

# CONSOLIDATED PRACTICE DIRECTIVES

2025

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**THE COMMUNITY SCHEMES OMBUD SERVICE  
CONSOLIDATED PRACTICE DIRECTIVES 1 OF 2025**

I, the undersigned, Kedibone Phetla, Acting Chief Ombud of the Community Schemes Ombud Service and acting in terms of section 36 of the Community Schemes Ombud Service Act 9 of 2011, do hereby issue this Practice Directive.



**Kedibone Phetla**  
**Acting Chief Ombud**  
**Community Schemes Ombud Service (CSOS)**  
**Date:** 18 July 2025

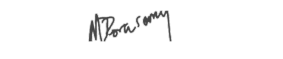
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**Date:** 18 July 2025



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**Date:** 18 July 2025



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**REGIONAL OMBUD: KZN, FS & MP**  
**Date:** 18 July 2025

## Disclaimer

### 1. Scope and Applicability

The Community Schemes Ombud Service Consolidated Practice Directives 1 applies to all to Community Schemes as defined in the CSOS Act, such as Home or Property Owners' Associations, Housing Co-operatives; Housing Schemes for Retired Persons, Sectional Title Schemes and Share Block Companies, all persons who own and occupy units in such Community Schemes and all persons who manage such Community Schemes.

### 2. Version Control

The Community Schemes Ombud Service is currently in the process of reviewing and amending enabling legislation, as such the Consolidated Practice Directives are therefore subject to change. Affected stakeholders are advised to regularly consult the CSOS Website and official publications for updates.

Item No.	Record Document	Doc Number	Location
1.	The Community Schemes Ombud Service Consolidated Practice Directives 1 of 2025	1	<a href="http://www.csos.org.za/">www.csos.org.za/</a>

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## INTRODUCTION

The Community Schemes Ombud Service (**CSOS**) is established in terms of the Community Scheme Ombud Service Act No. 9 of 2011 (**CSOS Act**) to regulate the conduct of parties within Community Schemes and to ensure their good governance.

The Community Schemes being any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a Sectional Title Scheme, a Share Block Company, Home or Property Owner's Association, however constituted, established to administer a property development, a Housing Scheme for Retired Persons, and a Housing Co-operative as contemplated in the South African Co-operatives Act, 2005 (Act No. 14 of 2005).

As encapsulated in section 36(1) of the CSOS Act, the Chief Ombud must issue Practice Directives regarding any matter pertaining to the operation of the Service (CSOS). Furthermore, section 36(2) provides that Practice Directives must, subject to the CSOS Act and the regulations, direct the performance of any act in the operation of the CSOS. The Chief Ombud herein issues this Practice Directive.

The purpose of this Practice Directive is to serve as single source of reference to the prescribed practice issued by CSOS. No interpretation of this Practice Directive should have the effect of creating a conflict with the provisions of the CSOS Act and the Sectional Titles Schemes Management Act No. 8 of 2011 (**STSM Act**) and other legislation and regulations.

This Practice Directive supersedes all previous directives, circulars and guidelines issued on the same subject matter. From the effective date, there will be a repeal of all prior directives. Any conflicting statements or procedures from earlier documents are now considered void.

All stakeholders are expected to adhere to the updated practices as outlined in this directive to ensure consistency and alignment with current standards and objectives.

## DEFINITIONS

In the interpretation of this Practice Directive, words and expressions to which a meaning has been assigned in the Act or its regulations shall bear the same meaning as assigned unless the content indicates the contrary words importing:

- (i) The singular must be interpreted to include the plural, the plural to include the singular, and
  - (ii) Any one gender must be interpreted to include all other genders.
- 
- 1. **“Adjudicator”** means a person contemplated in section 21(2)(b) of the CSOS Act, tasked with amongst other things conducting investigations, adjudicating and presiding over CSOS disputes and issuing adjudication orders.
  - 2. **“Annual General Meeting”** means a meeting conducted annually at the end of each financial year in accordance with the time period specified in the scheme governance documentation, in such a meeting members of a Community Scheme gather to discuss and vote on key issues.
  - 3. **“Body Corporate”** means a legal entity made up of all the owners in a sectional title scheme responsible for the enforcement of rules and for the control, administration and management of the common property for the benefit of all the owners. This entity is formed with effect from the date which any person other than the developer becomes an owner of a unit in a Sectional Title Schemes.
  - 4. **“Business Days”** means a day, other than a Saturday, Sunday or public holiday.
  - 5. **“Case Management Officer”** means a CSOS employee responsible for managing, coordinating and monitoring cases within CSOS, ensuring they are processed efficiently and in compliance with relevant policies and procedures.
  - 6. **“Chief Ombud”** means the person appointed in terms of section 14 of the CSOS Act.

