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Community Schemes Ombud Service
Affordable Reliable Justice

PRACTICE DIRECTIVE ON DISPUTE RESOLUTION

Revision history

This section records the change history of this document

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Approvals

The undersigned have approved the release of version 2 of CSOS' Practice Directive on Dispute Resolution

Name	Designation	Signature	Date
Ms. Ndivhuo Rabuli	Acting Chief Ombud		01/08/2019

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PRACTICE DIRECTIVE ON DISPUTE RESOLUTION

No: 1 2019

COMMUNITY SCHEMES OMBUD SERVICE

COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011 (ACT NO. 9 OF 2011)

I, the undersigned, Ndivhuo Rabuli, acting in terms of section 36 of the Community Schemes Ombud Service Act, 2011 (Act No 9 of 2011), do hereby issue a Practice Directive on Dispute Resolution Process. The Practice Directive is set out hereunder: -

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PART ONE – DEFINITIONS AND INTRODUCTION

1. DEFINITIONS

In this Practice Directive, any word or expression to which a meaning has been assigned by the Act and Regulations shall bear the same meaning assigned to it in the Act or Regulations, and unless the context indicates otherwise —

Term	Definition
"Act"	means the Community Schemes Ombud Service Act (2011) Act No 11 of 2011 and includes any Regulations made in terms of the Act;
"Adjudication"	means the process where an independent adjudicator appointed by the Ombud or selected by both parties from the list provided by the Ombud in terms of section 48 of the Act, makes a final determination and issues a binding order;
"Adjudication Fees"	Means the fee for adjudication determined by the Minister of Human Settlements by way of Regulations published in terms of section 29 of the CSOS Act;
"Applicant"	Means any person lodging an application for dispute resolution in terms of CSOS Act;
"Conciliation"	means the process where the parties use the services of an independent conciliator appointed by the Ombud to assist parties to facilitate an amicable resolution of the dispute in terms of section 47 of the CSOS Act;
"Conciliation Fee"	means the prescribed fee payable for conciliation of dispute;
"Code of Conduct"	means the Code of Conduct for Conciliators and Adjudicators;
"Confidentiality/ Confidential Information"	means the information that is personal or private, and should not be publicly disclosed;
"CSOS"	means the Community Schemes Ombud Service;
"Ombud"	means the Chief Ombud and/or regional Ombud appointed in terms of the CSOS Act;
"STSMA"	Means Sectional Titles Schemes Management Act;

2. OBJECTIVE OF THE PRACTICE DIRECTIVE

2.1 The objective of the Practice Directive is to provide information on the procedures and content requirements for dispute resolution applications lodged with the CSOS. Nothing in this Practice Directive supersedes or overrides the requirements of the CSOS Act. The CSOS retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 3, 4 and 5 of the Act.

2.2 The Practice Directive gives more information about the implementation of the dispute resolution in terms of the Community Schemes Ombud Service Act and does not replace the Act or the ability of the Chief Ombud to decide what is required for a particular dispute.

3. LEGISLATIVE FRAMEWORK

This Practice Directive is governed by the following pieces of legislation

NO	ACT	APPLICABLE PROVISION
1	Constitution of the Republic of South Africa.	The rights as enshrined in the Bill of Rights.
2	Community Schemes Ombud Service Act No. 9 of 2011	In its entirety
3	Sectional Titles Schemes Management Act No. 8 of 2011	In its entirety
4	Sectional Titles Act No. 95 of 1989	In its entirety
4	Housing Development Schemes for Retired Persons Act No. 65 of 1988	In its entirety
5	Share Block Control Act No. 59 of 1980	In its entirety
6	Co-operatives Act No. 14 of 2005	In its entirety
7	Promotion of Administrative Justice Act No.3 of 2000	In its entirety.
9	Protection of Personal Information Act No. 4 of 2013	The Act provides for the protection of personal information processed by public and private bodies.

10	Magistrate's Court Act, 1944 (Act No. 32 of 1944)	In its entirety
11	Superior Court Act, 2013 (Act 10 of 2013)	In its entirety

4. SCOPE OF APPLICATION

This Practice Directive will apply to all applications for dispute resolution in CSOS.

PART TWO – FILING OF APPLICATION

5. THE APPLICATION

5.1 Applicants must complete the Application of Dispute Resolution Form – Form CS ADR.

5.2 The form can be downloaded from CSOS website at www.csos.org.za/disputeresolutionprocess. Alternatively, the form can be obtained from any CSOS offices. The completed dispute resolution form may be submitted to CSOS either by post, email or hand delivery to the relevant CSOS Regional Office depending on the area of jurisdiction of the community scheme.

