personal information must be processed lawfully and in a reasonable manner that does not infringe the privacy of the data subject.
- ii. Processing is deemed to be lawful only if it is given a purpose for processing, the information obtained is adequate, that the information obtained is relevant and not excessive.
- iii. Personal Information may only be processed by Mart Attorneys if one of the following grounds of lawful processing exists:
 - ❖ The Data Subject consents to the processing.
 - ❖ Processing is necessary for the conclusion or performance of a contract (fee and mandate agreement) with the Data Subject.
 - ❖ Processing complies with a legal responsibility imposed on Mart Attorneys.
 - ❖ Processing protects a legitimate interest of the Data Subject.
 - ❖ Processing is necessary for pursuance of a legitimate interest of Mart Attorneys or correspondent attorneys to whom the information is supplied too.
- iv. Data subject consent is not required if it would prejudice a lawful process or if the information is contained in a public record.
- v. Special Personal Information includes:
 - ❖ Religious, philosophical, or political beliefs.
 - ❖ Race or ethnic origin.
 - ❖ Trade union membership.
 - ❖ Health or sex life.
 - ❖ Biometric information (including but not limited to blood type, fingerprints, DNA, retinal scanning, voice recognitions, photographs).
 - ❖ Criminal behaviour.
 - ❖ Information concerning a child.
- vi. Mart Attorneys may only process Special Personal Information under the following circumstances:
 - ❖ The Data Subject has consented to such processing.
 - ❖ The Special Personal Information was deliberately made public by the Data Subject.
 - ❖ Processing is necessary for the establishment of a right or defence in law.
 - ❖ Processing is for historical, statistical or research reasons; and / or
 - ❖ If the processing of race or ethnic origin, is to comply with the affirmative action laws.
- vii. All Data Subjects have the right to refuse or withdraw their consent to the processing of their Personal Information, and a Data Subject may object at any time, to the processing of their Personal Information on any of the above grounds, unless legislation provides for such processing. If the Data Subject withdraws consent or objects to processing then Mart Attorneys, shall immediately refrain from processing the Personal Information.

c) PURPOSE SPECIFICATION

- i. Personal Information must be collected for a specific, explicitly defined, and lawful purpose related to a function or activity that Mart Attorneys renders.
- ii. Mart Attorneys is to ensure that the Data Subjects are made aware of the purpose for which the collection of their Personal Information is for.
- iii. The purposes for collecting Data Subjects Personal Information must remain within the ambit of the following:

Retention and Restriction of Records:

- ❖ Subject to the above records of Personal Information must not be kept longer than is necessary for achieving the purpose for which the information was collected or subsequently processed.
- ❖ Mart Attorneys will ensure that the destruction or deletion of Personal Information is done in a manner that prevents its reconstruction in an intelligible form.

d) FURTHER PROCESSING LIMITATION

- i. Further processing of Personal Information must be in accordance with or compatible with the purpose for which it was collected in its specific purpose.
- ii. To assess if further processing is compatible with the purpose of collection, Mart Attorneys must consider the following:
 - ❖ The relationship between the purpose of the intended further processing and the purpose for which the information has been collected.
 - ❖ The nature of the information concerned.
 - ❖ The consequences of the intended further processing for the data subject.
 - ❖ The way the information has been collected; and
 - ❖ Any contractual rights and obligations between the parties.
- iii. Further processing of Personal Information is not incompatible with the purpose of collection if:
 - ❖ The Data Subject or a competent person where the Data Subject is a child has consented to the further processing of the information.
 - ❖ The information is available in or derived from a public record or has been deliberately made public by the data subject.
- iv. Further processing is necessary in the following instances:
 - ❖ To avoid prejudice to the maintenance of the law by any public body including the prevention, detection, investigation, prosecution, and punishment of offences.
 - ❖ To comply with an obligation imposed by law or to enforce legislation concerning the collection of revenue.
 - ❖ For the conduct of proceedings in any court or tribunal that have commenced or are reasonably contemplated; or
 - ❖ Is the interest of national security.

e) INFORMATION QUALITY

- i. Mart Attorneys must take reasonable steps to ensure that the Personal Information obtained from Data Subjects is complete, accurate, not misleading and updated where necessary.