7. **“Compliance and Enforcement Investigator”** means a CSOS employee responsible for conducting compliance checks and verification of information relation to Community Schemes.
8. **“Community Scheme”** means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and building, including but not limited to a sectional titles scheme, a share block company, a home or property owner’s association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing co-operatives as contemplated in the South African Co-operatives Act, 2005 (Act 14 of 2005).
9. **“Conciliator”** means a person contemplated in section 21(2)(c) of the CSOS Act, tasked with amongst other things chairing conciliation hearings.
10. **“CSOS Connect”** means a secure online service providing a digital platform to support the CSOS Community Schemes in Ombud Services. The services provided include but are not limited to scheme registration and governance, customer relations management and revenue management.
11. **“CSOS Levy”** means a levy payable to the CSOS as prescribed in the Community Schemes Ombud Service Regulations: Levies and Fees.
12. **“Data Subjects”** means the natural or juristic person to whom Personal Information relates.
13. **“Dispute”** means a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly.
14. **“Dual Scheme (Duets)”** means a Sectional Title Scheme consisting of only two units or sections.
15. **“Executive Committee Members”** means the executive body of a Community Scheme, including but not limited to the trustees of a sectional title Body Corporate, the board of directors of a Share Block Company, the board of directors of a Homeowners Association and the management associate of any Housing Scheme for Retired Persons.

16. **“Executive Managing Agent”** means a qualified managing agent with the required skill and experience, who is appointed to carry out all the functions and powers of the trustees of a Body Corporate in terms of management rule 28 of the STSM Act.
17. **“Existing scheme”** means Community Schemes that have been in existence for more than a year at the time of registration.
18. **“Homeowners’ Association”** means separate individual properties managed by a single association to which the owners of all the individual properties must belong. It may be either a non-profit company or a common law association. The Companies Act No. 71 of 2008 regulates aspects of non-profit companies. There is no specific legislation for common law homeowners’ associations
19. **“Housing Co-operatives”** means an entity established by a number of people and operated on co-operatives principles to provide housing to its members. Housing co-operatives are established in terms of the Co-operatives Act No. 14 of 2005.
20. **“Housing Scheme for Retired Persons”** means either occupational rights or ownership reserved for people and their spouses over the age of 50 (fifty). It can be any type of community scheme, including life rights. The legislation is the Housing Development Schemes for Retired Persons Act No. 65 of 1988, and it protects the interest of retired persons.
21. **“Information Officer”** means an information officer or deputy information officer as contemplated in terms of section 17 of PAIA.
22. **“Information Regulator”** means the regulator established in terms of section 39 of POPIA.
23. **“Master Association”** means the managing body of subsidiary Community Schemes responsible for the overarching management of the Community Scheme.
24. **“Means Test”** means a method used to determine an individual’s or household’s eligibility for financial assistance or benefits based on their income and assets.
25. **“Minister”** means the Minister of Human Settlements.

26. **“Mixed- use development”** means a Community Scheme that can be described as different types of Community Schemes within a scheme. Such a Community Scheme comprises of a Master Association if the Community Scheme consists of both the Homeowners’ Association and the Sectional Titles Schemes. It can consist of Sectional Title Schemes, Homeowners’ Association, retail and commercial outlets as well as Housing Developments for Retired Persons.
27. **“New scheme”** means Community Schemes that have been in existence for less than a year at the time of registration.
28. **“Occupier”** means a person who legally occupies a private area.
29. **“Operator”** means a person who processes personal information for a responsible party in terms of a contract or mandate, without coming under the direct authority of that party.
30. **“Owner”** means a person who has a legally secured right to possession and occupation of a private area, including but not limited to the owner of a sectional title unit, the holder of shares in a share block company and the holder of an occupation right in a housing scheme for retired persons.
31. **“Personal Information”** means any data or information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person, including, but not limited to –
- (a) information relating to the race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the person.
  - (b) information relating to the education or the medical, financial, criminal or employment history of the person;
  - (c) any identifying number, symbol, e-mail address, physical address, telephone number, location information online identifier or other particular assignment to the person;