5.3 The Applicant bears the onus of ensuring that all relevant information has been submitted to 'make their case', in other words, to ensure their application form is correctly completed and meets legislative requirements.

5.4 The application form and any attachments may either be typed or handwritten. If typed, the font must be clear. Handwritten applications must be clear and legible.

5.5 If an application is not clear and legible, whether typed or handwritten, the Applicant will be requested to submit a revised application that is clear and legible.

5.6 If the applicant has different disputes against multiple respondents, generally separate applications will be required (each accompanied by the prescribed fee).

5.7 If the application is from more than one applicant, and the dispute relates to similar or related matters, then the application can be submitted in name of one applicant and the other applicants can be identified and listed in an annexure attached to the application form. Only one prescribed fee can be paid. If the applicants elect to lodge individual application, each applicant will pay an individual dispute resolution fee.

5.8 If the same relief is claimed against multiple respondents on several issues or disputes, one application can be submitted in one form. Each dispute and the relief claimed in respect of each dispute must be recorded in separate annexures and the annexures must be numbered.

5.9 Where the Applicant is a community scheme, a copy of a resolution by the Executive Committee of the scheme must be attached to the application authorising the lodgement of the application.

5.10 The application form must be signed by the applicant, unless the application form is signed by an applicant's authorised representative, which must be indicated in the form.

5.11 Where an applicant is represented, full particulars and contact details of the representative must be disclosed in the application form, including the capacity in which the representative acts (i.e. trustee, managing agent, etc.).

6. COMMUNICATION WITH APPLICANTS

6.1 CSOS will communicate directly with an applicant unless that applicant has authorised a representative and will use the contact details supplied on the application form unless an applicant advises otherwise.

6.2 Where there are multiple applicants for an application, the applicants must nominate one person to act as the applicants' point of contact with the CSOS. The nominated contact will be responsible for relaying any relevant notice, information or request from the CSOS to each of the named applicants.

6.3 The CSOS retains discretion to contact a party directly regarding an application, or to decline to communicate to a representative, where, CSOS is of the view that the urgency of the circumstances requires the party to be contacted directly.

7. RELIEF SOUGHT

7.1 The applicant must provide a short statement of what outcome they believe would resolve the matter. Generally, the outcome should clearly identify the action that the applicant wants the respondent to take, or to cease, in order to resolve the dispute. In essence, the application must include the relief sought by the applicant, which relief must be within the scope of one or more of the prayers for the relief contemplated in section 39; the name and address of each person the applicant considers to be affected materially by the application; and the grounds on which the relief is sought.

7.2 Information included in the application assists the conciliator, adjudicator, the respondent and any affected party to understand what the applicant is seeking and the reasons why the application has been made.

7.3 If the relief sought relates to an order declaring any decision of an association or an executive committee to be void, and 60 (sixty) days has lapsed since the decision was

taken, the applicant must together with the application for dispute resolution apply for condonation for late submission of an application to the Ombud. The application for condonation must include reasons for the failure to submit the application within the prescribed time frame.

7.4 *The form can be downloaded from the CSOS website at www.csos.org.za/condonation. Alternatively, the form can be obtained from any CSOS offices. The completed application for condonation form may be submitted to CSOS either by post, email or hand deliver to the relevant CSOS Regional Office depending on the area of jurisdiction of the community scheme.*

8. CONFIDENTIALITY OF INFORMATION SUBMITTED

Section 43 (1) of the Act, requires CSOS to give notice to the association and any affected person to the application. As such, an applicant submitting the application for dispute resolution must ensure that the application and any supporting material contain only information which the applicant is prepared to have made available to all other parties to the dispute. The information submitted by the Applicant will not be classified as private and confidential. If there is any information that is regarded as personal and confidential, the Applicant must severe the information from the form.

9. INTERNAL DISPUTE RESOLUTION

9.1 All applicants must attempt to resolve the dispute internally within the community scheme before seeking relief from CSOS.

9.2 The applicant must submit together with the application, proof that any prescribed internal processes for resolution of the dispute have been exhausted or submit reasons why an internal process could not be followed.

9.3 The provisions of clause 9.1 above will not apply if the applicant can prove that the respondent has failed and/or refused to participate in any internal dispute resolution process or any invitation thereto, or if there is no functioning schemes executive committee.

10. RESPONSE TO CORRESPONDENCES

10.1 All emails received by CSOS for dispute resolution will receive an automated email acknowledging receipt. The CSOS staff will not personally acknowledge the receipt of all correspondence to the CSOS.

