



## CIRCULAR ON THE APPROVAL SPECIAL AND UNANIMOUS RESOLUTION PROCESS IN TERMS OF THE SECTIONAL TITLES SCHEMES MANAGEMENT ACT

### Revision history

This section records the change history of this document

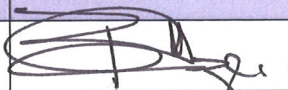
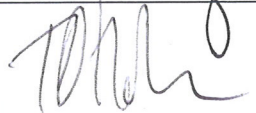
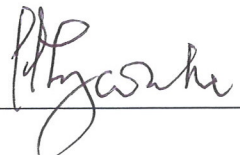
Revision #	Date of Release	Author (s)	Summary of Changes
2.0		Ms Johlene Wasserman	EXCO submission:

### Approvals

The undersigned has approved the release of version 2 of CSOS' Practice Directive on the Amendment to Circular on Approval of Special and Unanimous Resolution process in terms of the STSMA

Name	Designation	Signature	Date
Ms Johlene Wasserman	Executive: Governance, Compliance & Enforcement		

The undersigned has approved the release of Version 2 of Circular.

Name	Designation	Signature	Date
Adv. Boyce Mkhize	Chief Ombud		31/08/2021
Mr. Taurean Holmes	LATCOM Chairperson		6/8/21
Mr. Mthobi Tyamzashe	Chairperson of the Board		6/8/21

## **CIRCULAR ON THE APPROVAL OF SPECIAL AND UNANIMOUS RESOLUTION**

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No: 2

2021

### **SECTIONAL TITLES SCHEMES MANAGEMENT ACT, 2011 (ACT 8 OF 2011)**

### **CIRCULAR ON THE APPROVAL OF SPECIAL AND UNANIMOUS RESOLUTION IN TERMS OF THE STSMA**

#### **1. DEFINITION**

In this Circular, any word or expression to which a meaning has been assigned by the STSMA and Regulations under the STSMA shall bear the same meaning assigned to it in the STSMA or Regulations made in terms of the STSMA, and unless the context indicates otherwise.

<b>Term</b>	<b>Definition</b>
<b>“Act”</b>	means the Community Schemes Ombud Service Act (2011) Act, No. 9 of 2011, and includes any Regulations made in terms of the Act;
<b>“Circular”</b>	Means a Notice issued in terms of the Sectional Titles Schemes Management Act;
<b>“CSOS”</b>	means the Community Schemes Ombud Service;
<b>“Ombud”</b>	means the Chief Ombud appointed in terms of the CSOS Act;
<b>“STSMA”</b>	Means the Sectional Titles Schemes Management Act;

#### **2. OBJECTIVES OF THE CIRCULAR**

- 2.1 The objective of the Practice Directive is to provide further information on the procedures and content requirements for approval of unanimous and special resolution applications lodged with the CSOS. Nothing in this Practice Directive supersedes or overrides the

requirements of the STSM Act. The CSOS retains the discretion to make decisions about the applications made.

- 2.2 The Practice Directive gives more information about the implementation of the approval of a unanimous and special resolution in terms of the Sectional Title Schemes Management Act and does not replace the Act or the ability of the Chief Ombud to decide what is required for a particular application.

### **3. LEGISLATIVE FRAMEWORK**

- 3.1 Community Schemes Ombud Service Act, No 9 of 2011
- 3.2 Constitution of the Republic of South Africa, No 108 of 1996
- 3.3 Housing Development Schemes for Retired Persons Act, No 85 of 1988
- 3.4 Promotion of Administrative Justice Act, No 3 of 2000
- 3.5 Sectional Titles Schemes Management Act, No 8 of 2011
- 3.6 Sectional Titles Act, No 85 of 1986

### **4. SCOPE OF APPLICATION**

- 4.1 The Circular applies to the following persons: -
  - 4.1.1 Sectional Title Development Schemes defined in terms of the STSMA, all persons who own such schemes and all persons who manages such schemes.
  - 4.1.2 CSOS.
  - 4.1.3 The Practice Directive only applies to applications in terms of section 6(9) of the STSMA.
- 4.2 The Practice Directive does not apply to Homeowners Association or any other community scheme besides those mentioned above.

### **5. FILING THE APPLICATION**

- 5.1 Applicants must complete the Application for Approval of Special or Unanimous Resolution Form – Form ST1.
- 5.2 The form can be downloaded from the CSOS website at [www.csos.org.za](http://www.csos.org.za). Alternatively, the form can be obtained from any CSOS offices.
- 5.3 The completed form can be submitted to CSOS, either online, by post, email, or hand-delivered to any of the CSOS's Regional Offices. The email address is [sectionaltitles@csos.org.za](mailto:sectionaltitles@csos.org.za). Other contact details can be downloaded from the CSOS website.
- 5.4 The applicant bears the onus of ensuring that all relevant information has been submitted to 'make their case', in other words, to ensure that their application form is correctly completed and meets legislative requirements. The CSOS cannot complete application forms for applicants nor can the CSOS instruct Applicants on how to complete their application form unless the Applicant is unable to read and write or has some disabilities.
- 5.5 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.
- 5.6 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.
- 5.7 If the applicant has multiple resolutions, separate applications must be submitted or one form with separate annexures per resolution.
- 5.8 The application form must be signed by the applicant unless the application form is signed by an applicant's authorized representative, which must be indicated on the form.
- 5.9 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.).
- 5.10 An applicant submitting the application for approval of a unanimous or special 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.

- 5.11 The application should be made within 90 days after failure by the Applicant to obtain the required resolution.