- (d) the biometric information of the person;
  - (e) the personal opinions, views, or preferences of the person;
  - (f) correspondence sent by the person is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence;
  - (g) the views or opinions of another individual about the person; and
  - (h) 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.
32. **“Practice Directives”** means the official guidelines or instructions issued by the Chief Ombud in terms of section 36 of the CSOS Act to ensure consistent and effective handling of disputes, compliance and governance within the schemes.
33. **“Property Owners Association”** means separate individual properties managed by a single association to which the owners of all the individual properties must belong. It may be either a non-profit company or a common law association. The Companies Act No. 71 of 2008 regulates aspects of non-profit companies. There is no specific legislation for common law property owners’ associations
34. **“Regional Ombud”** means a designated individual within a specific geographic area who is responsible for receiving and handling disputes related to Community Schemes within their region, essentially, they are the local point of contact for residents within a particular area who have issues with their Community Scheme management and need to access dispute resolution services through CSOS in terms of Section 21(2)(a) of the CSOS Act.
35. **“Representative”** means a person who is appointed to act on behalf of another person or group of people in a specific capacity to further a common goal.

36. **“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.
37. **“Scheme Governance Officer”** means a CSOS employee responsible for conducting quality assurance on scheme governance documentation, liaising with various stakeholders and monitoring compliance.
38. **“Sectional Title Scheme”** means a scheme where a number of people can simultaneously own a piece of land, on which multi-level apartment blocks, town houses and other developments with share facilities and areas are built.
39. **“Share Block Company”** means a company the activities of which comprise or include the operation of a share block scheme. Share block scheme being any scheme in terms of which a share, in any manner whatsoever, confers a right to or an interest in the use of immovable property.
40. **“Special General Meeting”** means a general meeting of owners, shareholders or members that is not scheduled annually and is held for a specific purpose/s.



## ACRONYMS AND ABBREVIATIONS

AGM	Annual General Meeting
CEI	Compliance and Enforcement Investigator
CIPC	Companies and Intellectual Property Commission
CMO	Case Management Officer
CSOS	Community Schemes Ombud Service
DMA	Disaster Management Act
DRGA	Dispute Resolution Governance Administrator
EUA	Exclusive Use Area
HOA	Homeowners' Association
IRBA	Independent Regulatory Board for Auditors
NCA	National Credit Act
PAIA	Promotion of Access to Information Act
PAJA	Promotion of Administrative Justice Act
PAYE	Pay As You Earn
PMR	Prescribed Management Rules
QAC	Quality Assurance Certificate
SASSA	South African Social Security Agency
SGO	Scheme Governance Officer
STA	Sectional Titles Act

## **LEGISLATIVE FRAMEWORK**

CSOS is primarily responsible for the regulation, promotion, and monitoring of good governance of the CSOS Act and the STSM Act; however, the following legislation has a direct impact on the successful implementation of the Practice Directive:

1. The Constitution of the Republic of South Africa, 1996;
2. Community Schemes Ombud Service Act No. 9 of 2011;
3. Sectional Titles Schemes Management Act No. 8 of 2011;
4. Sectional Titles Act No. 95 of 1986;
5. Share Block Control Act No. 59 of 1980;
6. Housing Development Schemes for Retired Persons Act No. 65 of 1988;
7. South African Co-Operatives Act No. 14 of 2005;
8. Companies Act No. 71 of 2008;
9. Public Finance Management Act No. 1 of 1999;
10. Property Practitioners Act No. 22 of 2019;
11. National Credit Act No. 34 of 2005;
12. Banks Act No. 94 of 1990;
13. Legal Practice Act No. 28 of 2014;
14. Disaster Management Act No. 22 of 2005
15. Protection of Personal Information Act No. 4 of 2013;
16. Promotion of Access to Information Act No. 2 of 2000; and
17. Promotion of Administrative Justice Act No. 3 of 2000.

## GENERAL GUIDELINES

Persons seeking the services of the CSOS shall adhere to the general guidelines set out below and the specific requirements of each application.