10.2 A formal written response will be sent to the applicant within 10 days of the email, hand delivery or after receipt by post. The time period for a response will depend on the urgency of the matter and the resources of the CSOS. *A formal written correspondence signed by the Ombud* will be sent to the applicant informing him whether the application is rejected or accepted.

PART THREE - ADMINISTRATION OF APPLICATION

11. REGISTRATION AND ASSESSMENT OF DISPUTE

11.1 As soon as an application is received by the CSOS, a new file will be opened and allocated a unique file reference number.

11.1 The application will be assessed by the Ombud or a delegate. Generally, a case officer will act as a delegate of the CSOS in determining whether the application complies with the legislative requirements. In particular, the case officer will assess whether the dispute falls within the jurisdiction of the CSOS.

11.2 Where necessary, the case officer will contact the applicant to request clarification of the application or additional information or documentation to satisfy the requirements of the CSOS Act, more particularly information as envisaged by section 40 of the CSOS Act.

12. REJECTION OF APPLICATION

12.1 The Ombud or his delegate may reject an application that fails to comply with the requirements of the CSOS Act or this Practice Directive.

12.2 If the Ombud decides to reject an application, the Ombud will inform the applicant in writing of the reasons for the rejection.

12.3 In addition to the grounds set in section 42 of the CSOS Act, relating to grounds for rejection of application, the dispute can be rejected in the event that the dispute is part of, or closely related to the existing proceedings in a court and if the applicant does not pay the prescribed fee within 5 days of receipt of a letter requesting the applicant to pay the fee and such applicant has not been granted a waiver of fees.

13. PAYMENT OF PRESCRIBED FEE

13.1 The prescribed fee must be paid before the application can be referred to the Conciliator.

13.2 A letter will be forwarded to the applicant acknowledging receipt of the application and requesting the applicant to pay the prescribed application fee paid (if applicable). This letter includes the file reference number which must be included by the applicant in all communication with the CSOS about the application, the banking details and email where the proof of payment must be emailed.

13.3 The applicant must insert the reference number on the payment details, to ensure that payment is allocated to the correct file.

13.4 If the prescribed fee is not paid within 5 (five) working days, the Ombud may reject the application.

13.5 The prescribed fee for making an application is not refundable, regardless of whether the application is later withdrawn by the applicant; rejected by the Ombud; or unsuccessful.

13.6 CSOS does not receive cash onsite and payment must be made via Electronic Funds Transfer, into CSOS Bank account as reflected on the letter from CSOS.

13.7 The Chief Ombud may waive the applicant from paying the prescribed fee. An application for waiver must be lodged with the Chief Ombud in terms of the Waiver or Discount Directive. If the applicant is automatically waived from paying a fee as set in the Regulations for Fee and Waiver, such applicant must submit the proof of income for the waiver to be effective. Applicants seeking a waiver of the fee must complete CS3 Form. Completion of waiver application does not of itself mean the fee will be waived and the Chief Ombud may request the applicant to provide further evidence of financial hardship. The criteria as set in the waiver directive will be considered in determining whether the waiver application should be approved or not.

14. NOTICE TO AFFECTED PERSONS

14.1 The application form and all attachments to the form will be served on the respondent or the association and/or each person the Ombud considers to be affected materially by the application. A response may then be submitted to the Ombud within a period of 14 days. The provisions of section 43 will apply with regard to notice to affected parties.

14.2 Once the Ombud has received a response from the respondent, the Ombud will allow the applicant a period of 10 (ten) days to inspect the submission or to provide any written response relating to the issues raised in the submission.

14.3 The CSOS will only consider an extension of the 10 (ten) days if exceptional circumstances exist as to why an affected party cannot respond within the given time frame as mentioned above.

15. AMENDMENT OR WITHDRAWAL OF APPLICATION

15.1 An applicant can request to amend their application or provide additional information prior to the referral to conciliation. After referral to conciliation, an amendment or supplementation of the application may be allowed by the conciliator after having considered a view from the other party.

15.2 An applicant may withdraw an application in writing at any time before the conciliation or adjudication hearing is finalised. Once an application is withdrawn, CSOS will take no further action in relation to the application.

PART FOUR - CONCILIATION OF DISPUTES

16. REFERRAL TO CONCILIATION

16.1 Once the Ombud has decided that the matter should be referred to conciliation, the application is referred to a conciliator who will attempt to conciliate on the matter.

16.2 If the parties reach agreement at conciliation on any of the issues in dispute, the parties can choose to sign a written agreement documenting the terms of their agreement. It should also be noted that parties can also negotiate a settlement leading up to a scheduled conciliation session.