## **6. COMMUNITY SCHEME APPROVAL PROCESS**

- 6.1. Before submitting an application to the Chief Ombud for the approval of a unanimous resolution, the applicant must ensure that the matter relating to the resolution was tabled at the general meeting or through a round-robin. Application to the Chief Ombud should be made as a last resort.
- 6.2 The notice of the meeting for approval of a special or unanimous resolution is 30 (thirty) days.
- 6.3 The requirement for the Special Resolution is that at least 75% calculated both in value and in number, of the votes of the members of the body corporate represented at a general meeting should have passed the resolution; or agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.
- 6.4 The requirement for the unanimous resolution is that it should have been passed unanimously by all the members of the body corporate at a meeting at which at least 80% calculated both in value and in number, of the votes of all the members of a body corporate are present or represented; and all the members who cast their votes do so in favour of the resolution; or agreed to in writing by all the members of the body corporate.
- 6.5 All the above requirements must have been satisfied prior to submission of an application to CSOS.

## **7. SUPPORTING DOCUMENTATION**

- 7.1 Notification for the meeting and proof that all owners received same. Notification for a round robin should be submitted where applicable.
- 7.2 Minutes of the general meeting indicating the number of members who attended or duly represented by proxy, clearly indicating quorum requirements.
- 7.3. The read receipt notice or members signature acknowledging receipt, will serve as proof that the notice has been received by a member of the body corporate.



- 7.2 Confirmation by trustees indicating votes, both in number and value of members who voted in favour of the resolution.
- 7.3 A list indicating the number of members who voted against the resolution.
- 7.4 Reasons from members who voted against the resolution if so provided.
- 7.5 Any other documents in support of the application.
- 7.6 Motivations in support of the resolution.

## **8. REGISTRATION AND ASSESSMENT OF THE APPLICATION**

- 8.1. As soon as an application is received by the CSOS, a new file will be opened and allocated a unique file reference number.
- 8.2 The application will be assessed by the Chief Ombud or duly delegated personnel. Generally, a Schemes Governance Documentation Officer will act as a delegate of the Chief Ombud in determining whether the application complies with the legislative requirements and this Circular.
- 8.3 Where necessary, the Chief Ombud will contact the applicant to request clarification of the application or additional information or documentation to satisfy the requirements of the STSM Act and this Circular.
- 8.4. The Chief Ombud will assess the application having regard to whether the approval of the resolution will be lawful, reasonable and fair to all scheme members and in this regard will consider the following: -
  - a) The objective of the STSMA and the Regulations
  - b) The reasons submitted by members who voted against the resolution;
  - c) The objective and purpose of the resolution;
  - d) Whether the resolution will enhance the living conditions of the members residing in the scheme or promote proper governance in community scheme.
- 8.5 Before the Chief Ombud can approve the application, at least more than 75% of members entitled to vote both in number and value should have voted in favour of the unanimous resolution.
- 8.6 At least more than 50% of members entitled to vote both in number and value should have

voted in favour of the special resolution.

## **9. REJECTION OF APPLICATION**

- 9.1 The Chief Ombud may reject an application that fails to comply with the requirements of the STSMA or this Circular.
- 9.2 if the Chief Ombud decides to reject an application, the Chief Ombud will inform the applicant applicant in writing of the reasons for the rejection.
- 9.3 The grounds for rejection of the application may include but not limited to the following:
  - 9.3.1 That the dispute is part of, or closely related to the existing proceedings in court;
  - 9.3.2 That the applicant failed to provide requested further particulars within 14 (fourteen) days;
  - 9.3.3 That the application does not fall within section 6(9) of the STSM Act;
  - 9.3.4 That the application does not meet the necessary requirements.

## **10. PAYMENT OF PRESCRIBED FEE**

- 10.1 No fee is payable for the processing of this application.

## **11 NOTICE TO MEMBERS OF THE COMMUNITY SCHEME**

- 11.1 Having considered the provisions of section 33 of the Constitution and the Promotion of Administrative Justice Act, it is imperative that the Chief Ombud notify any interested and affected parties and provide them with an opportunity to be heard before a decision is made. This is also meant to ensure that there is transparency in the approval process.
- 11.2 The Chief Ombud will provide the interested and affected parties notice on the nature and purpose of the resolution received from the applicant for approval. This would entail all information and supporting documents from the applicant.
- 11.3 The body corporate must ensure that the said notice is circulated to all members of the body corporate and provide proof to that effect. The read receipt notice or member





signature acknowledging receipt will serve as proof that the notice has been received by a member of the body corporate.

- 11.4 The affected parties will have 21 (twenty-one) working days to respond to the notice.
- 11.5 The Chief Ombud 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.
- 11.6 If no response is received from the members, as requested, the Chief Ombud will proceed and make the decision which will be circulated to the parties within thirty (30) working days.

## **12 DECISION BY THE OMBUD**

- 12.1 Once the Chief Ombud has made a decision, any party who is affected or is an interested party who is not satisfied by the decision may file a review application with the High Court against the decision of the Chief Ombud.

## **13. REVIEW OF THE CIRCULAR**

- 13.1 This Circular will be reviewed annually or as and when there is a change in legislation, or if a court decision amends or varies any of the provisions contained herein.
- 13.2 The amended Circular will be published on the CSOS website.

## **14. REPEAL OF THE CIRCULAR**

- 14.1 Circular 2 of 2018 is hereby repealed and replaced by this Circular.

## **15 COMMENCEMENT OF THE CIRCULAR**

- 15.1 This Circular will commence on the date of signature hereof and will remain in force until amended, substituted, withdrawn or repealed.

- END -

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