- ii. By taking the steps referred to in (d)(i), Mart Attorneys must have regard to the purpose for which Personal Information is collected or further processed.
- iii. Employees should as far as reasonably practicably follow the following guidance when collection Personal Information:
 - ❖ Personal Information should be dated when received.
 - ❖ A record should be kept of where the Personal Information was obtained.
 - ❖ Changes to information records should be dated.
 - ❖ Irrelevant or unneeded Personal Information should be deleted or destroyed.
 - ❖ Personal Information should be stored securely, either on a secure electronic database or in a secure physical filing system or both.

f) OPENNESS

- i. Documentation
 - ❖ Employees must maintain the documentation of all processing operations under its responsibility as referred under retention and restriction of records.
 - ❖ Mart Attorneys employees must take reasonable practical steps to ensure that the Data Subjects are aware of:
 - The reason for which information is being collected and where the information is not collected from the data subject, the source from which it is collected.
 - The name and address of the Mart Attorneys.
 - The purpose for which the information is being collected.
 - Whether or not the supply of the information by that data subject is voluntary or mandatory.
 - The consequences of failure to provide the information.
 - Any law authorising or requiring the collection of the information.
 - The fact that, where applicable, the Mart Attorneys intends to share the information to a third party or international organisation and the level of protection afforded to the information by that third party or international organisation.
 - That the Data Subject has the right to access or rectify the information collected.
 - That the Data Subject has the right to object to the processing of their Personal Information; and
 - Mart Attorneys has the obligation to inform the Data Subject that should they be unhappy in the way their Personal Information is being processed or stored that they have the right to lodge a complaint to the Information Regulator.

g) SECURITY SAFEGUARDS

- i. Mart Attorneys must ensure the integrity and confidentiality of all Personal Information in its possession, by taking reasonable steps to:
 - ❖ Identify all reasonably foreseeable risks to information security.
 - ❖ Implementing security controls to minimize the risk of loss, unauthorised access, disclosure, interference, modification, or destruction.
 - ❖ Security controls implemented should be context sensitive. This meaning that the more sensitive personal information is – the greater security is required.
- ii. Written records:
 - ❖ Personable Information records should be kept in areas that non-staff members have access to.

- ❖ When in use, Personal Information records should not be left unattended in areas where non-staff members may access to.
 - ❖ Mart Attorneys shall implement and maintain a "Clean Desk Policy" where all employees shall be required to clear their desks of all Personal Information when leaving their desks for any length of time and at the end of the day.
 - ❖ Personal Information which is no longer required should be disposed by shredding.
 - ❖ All FICA documents must be uploaded onto Mart Attorneys' online portal and the hard copies must be stored away in a designated secure storage unit.
 - ❖ Any loss, theft or unauthorised access to Personal Information must be immediately reported to the Information Officer.
- iii. Electronic Records:
- ❖ All electronically held Personal Information must be saved on an online portal.
 - ❖ As far as reasonably practical, no Personal Information should be saved on individual computers, laptops, or hand-held devices.
 - ❖ All computers, laptops and hand-held devices should be access protected with a password with the password being of reasonable complexity and changed monthly.
 - ❖ Mart Attorneys shall implement a "Clean Screen Policy" where all employees shall be required to lock their computes or laptops when leaving their desks for any length of time and to log off at the end of each day.
 - ❖ Electronic Personal Information which is no longer required must be deleted from the individual laptop or computer and the relevant database. The employees must ensure that the information has been completely deleted and is not recoverable.
 - ❖ Any loss or theft of computers, laptops or other devices which may contain Personal Information must be immediately reported to the Information Officer who shall notify the IT Department who will then take all the necessary steps to remotely delete the information, if possible.
 - ❖ Mart Attorneys will continuously review its security controls which will include regular testing of protocols and measures put in place to combat cyberattacks on the IT network.

h) DATA SUBJECT PARTICIPATION

- i. Data Subjects have the right to request access to, amendment or deletion of their Personal Information as per Annexure "A".
- ii. All such requests must be submitted in writing to the Information Officer, unless there are grounds for refusal as set out in below, Mart Attorneys shall disclose the requested Personal Information:
 - ❖ On receipt of adequate proof of identity from the Data Subject or requestor.
 - ❖ Within a reasonable time.
 - ❖ On receipt of the prescribed fee, if any.
 - ❖ In a reasonable format.
- iii. Personal Information shall not be disclosed to any party unless the identity of the requestor has been identified.