16.3 *If* the parties agree to sign the settlement agreement, the settlement agreement may be made an adjudication order

16.4 If the parties cannot reach an agreement, the Conciliator may issue a non-resolution certificate. A copy of this certificate should be retained as it must be lodged with any future adjudication application about the same dispute.

16.5 Once the conciliation process has concluded, the conciliator has no further involvement in the dispute or any subsequent adjudication application about the dispute.

17. NOTICE OF CONCILIATION

17.1 The CSOS will notify the parties in writing, by e-mail or by registered post of the time and date of a conciliation session. The Conciliator will give 14 working days' notice of Conciliation.

17.2 Parties may request a more suitable time but should be aware that a re-scheduled session will depend on the availability of the conciliator and the other parties to the dispute. It must be noted that conciliation must be conducted as quickly as possible – *such request must be accompanied by proof that necessitated the request for postponement.* The conciliator may contact each of the parties by e-mail and/or telephonically prior to the conciliation session. The conciliator may seek further information from the parties to assist the conciliator's understanding of the dispute and how each of the parties would like the dispute to be resolved.

17.3 Conciliation may take up to 3 hours and parties are requested to set aside this time for a possible resolution.

17.4 Parties must represent themselves in the conciliation session and actively contribute towards discussions to resolve the dispute. Parties seeking to be legally represented at conciliation should take note of the provisions of section 52 of the CSOS Act and the CSOS Regulations.

18. CONCILIATION PROCESS / RULES FOR CONCILIATION

18.1 The CSOS provides a conciliation service through the use of trained conciliators to assist parties to resolve a wide range of issues in a constructive and non-confrontational manner.

18.2 The role of the conciliator is to facilitate discussions and assist parties to resolve issues that they are unable to resolve themselves. Conciliators may also assist parties in discussing how to resolve any future disputes which may arise between them.

18.3 Conciliators are trained to provide general information on the legislation relevant to the issues in dispute and to discuss possible resolution with the parties. Conciliators may also refer parties to previous decisions of adjudicators and courts which have interpreted and applied provisions of the relevant legislation applicable to issues in dispute.

18.4 Conciliators do not provide legal advice or make a decision about who is right, who is wrong or what the outcome of the dispute should be.

18.5 The parties can assist the conciliation process by identifying the issues of concern to them that relate to the dispute and may do so by giving a brief description of the issues. The other party must be prepared to listen to other party's points of view or understanding of the issues.

18.6 Parties may submit relevant documents, plans or photographs that might assist in the resolving of dispute.

18.7 The parties must avoid using foul or abusive language.

18.8 If parties have additional information to add to the dispute, the conciliator will allow this material only if the conciliator believes it is relevant and will assist in resolving the dispute. If the information is not relevant, it will not be allowed.

18.9 A party cannot produce any additional information or evidence during the conciliation session that has not been disclosed to the other party. This is meant to allow the other party to the dispute to prepare adequately for conciliation. Any information that has not been disclosed prior to the conciliation date, will not be allowed.

19. ATTENDANCES OF CONCILIATION PROCESS

19.1 The conciliator makes the final decision as to who is permitted to attend the conciliation session. Only the parties directly involved in the dispute are permitted to attend and take part in the conciliation session. The parties who attend the session are expected to have the authority to negotiate and enter into an agreement to resolve the dispute. Proof of resolution must be submitted prior to conciliation.

19.2 The conciliator may allow a person who is not a party to attend the conciliation session if the conciliator believes it may help resolve the dispute. If the conciliator allows a person who is not a party to the dispute to attend, the conciliator may impose conditions or limitations on the person's attendance and involvement in the conciliation session

19.3 The community scheme may be represented at the conciliation hearing by the managing agent, the trustee, the Executive Managing Agent, the Administrator appointed in terms section 16 of STSMA or director of the community scheme.

19.4 The nature of conciliation is non-adversarial, *and* provides an environment which encourages parties to openly talk to one another and work together to resolve their dispute. As such, legal representation is not permitted in conciliation.

19.5 Once the conciliator has ended the conciliation process, the conciliator has no further legislative role in relation to the dispute. Unless one of the above conditions applies,

the conciliator is unable to enter into any discussion about what was said or done in conciliation with any person.

19.6 The evidence of anything said or done about a dispute in conciliation is inadmissible in an adjudication process or another legal proceeding. This is meant to encourage an open flow of information between the parties and assist resolving the dispute in a way that satisfies the parties.

