DYKES VAN HEERDEN
ATTORNEYS AND CONVEYANCERS

COMMUNITY SCHEMES OMBUD SERVICE ACT

The Community Schemes Ombud Service Act 9 of 2011 and regulations came into operation on 7 October 2016.

For the first time in South Africa, legislation has been enacted with a view to the promotion of good governance for all community housing schemes. A community scheme, in terms of the act and regulations, is any housing development in which the owners share the use of parts of the land and/or buildings. Normally the owners would then also share the responsibility for the land and/or buildings. Most commonly occurring community schemes include sectional title schemes, share block schemes, cluster developments such as those which are managed by a home owners' or property owners' association, as well as retirement housing schemes and housing co-operatives.

The promotion of good governance is achieved by the establishment of the Community Schemes Ombud Service (CSOS). One of the main functions of CSOS is to provide dispute resolution services to owners, management bodies and people who have an interest in solving disputes in respect of community schemes. Another important function thereof is to regulate, monitor and control the quality of scheme governance documentation and to keep it safe and preserved in order for the public to have access thereto.

DISPUTE APPLICATIONS:

Owners and management bodies alike have in the past been burdened with limited and expensive options in regard to the resolution of disputes in housing schemes. The act now provides for a dispute resolution option at minimal costs to all involved. Any person who is involved or affected by a dispute in regard to the administration of a community scheme may make an application to CSOS for the resolution thereof. It may be a dispute between two owners, or between an owner and the management body or even a dispute affecting a person who is living in a community scheme. Disputes which can be referred to CSOS for resolution are disputes regarding financial issues, behavioural issues, scheme governance issues, meetings, management agency services and works pertaining to public and private areas. The dispute resolution procedure involves a process of conciliation and adjudication. A fee of R50 is payable to CSOS for making an application to refer a dispute, and if the matter proceeds to adjudication, an additional R100 is payable. A person whose gross monthly income is below R5 500 is entitled to a waiver of the application and adjudication fees.

A party is not entitled to legal representation during the conciliation and adjudication processes, unless the adjudicator and all other parties consent thereto, or if the adjudicator determines that a party cannot deal with the adjudication without legal representation.

CSOS LEVIES:

Every community scheme has to collect monthly contributions from each unit or home in the scheme, and pay such levies over to CSOS on a quarterly basis. These levies are calculated, according to a prescribed formula, based on the monthly levy collected by the scheme from the unit owner for its administration or maintenance fund (scheme levies). Owners whose scheme levies are R500 per month or lower, are exempted from having to pay the CSOS levy. The maximum CSOS contribution is R40 per unit per month. For scheme levies which are above R500, the CSOS levy is calculated at 2% of that portion of the scheme levy which exceeds R500, up to a maximum of R40 per unit per month. A person may apply to the chief ombud for a discount or waiver of the CSOS levies. A community scheme or person who fails to pay over the levies to CSOS is liable for interest at a rate prescribed by the National Credit Act.

The table below is given as an example of the CSOS levies that would be payable by unit per month: Monthly levy charged by the community schemes (scheme levies)

Monthly levy charged by the community schemes (scheme levies)	Monthly CSOS levy payable by unit owner
R0 to R500	R0
R600	R2
R700	R4
R800	R6
R900	R8
R1000	R10
R1250	R15
R1500	R20
R1750	R25
R2000	R30
R2250	R35
R2500	R40
R2750	R40

REGISTRATION AND SCHEME GOVERNANCE DOCUMENTATION:

Each community scheme has to register with CSOS within 30 days of the coming into effect of the regulations or the date of incorporation of the scheme, by completing the prescribed form CS1 and submitting it to CSOS in the prescribed manner.

Each community scheme has to file an annual return with CSOS in the prescribed form CS2, together with a copy of its latest financial statements, within four months of the scheme's financial year end.

The chief ombud may by written notice to the scheme require the scheme to lodge its governance documentation, for instance its constitution, management and conduct rules, within 90 days of the establishment of the scheme or the coming into operation of the regulations. A sectional title scheme only has to lodge its management and conduct rules in case the prescribed rules are substituted, added to, amended or repealed. The developer or body corporate has to lodge a notification of such change with the chief ombud in the prescribed form for approval and filing of the amended rules.

FIDELITY INSURANCE COVER:

Every community scheme has to take insurance cover against the risk of loss of money belonging to the scheme as a result of fraud or dishonesty committed by an executive, employee or agent of the scheme who has control over the money or the managing agent or its employees. The minimum amount of the fidelity insurance cover prescribed by the regulations is the value of the scheme's investments and reserves at the end of the previous financial year plus 25% of the value of the scheme's operational budget for the current financial year.

The CSOS head office in Johannesburg can be contacted by phoning 010 593 0533. The CSOS also has a Durban office (phone 087 805 0235) and a Cape Town office (087 805 0226). Email: **info@csos.org.za**

Visit **www.csos.org.za** to download a complaint application form.

dvh Going Beyond

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