7. GENERAL DESCRIPTION OF INFORMATIONS SECURITY MEASURES

Mart Attorneys employs up to date technology to ensure the confidentiality, integrity and availability of the Personal Information under its case. These measures include:

- ❖ Firewalls
- ❖ virus protection software and updated protocol
- ❖ physical access control
- ❖ Outsourced Service Providers who process Personal Information on behalf of Mart Attorneys are contracted to implement security controls.

8. ACCESS TO PERSONAL INFORMATION

- a) All individuals and entities may request access, amendment or deletion of their own Personal Information held by Mart Attorneys. Any requests should be directed, on the prescribed form to the Information Officer.
- b) Remedies available if request for access to Personal Information is refused:
 - i. **Internal Remedies:** The Act does not provide any internal remedies should a request for Personal Information is made and is denied by the Information Officer. As such, the requestor must exercise external remedies at their disposal.
 - ii. **External Remedies:** Should a requestor or third party be dissatisfied with the Information Officer's refusal to disclose information, may within 30 days of notification of the decision, apply to a court for relief. For purposes of the Act, courts that have jurisdiction over these applications are the Constitutional Court, the High Court, or another court of similar status.
- c) An Information Officer may refuse the request to Personal Information on the following grounds:
 - i. Protecting Personal Information that Mart Attorneys holds about a third party (who is a natural person) including a deceased person, from unreasonable disclosure.
 - ii. Protecting commercial information that Mart Attorneys holds about a third party or the "trade secrets" that could harm the commercial or financial interest of the organisation or the third party.
 - iii. If disclosure of the record would result in a breach of a duty of confidence owed to a third party in terms of an agreement.
 - iv. If disclosure of the record would endanger the life or physical safety of an individual.
 - v. If disclosure of the record would prejudice or impair the security or property or means of transport.
 - vi. If disclosure of the record would prejudice or impart the protection of the safety of the public.
 - vii. The record is privileged from production in legal proceedings unless the legal privilege has been waived.
 - viii. Disclosure of the record (containing trade secrets, financial, commercial, or technical information) would harm the commercial or financial interest of Mart Attorneys.
 - ix. Disclosure of the record would put Mart Attorneys, at a disadvantage in contractual or other negotiations or prejudice it in commercial competition.
 - x. The record is a computer programme, and
 - xi. The record contains information about research being carried out or about to be carried out on behalf of a third party or Mart Attorneys
- d) Records that cannot be found or do not exist:
 - i. Should a Data Subject request Mart Attorneys to search for a record and it is believed that the record does not exist or cannot be found, the requestor must be notified by way of affidavit or affirmation. Steps that were taken to try locating this record must be stated on the affidavit / affirmation.

9. IMPLEMENTATION GUIDELINES:

a) TRAINING AND DISSEMINATION OF INFORMATION

- i. This Policy has been put in place throughout Mart Attorneys. Training on the Policy and POPI will take place with all affected employees.
- ii. All new employees will be made aware of this policy or through training programmes of their responsibilities under the terms of the Policy and POPI.
- iii. Modifications and updates to data protection and information sharing policies, legislation or guidelines will be brought to the attention of all staff.

b) EMPLOYEE CONTRACTS

- i. Each new employee will sign an Employment Contract containing the relevant consent clauses for the use and storage of employee information and a confidentiality undertaking that the employee will be personally responsible for ensuring there are no breaches of confidentiality in relation to any Personal Information that the employee deals with or oversees, however it is stored. Failure to comply will result in the necessary disciplinary action being taken against the contravening employee.
- ii. Each employee who is currently employed with Mart Attorneys will sign an addendum to their Employment Contract containing the relevant consent clauses for the use and storage of employee information and a confidentiality undertaking that the employee will be personally responsible for ensuring there are no breaches of confidentiality in relation to any Personal Information that the employee deals with or is in charge of, however it is stored. Failure to comply will result in the necessary disciplinary action being taken against the contravening employee.

10. DIRECT MARKETING

- a) All Direct Marketing communications shall contain Mart Attorneys details and an address or method for the customer to opt-out or receiving further marketing communication.
- b) Existing Clients:
 - i. Direct Marketing by electronic means to existing clients is only permitted:
 - ❖ i. If the client's details were obtained in the context of a service; and
 - ❖ ii. For the purpose of marketing similar products or content.
 - ii. The client must be given the opportunity to opt-out of receiving direct marketing on each occasion of direct marketing.
- c) Consent
 - i. Mart Attorneys may send electronic Direct Marketing communication to Data Subjects who have consented to receiving it. Mart Attorneys may approach a Data Subject for sent only once.
- d) Record Keeping
Mart Attorneys shall keep record of:
 - i. Date of consent.
 - ii. Wording of the consent.
 - iii. Who obtained the consent?
 - iv. Proof of opportunity to opt-out on each marketing contact.
 - v. Record of opt-outs.