19.7 To allow free flow of information, the recording of the session is not allowed, as such, all recording devices, *including mobile devices,* must be switched off

19.8 If one of the parties does not attend the conciliation on the date set for conciliation, the conciliator will regard the matter as not resolved and will issue a non-resolution certificate. The conciliator will attempt to communicate with the absent party telephonically, by sms and/or e-mail to establish the reason for a party's absence and may, if deemed necessary, *under exceptional circumstances such as illness or death, set* a new date for conciliation.

19.9 If the party that has failed to attend the conciliation is the Applicant in the proceedings, and there are no exceptional circumstances (illness or death) or the circumstances are not adequate to warrant a postponement, then the matter shall be closed.

20. CONCILIATOR CONDUCT

The conduct of the Conciliator will be dealt with in terms of the Code of Conduct Attached to this Practice Directive as Annexure "A".

PART FIVE – ADJUDICATION OF DISPUTES

21. MATTER THAT MAY BE REFERRED DIRECTLY TO ADJUDICATION

21.1 Generally, all applicants must attempt to resolve the dispute through conciliation with the CSOS conciliator before the matter can be referred for adjudication.

21.2 The Ombud may refer an application directly to adjudication if the Ombud considers the dispute not appropriate for conciliation. This Practice Directive sets out some of the factors which the Ombud may take into account in deciding whether a dispute is not appropriate for conciliation and this list is not exhaustive.

21.3 The Ombud will consider the circumstances of each dispute before deciding whether the matter may be referred directly for adjudication.

21.4 The Ombud may request the applicant or another person to provide information about the dispute, to assist in deciding whether to refer the application directly for adjudication.

21.5 In order to determine whether a dispute should be referred directly for adjudication, the Ombud will consider the following factors: -

21.5.1 any circumstance or aspect of urgency associated with the issues in dispute,

21.5.2 where the applicant seeks an order that will have an impact on the body corporate or all owners within the community scheme;

21.5.3 whether the application is seeking the return of body corporate property, such as records, necessary for the operation of the body corporate;

21.5.4 where a body corporate has no functioning executive committee and is not able to appoint representatives to act on its behalf at conciliation;

21.5.5 where the application involves numerous applicants and respondents, making conciliation impractical;

21.5.6 if it relates to governance issues, meetings, a declaration invalidating a scheme rule and termination of a managing agent's contract;

21.5.7 where it is clear from the application or evidence submitted with the application that an internal dispute resolution process has failed, and/or a respondent has failed to co-operate and that it is evident that a conciliation would be a futile exercise.

21.5.8 *Where respondent fails to attend the Conciliation hearing, the matter will be referred directly to Adjudication.*

22. REFERRAL TO ADJUDICATION

22.1 *If* the dispute has not been resolved through conciliation, the matter may be referred to adjudicator. Once the matter is referred for adjudication, the applicant must pay the prescribed fee. The matter will not be actioned until the payment is received. If the prescribed fee for an application is not received the Ombud may reject the application within 5 working days.

22.2 The prescribed fee is not refundable, regardless of whether the application is later withdrawn by the applicant; or unsuccessful.

22.3 CSOS does not receive cash onsite and payment must be made via Electronic Funds Transfer, into CSOS Bank account as reflected on the letter from CSOS.

22.4 The Chief Ombud may waive the applicant from paying the prescribed fee. An application for waiver must be lodged with the Chief Ombud in terms of the Waiver or Discount Directive. If the applicant is automatically waived from paying a fee as set in the Regulations for Fee and Waiver, such applicant must submit the proof of income for the waiver to be effective. Applicants seeking a waiver of the fee must complete CS3 Form. Completion waiver application does not of itself mean the fee will be waived and the Chief Ombud may request the applicant to provide further evidence of financial hardship. The criteria as set in the waiver directive will be considered in determining whether the waiver application should be approved or not.

23. INVESTIGATION

The Adjudicator has power to conduct investigations as envisaged in section 50 and section 51 of the CSOS Act.

24. NOTICE OF ADJUDICATION

24.1 A notice of set down of the adjudication will be sent to the parties by email or registered post, by using the email and/or postal address provided by the parties during the conciliation process *i.e. the signing of the Attendance Register,* or when the submissions for dispute resolutions were made.

24.2 In addition to the email as indicated above, an SMS may be sent to the parties using the cell number provided during the conciliation process.

24.3 The electronic delivery notification or "read receipt" *or delivery notification,* confirmation that the email was sent to the dedicated email of a party will on production thereof be conclusive evidence that the notice was served on the party or proof ore registered post.