1. In any application, the applicant or authorised Representatives shall provide the contact details of the parties and affected persons.
2. The affected parties and stakeholders shall conduct themselves in a manner that is professional, courteous, and respectful at all times. The use of derogatory, disrespectful or discourteous language and/or behaviour directed to CSOS staff and/or any of the parties is prohibited. The CSOS staff are equally expected to engage with all stakeholders respectfully and professionally. Where applicable, CSOS staff are guided by the organisation's internal Code of Good Conduct.
3. The parties are required to adhere to the time frames and due dates set out in this Practice Directive, CSOS Act, STSM Act, Regulations or any other applicable legislation.
4. All parties to a Dispute (dispute resolution and/or scheme governance matter) are entitled to all documentary evidence including responses and submissions that the opposing party intends to use in the proceedings.
5. Parties shall first exhaust all internal dispute resolution mechanisms available in terms of their Community Scheme rules prior to approaching the CSOS. Only after such internal processes have been fully utilised and no resolution has been reached, with evidence of such attempts, may any party initiate proceedings with CSOS. This provision shall not preclude any party from seeking urgent interim relief where necessary to prevent irreparable harm.
6. CSOS is in the process of transitioning to an automated system through the CSOS Connect platform, which will streamline and enhance service delivery. Notwithstanding the organisation's transition to the CSOS Connect platform, walk-in patrons shall continue to be attended to. CSOS remains committed to providing in-person assistance where necessary, ensuring that all individuals, regardless of their access to CSOS Connect, receive the required services and support.

7. All applications submitted to the organisation shall be in English. However, CSOS acknowledges the linguistic diversity of its stakeholders and remains committed to assisting and attending to applications in other official languages as necessary, ensuring fair and accessible service delivery.
8. All forms, documents and information not annexed here are available from CSOS per email, telephone call, visit to our offices, CSOS Connect and on the CSOS website.
9. CSOS and its staff shall guide and support the stakeholders and Community Schemes in line with its mandate however, this support shall not include the provision of legal advice, nor will it include investigative powers to either party.
10. All parties and stakeholders must use the correct emails and channels when communicating with CSOS to enable effective responses from CSOS.
11. The CSOS contact details are as follows:

Office/Region	Address	Contact Number	Email address	Website
<b>Head Office and Gauteng Regional Office</b>	8 Bauhinia Street, Berkeley Office Park, Highveld Technopark, Centurion.	0800 000 653	<a href="mailto:info@csos.org.za">info@csos.org.za</a>	<a href="http://www.csos.org.za">www.csos.org.za</a>
<b>KwaZulu–Natal Regional Office</b>	7th Floor Aquasky Towers, 275 Anton Lembede Street, Durban	0800 000 653	<a href="mailto:info@csos.org.za">info@csos.org.za</a>	<a href="http://www.csos.org.za">www.csos.org.za</a>

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# **CHAPTER 1: REGISTRATION OF SCHEMES, COMPLIANCE AND ENFORCEMENT**

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# **1. REGISTRATION OF SCHEMES**

## **SCOPE OF APPLICATION**

- 1.1 This section applies to Community Schemes as defined in the CSOS Act, all persons who own and occupy units in such Community Schemes and all persons who manage such Community Schemes.

## **MANDATORY REGISTRATION OF SCHEMES**

- 1.2 Community Schemes are mandated to be registered in terms of Regulation 18(3) of the CSOS Regulations, 2016.

## **PROCEDURAL REQUIREMENTS**

- 1.3 The CSOS will only approve the registration of a Community Scheme provided that the correct information is provided.
- 1.4 There is no fee payable to register a Community Scheme with the CSOS.
- 1.5 The Community Scheme will receive a scheme registration number which must be used when effecting payment of the CSOS Levy.<sup>1</sup>
- 1.6 The Community Scheme will receive a registration certificate once it has been registered.

## **REGISTRATION PROCESS**

- 1.7 The CSOS has digitalised the scheme registration process through the utilisation of CSOS Connect. Community Schemes are strongly advised to utilise the online platform for seamless and efficient registration of its Community Scheme.

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<sup>1</sup> Format of the registration number will be in accordance with clause 11.14 and clause 11.15.

- 1.8 The Community Scheme must register with the CSOS through the CSOS Connect online platform: [www.csosconnect.org.za](http://www.csosconnect.org.za) as prescribed in section 59 (b) (iii) read together with Regulation 18(3) (a) and (b).
- 1.9 The person who registers the Community Scheme on the CSOS Connect platform must be appointed by the Community Scheme as an authorised Representative. Such appointment must be minuted in the first meeting of the elected executives following an AGM.
- 1.10 Under the CSOS Connect platform, the authorised Representative must follow the following steps in order to register:
- 1.10.1 Create a user profile on CSOS Connect:
- 1.10.1.1 Open the CSOS Connect platform on [www.csosconnect.org.za](http://www.csosconnect.org.za) and select “Register”;
- 1.10.1.2 The user can register as a board of directors, developer, managing agent, occupier, owner, sectional title trustees, managing association of retired owners or Executive Managing Agent (**EMA**);
- 1.10.1.3 Once registered, the user will receive a profile registration notification and a registration confirmation email.
- 1.10.2 Activate user profile:
- 1.10.2.1 Once registered on the system, the user must activate their profile by utilising the 1<sup>st</sup> time login option.
- 1.10.2.2 The user will receive an account activation notification, prompting them to change their password.
- 1.10.2.3 The user will capture their current password, new password and confirm new password.