11. INFORMATION OFFICER:

- a) Mart Attorneys has appointed Mr Tshepo Rametse whose details appears below as the Information Officer:
 - ❖ Contacts: 0112977754
 - ❖ Email: tshepo@mrlf.co.za

- b) The Information Officer is responsible for ensuring compliance with POPI Act.
- c) Mart Attorneys may annually consider a change in the Information Officer and/ Deputy Officer.
- d) The Information Officer will be issued with Guidance Notes on their duties and same can be accessed on request to the Information Officer.
- e) The Information Officer is to attend to any complaints issued to him / her on the prescribed form.

12. INFORMATION TECHNOLOGY:

- a) Mart Attorneys must ensure that their IT department is responsible for:
 - ❖ Ensuring that the IT infrastructure, electronic filing system and any other device used for processing personal information meet acceptable security standards.
 - ❖ ensuring that all electronically held personal information is kept only on designated drives and serves and are u-loaded only to approved cloud computing services.
 - ❖ Ensuring that all servers containing personal information are stored in a secure location, away from the general office space.
 - ❖ Ensuring that all back-ups containing personal information are protected from unauthorised access and malicious hacking attempts.
 - ❖ Ensuring that personal information being transmitted electronically is encrypted.
 - ❖ Performing regular IT audits to ensure that the security of the firm's hardware and software systems are functioning.
 - ❖ Performing regular IT audits to verify whether electronically stored personal information has been access or acquired by any unauthorised persons.

13. EMPLOYEES AND OTHER PERSONS ACTING ON BEHALF OF Mart Attorneys:

- a) All employees and other persons acting on behalf of Mart Attorneys will, during the course of the scope and duties of their services, gain access to and become acquainted with the personal information of certain clients, suppliers and other employees.
- b) Employees and other persons acting on behalf of Mart Attorneys are required to treat Personal Information as a confidential business asset and to respect the privacy of data subjects.
- c) Employees and other persons acting on behalf of Mart Attorneys may not directly or indirectly, utilise, disclose or make public in any manner to any person or third party, either within the firm or externally, any personal information, unless such information is already publicly known, or the disclosure is necessary in order for the employee or person to perform his or her duties.
- d) Employees and other persons acting on behalf of Mart Attorneys must request assistance from the Information Officer if they are unsure about any aspect related to the protection of a data subject's Personal Information.
- e) Employees and other persons acting on behalf of Mart Attorneys must always adhere to the 8 processing conditions of personal information and must always obtain consent from the Data Subject before processing / using or storing their Personal Information.

14. DESTRUCTION OF DOCUMENTS:

- a) Documents may be destroyed after the termination of the retention period specified in Mart Attorneys Record and Retention Policy or as determined by Mart Attorneys from time to time.

- b) Each department is responsible for attending to the destruction of its documents and electronic records, which must be done on regular basis. Files must be checked to make sure that they may be destroyed and also to ascertain if there are important original documents in the file. Original documents must be returned to the holder thereof, failing which, they should be retained by Mart Attorneys pending such return.
- c) The documents must be shredded or use of another approved document disposal company.
- d) Deletion of electronic records must be done in consultation with the IT Department, to ensure that deleted information is incapable of being reconstructed and / or recovered.

15. DISCIPLINARY ACTION:

- a) Where a POPI Act compliant or investigation has been finalised, Mart Attorneys may recommend any appropriate administrative, legal and / or disciplinary action to be taken against any employee reasonably suspected of being implicated in any non-compliant activity outlined within this policy.
- b) In the case of ignorance or minor negligence, Mart Attorneys will undertake to provide further awareness training to the employees.
- c) Any gross negligence or the wilful mismanagement of personal information, will be considered a serious form of misconduct which may result in summarily dismissal of the employee responsible,
- d) Disciplinary procedures will commence where there is sufficient evidence to support an employee's gross negligence.

16. TRANS BORDER FLOW OF INFORMATION

Mart Attorneys may not transfer Personal Information of a data subject to a 3rd party in a foreign country without the consent of the data subject or where it is contrary to the provisions of the Act.

Tshepo Rametse
Managing Director

DATE ____/05/2021