24.4 *Should the notice of set down land in a party's Junkmail box, it is the responsibility of that party to ensure that all boxes are checked.*

25. NON-ATTENDANCE BY PARTIES

25.1 In the event that any of the party to the dispute does not attend the adjudication hearing after being served with the notice of set-down, the adjudicator will proceed with the adjudication process in their absence. Prior to the commencement of the

adjudication hearing, the adjudicator will attempt to communicate with the absent party or parties by email, sms or telephonically, to ascertain the reason for the party's absence.

25.2 The Ombud may consider the application to vary or set aside an Adjudication Order issued in absentia if both parties consent to the variation or setting aside of the Adjudication Order.

25.3 A Party applying for the Adjudication Order to be varied or set aside can do so in the following circumstances: -

25.3.1 If a Party was ill or incapacitated and can produce a medical certificate issued by a medical practitioner. The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament;

25.3.2 If the Adjudication Order contains an omission that will not materially alter the Adjudication Order;

25.3.3 If both Parties consent to the setting aside of the Adjudication Order;

25.3.4 If an Adjudication Order was granted as a result of a mistake common to both Parties to the proceedings;

25.3.5 If there is proof that the Notice of Set Down was not served properly or in time or not delivered properly to the other Party;

25.4 The Party applying for the setting aside of the Adjudication Award must submit a Notice setting out the grounds for the application for setting aside/varying the Adjudication Order and must contain the following;

25.4.1 The case number and details of the parties in the matter;

25.4.2 The address of the party making the application and the relief sought by that party;

25.4.3 The party requesting that the Adjudication Order be varied or set aside will have to prove that they were not in wilful default;

25.4.4 sets out the material facts on which the application is based, together with all annexures which support the averments made in the affidavit.

25.5 Once the Ombud has received all the documentation, he may, refer the matter to the same Adjudicator or another Adjudicator.

25.6 Once the Adjudicator has varied the Order or set it aside, the Ombud will serve the amended adjudication order on all parties concerned.

25.7 Once the Adjudicator has varied or set aside the order, the Ombud will refer the matter to another Adjudicator who will hear the matter *afresh.*

26. ADJUDICATION PROCESS / RULES FOR ADJUDICATION

26.1 The adjudicator is to be impartial and independent of the parties and shall inform the parties immediately of anything of which could affect his impartiality or independence.

26.2 The adjudicator shall not give advice to the parties or their representatives concerning any aspect of the Agreement in respect of which he has been appointed other than in accordance with these Rules.

26.3 The adjudicator may not be called as a witness by either party to give evidence concerning the matter referred or adjudicated by him or her.

26.4 The adjudicator shall enjoy the same privileges and immunities from liability as a Judge of the High Court and shall not be liable for any claims in respect of any act or omission in discharging his duties unless such act or omission is shown to have been in bad faith.

26.5 The adjudicator shall: -

26.5.1 be bound by the provisions of the CSOS Act, the Dispute Resolution Directive, and any other provision of relevant legislations;

26.5.2 act with fairness and impartiality;

26.5.3 ensure that each party is furnished with a copy of any written submissions sent to or from either party;

26.5.4 adopt the most cost- and time-effective procedure consistent with fairness to determine the dispute;

26.5.5 conduct a hearing and shall observe procedural fairness;

26.5.6 determine the dispute on the basis of the oral submission, written documents and/or an inspection of work related to the dispute as is appropriate.

26.6 The Adjudicator may:

26.6.1 If both parties are not present for the hearing then the Adjudicator may dismiss the application. If the respondent is not present for the hearing then the Adjudicator may determine the matter in the absence of the respondent, pursuant to the Applicant leading evidence in respect of the matter. In the event that the Applicant is not

present, the Adjudicator may dismiss the application unless the Respondent pray for the decision on issues submitted for dispute

26.6.2 meet with the parties either jointly or separately as well as with any professional agent or others related to the dispute as is necessary from time to time;

26.6.3 make use of his/her specialist knowledge to arrive at an appropriate determination;

26.6.4 require a party to submit within a set period any further information, document or evidence which he/she may reasonably require in making a determination;

26.6.5 review and revise any opinion, instruction, determination, certificate or valuation related to the dispute;

26.6.6 refuse admission to any person other than the parties and their respective representatives and witnesses to any hearings;

26.6.7 approve requests for postponement by either of the parties;

26.6.8 adjudicate on the matter and *make a determination*, notwithstanding a party's failure to attend meetings, hearings or to provide information requested.

27. LEGAL REPRESENTATION

27.1 *As a rule*, parties are not entitled to legal representation. However, the Adjudicator has a discretion to allow legal representation upon consideration of the factors stipulated under section 52 of the CSOS Act.