- 1.10.2.4 Once the user has saved their password, the password will be changed successfully.
- 1.10.3 Link an Existing scheme or register a New scheme.
  - 1.10.3.1 A distinction should be made between New schemes and Existing schemes.
  - 1.10.3.2 The user will be prompted to upload documents based on the classification of the scheme either as a New scheme or an Existing scheme.
  - 1.10.3.2 Furthermore, the user must verify and link their identity number to the Community Scheme. It is possible that the user may be linked to more than one Community Scheme.
  - 1.10.3.3 A determination should be conducted pertaining to the number of units (i.e. 2 to 5 units) and whether such fall within the scope of Duets Schemes. Duet Schemes should be exempted from mandatory registration process when the required information is unavailable.
- 1.10.4 The user will thereafter login and register a Community Scheme.
  - 1.10.4.1 The user will be prompted to search for the Community Scheme prior to commencing with the registration process.
  - 1.10.4.2 The following Community Scheme types can be registered by the user namely:
    - 1.10.4.2.1 Home or Property Owners' Association (**HOA**);
    - 1.10.4.2.2 Housing Co-operatives;
    - 1.10.4.2.3 Housing Schemes for Retired Persons;

- 1.10.4.2.4 Sectional Title Schemes; and
- 1.10.4.2.5 Share Block Companies.
- 1.10.4.3 The user can indicate if the Community Scheme is a mixed-use development.
  - 1.10.4.3.1 The user will be prompted to specify the components that form the mixed-use development.
  - 1.10.4.3.2 Newly registered Sectional Title Schemes without an established body Corporate are subject to the provisions of Regulation 6(4) of the STSM Act. Therefore, the powers and functions of such a Sectional Title Scheme are delegated to a HOA. Furthermore, such schemes are subject to the provisions of the Master Association's scheme governance documents.
  - 1.10.4.3.3 Already established Body Corporates cannot assign their powers and functions to HOAs. Members of established Body Corporates are liable to the Body Corporate and are subject to the provisions of the STSM Act.
  - 1.10.4.3.4 A Master Association must be indicated if the Community Scheme consists of a Homeowners' Association and Sectional Titles Schemes.
  - 1.10.4.3.5 Body Corporates established prior to the commencement of the STSM Act, in terms of Regulation 6(5) are governed by the provisions of the HOA furthermore, the

provisions of the management rules contained in the STSM Act are not applicable.

1.10.4.4 Should the Dual Schemes established under Regulation 6(4) of the STSM Act have all the requested information, such schemes can be registered via CSOS Connect, the registration process is as follows:

1.10.4.4.1 The user will register the Community Scheme as indicate under clause 1.10.

1.10.4.4.2 The user will be prompted to select 'New scheme'

1.10.4.4.3 The user will capture the required information. Such information includes but not limited to the banking details, the levy schedule, financials, of the Community Scheme.

1.10.5 After registering, the user must attach mandatory documents as required by the CSOS Connect platform.

1.10.6 There must be at least two Executive Committee Members except for New Schemes.

1.10.7 There must be more than one authorised signatory for banking purposes.

1.10.8 The full Community Scheme address including the street number, street name, town, city and province must be stated during the registration process.

1.10.9 Upon successful registration of a Community Scheme, a unique scheme registration number will be generated. The scheme registration number will be in a format as stated under clause 11.14 and 11.15.

- 1.11 CSOS shall register the Community Scheme within 7 (seven) business days of receipt of a fully completed CS1 registration form or completed registration on CSOS Connect platform.
- 1.12 The Community Scheme must, within 30 (thirty) days after receipt of a certificate of registration, file with CSOS the supporting documents listed under **Annexure “A”** to be quality assured and approved.

## **2. COMPLIANCE AND ENFORCEMENT WITH THE LEGISLATION**

### **SCOPE OF APPLICATION**

- 2.1 This section applies to Community Schemes as defined in the CSOS Act, all persons who own and occupy units in such Community Schemes and all persons who manage such Community Schemes.