27.2 *Should a party require legal representation, submissions will be made on the day of the Adjudication hearing in front of the Adjudicator.*

28. ADJUDICATION ORDER

28.1 The adjudicator's written adjudication order shall:

28.1.1 Be delivered to the parties not later than 14 (fourteen) working days after date of final hearing by facsimile or e-mail;

28.1.2 Include reasons for the decisions.

28.2 The parties shall give immediate effect to any order issued by the adjudicator.

28.3 The adjudication order is binding on the parties unless and until such adjudication order is varied or set aside as provided for in clause 25.7 or overturned or varied in whole or in part by a High Court.

29. COST ORDER

29.1 The parties to a dispute resolution application are generally required to meet their own costs. This includes the application fee, the fee for inspecting or obtaining copies of any submission or reply, any personal costs incurred to attend a conciliation *and adjudication* session, and any legal costs incurred in making or responding to an application.

29.2 If an adjudicator dismisses an application for adjudication because it is frivolous, vexatious, misconceived or without substance, the adjudicator may in terms of section 53(2) (a) order costs against the applicant in favour of the respondent. The costs awarded must not be more than R5000,00.

30. ADJUDICATOR'S CONDUCT.

The conduct of the Adjudicator will be dealt with in terms of the Code of Conduct Attached to this Practice Directive as Annexure "A".

PART SIX – ENFORCEMENT OF ADJUDICATION ORDER

30 ENFORCEMENT OF ADJUDICATION ORDER

31.1 An adjudicator's order, may in terms of section 56 of the CSOS Act, be enforced in the Magistrates Court or the High Court as if it were a judgment handed down by that *Court.*

31.2 An adjudication order for specific performance, can only be enforced in the High Court. An adjudication order for specific performance, relates to an order that has no quantum or monetary value.

31.3 The adjudication order will have an implementation date. In the event that the party against whom the order has been issued has not complied with the adjudication order, the person in whose favour the order is issued must approach CSOS.

31.4 The person in whose favour the order was issued must file with the Clerk of the Magistrates Court or Registrar of the High Court *the* following documentation:

a. a copy of the adjudicator's order certified by the Ombud as a true copy, if the original cannot be located;

b. any relevant form/s required by the Magistrates Court or the High Court to be completed;

c. the court order to be endorsed by Clerk of the Magistrates Court or Registrar of the High Court.

31.5 Once the Clerk of the Magistrates Court or Registrar of the High Court has issued the order and allocated a case number, the party may submit the order to the Sheriff of Court for further execution. CSOS will not be involved in this process and the party will bear the costs related to the execution of the order.

31.6 An application for enforcement lodged with the Magistrates Court or High Court is not an appeal or a re-hearing of the merits of the original application.

32 AMENDMENT OF ADJUDICATION ORDERS

32.1 An adjudicator has no legal capacity to review or amend a final adjudication order or reason for the judgement once issued, except where directed to by a court or under circumstances set out in clause 25.3.

32.2 Where an order or a statement of reasons contains an accidental grammatical error or omission, such as a typo or spelling mistakes, an adjudicator has an inherent power to issue a further order correcting the error.

32.3 The capacity to correct accidental errors is limited to correctly stating what was decided and intended at the time of the original judgment. It does not extend to a reconsideration of the substantive issues of fact or legal interpretation and is not a mechanism to re-open an application to consider further evidence.

32.4 If a party to the dispute or a person affected by the order believes that the order or statement of reasons contains errors or omissions as indicated above, the person may make a written request to the adjudicator to issue an amendment order.

32.5 The Adjudicator has the discretion to decide whether an amendment order is warranted in the circumstances. Without limiting this discretion, Adjudicators may have regard to the nature of the error; whether the error appears in the order or the statement of reasons; and whether the error has any effect on the meaning, comprehension or enforcement of the order.

32.6 Other parties to the application would not normally be invited to make submissions in respect of the proposed correction.

32.7 Unless otherwise stated in the order, an amendment order will have effect from the date that it is issued.

PART SEVEN – URGENT MATTERS

33 URGENT MATTERS

33.1 The Applicant can submit an application for the matter to be heard on an urgent basis.

33.2 The applicant must demonstrate that there is a current, genuine emergency requiring an urgent adjudication order. The urgency cannot be used to circumvent the normal conciliation and adjudication processes.

33.3 The grounds of the application should include details of whether:

33.3.1 there is an immediate and serious health or safety risk;

33.3.2 deprivation of essential services, not limited to disconnection of water and electricity.

33.3.3 access to the scheme by unit owners or occupiers.

33.4 The fact that the applicant has failed to take appropriate or necessary action to address an issue over time does not necessarily create emergency circumstances.

33.5 The decision whether to treat the matter as urgent will depend on the nature and circumstances of the application.

33.6 While still ensuring procedural fairness to all parties, the Ombud may limit the period for the respondent and affected persons to make a submission, or for the applicant to reply to submissions;

33.7 The Ombud may limit or refuse an extension to the submission or reply period where such a request, or the proposed duration of the request.

33.8 If it later found that the matter was not urgent, the Adjudicator may issue a cost order against the applicant.

PART EIGHT - APPEAL PROCESS

34. WHEN TO LODGE AN APPEAL

34.1 A person who is not satisfied with the Adjudicator's order, may lodge an appeal in the High Court on the question of law.

34.2 Following the High Court decision in the Western Cape High Court, on a matter of The Trustees for the time being of the Avenues Body Corporate v Shmatyahu and Another the following procedure is prescribed for all appeal in terms of section 57 of the CSOS Act until such time that the Full Bench of the High Court has made a determination or order on the process to be followed for Appeals under section 57 of the CSOS Act:

34.2.1 An appeal in terms of s 57 is not a 'civil appeal' within the meaning of the Superior Courts Act 10 of 2013.

34.2.2 What may be sought in terms of s 57 is an order from this court setting aside a decision by a statutory functionary on the narrow ground that it was founded on an error of law.

34.2.3 The relief available in terms of s 57 is closely analogous to that which might be sought on judicial review.

34.2.4 The appeal should be brought by notice of motion supported by affidavit(s), which should be served on the respondent parties by the sheriff.

34.2.5 Both the Adjudicator and the CSOS should be cited as a respondent.

34.2.6 Whilst the adjudicator or CSOS might be expected in the ordinary course to abide the judgment of the court, there will be cases in which the adjudicator or CSOS might nevertheless consider that it might be helpful to file a report for the court in respect of any aspect of fact or law not dealt with in the adjudication order.

34.2.7 If the, the adjudicator's order has been registered as an order of court in terms of s 56 of the Act, notice of the proceedings must be lodged with the registrar or clerk of the court concerned; for the expunging of the registration from the court's records.

35. ROLE OF CSOS IN THE APPEAL PROCESS

35.1 Once a final order is made by an adjudicator to determine a dispute resolution application, the file is closed by the CSOS. The Ombud and the Adjudicator, have no further legislative role in relation to the dispute after the order has been given to the parties.

35.2 Adjudicators are independent decision-makers and not subject to direction of the Ombud in making their orders. The Ombud has no capacity to review an adjudicator's investigation, findings or order, or to direct an adjudicator to re-open or re-investigate an application, unless the order is varied as provided for in clause matter is heard as provided for in clause 25.7.

35.3 The Ombud or Adjudicator cannot further explain or interpret an adjudicator's order or the adjudicator's reasoning or advise on how the order is to be applied or complied with.

35.4 The Adjudicator has no capacity to review or amend a final order once it has been issued, other than if directed by a court in the event of a successful appeal.

35.5 Parties seeking legal advice about the terms, reasons for or effect of an order should direct their enquiries to an appropriately qualified person, such as an Attorney.

PART NINE – GENERAL MATTERS

36 DISPUTE RESOLUTION PROCESS AND CONFIDENTIALITY

36.1 The process flow for dispute resolution will be as set out in the Dispute Resolution Model Attached to this Practice Directive as Annexure "B".

36.2 Applications, submissions and replies to submissions provided for the consideration of the Ombud, the Conciliator or an Adjudicator are not confidential. Such information is entitled to be accessed by interested persons for a dispute resolution application.

36.3 Parties should also be aware that all correspondence and documents sent to the CSOS may also be publicly accessible to members of the public pursuant to the provision of section 58(2) of the CSOS Act.

36.4 An interested person may request the CSOS to provide them with copies of adjudication *orders if* they have paid the prescribed access fee.

36.5 The CSOS will not waive the fees payable to inspect or obtain copies of documents, even if the CSOS has waived the application fee.

36.6 The Adjudication orders will be published on CSOS website.

37 UPDATE AND REVIEW OF THE PRACTICE DIRECTIVE

37.1 This Practice Directive will be reviewed annually or as and when there is change in legislation or if a court decision amends or vary any of the provision contained herein.

37.2 The amended Practice Directive will be published on the CSOS website

38. REPEAL OF THE PRACTICE DIRECTIVE

Practice Directive Number	Extent of repeal
Practice Directive No. 2 of 2018	In its entirety

39 COMMENCEMENT OF PRACTICE DIRECTIVE

This Practice Directive will commence on date of signature hereof and will remain in force until amended, substituted, withdrawn or repealed.

- THE END -