### **COMMUNITY SCHEMES AND COMPLIANCE ASSISTANCE**

- 2.2 Community Schemes are required to operate in accordance with the CSOS Act, STSM Act and other applicable legislation and regulations. Community Schemes are required to adhere to compliance requirements. The compliance requirements for Community Schemes encompass the following:

- (a) The registration of the Community Scheme in terms of section 59 (b)((iii) read with regulation 18(3)(a) and (b) of the CSOS Act;
- (b) The submission of the annual returns in terms of section 59(b)(i), (ii) and (iii) read with regulation 18(2) of the CSOS Act;
- (c) The quality assurance of all other scheme governance documentation as prescribed by applicable legislation; and
- (d) The payment of levies in terms of section 59(a) read with Regulation 11(1) of the CSOS Act.

- 2.3 CSOS will engage with registered Community Schemes that need guidance and support to achieve compliance with the CSOS Act, STSM Act and other relevant legislation and regulations. Community Schemes which demonstrate effective compliance practices will be subjected to less compliance monitoring by CEIs, unless the Community Scheme seeks support from CSOS.

- 2.4 CSOS provides support to Community Schemes through training and education programmes as and when required. The support provided to Community Schemes is aimed at strengthening compliance requirements and practices within the Community Schemes. The support provided may be in the form of monitoring programmes or compliance and education campaigns.

## **ENGAGEMENT**

- 2.5 CSOS will adopt a dual approach to ensure compliance. The approach will entail a non-punitive method to engage with the Community Scheme in order to improve the level of compliance. Should the non-punitive approach fail to yield the desired outcome, CSOS may refer the matter to the National Prosecuting Authority in terms of section 34(1) and (2) of the CSOS Act to ensure compliance by the Community Scheme.
- 2.6 Non-stringent approaches will be used to engage with Community Schemes. The possible approaches are as follows:
- 2.6.1 Community Schemes that are not in compliance with the requirements of the CSOS Act, STSM Act and any other relevant legislation and regulations may request a direct engagement with CSOS to assist them in achieving full compliance.
  - 2.6.2 CSOS CEIs will conduct regular physical site visits to Community Schemes with the intention of assessing compliance and practices. Community Schemes that have a record of being compliant and not requiring guidance on meeting their statutory obligations should expect to see CSOS CEIs on a less frequent basis. However, such Community Schemes should remain engaged through various CSOS communication channels. The Community Schemes may call or email CSOS to obtain advice and guidance if required.
  - 2.6.3 During the compliance verification process, CSOS will work with managing agents or Executive Committee Members to ensure that the Community Scheme is meeting its statutory obligations.



- 2.6.4 Self-managed Community Schemes are not exempted from the compliance verification process, a CSOS CEIs may at any reasonable time and with prior notice conduct a compliance monitoring process to assess compliance and practice. An authorised representative of the Community Scheme may be required to furnish information and/or documents only in so far as it relates to the Community Scheme's governance and compliance.

## **INTENTIONAL CONTRAVENTION**

- 2.7 Intentional non-compliance with the CSOS Act, STSM Act and other relevant legislation and regulations, or failure to inform CSOS of non-compliance, will render such Community Schemes to be subjected to enforcement action by CSOS. CSOS will take appropriate enforcement action, and it will function as a deterrent for others not to breach the CSOS Act, STSM Act or other legislation and regulations.

## **ENFORCEMENT**

- 2.8 All Community Schemes that contravene the CSOS Act will be subjected to enforcement action by the CSOS. The CSOS will take enforcement action to resolve contraventions and set a deterrent for other Community Schemes not to contravene the CSOS Act. The CSOS enforcement actions are proportionate to the nature and seriousness of the contraventions.
- 2.9 CSOS may refer the matter to the National Prosecuting Authority for enforcement action which could result in the imposition of a penalty or any other available enforcement tool in line with section 34 of CSOS Act.

## **ENFORCEMENT OPTIONS**

### **Informal Mediation Action**

- 2.10 Community Schemes that:
- (a) are struggling to comply;
  - (b) have voluntarily brought a minor contravention to the attention of CSOS; and/or

- (c) has taken appropriate action,

Such Community Schemes may be assisted by CSOS through informal mediation action. CSOS may issue a resolution by telephone, email, or in person. The first resort of communication is in writing, unless the issue is immediately rectified telephonically and recorded as such in writing.

- 2.11 Where CSOS has identified a risk of non-compliance, CSOS may take preventative action by using targeted communications to a Community Scheme, its managing agents, or its Executive Committee Members.

### **Intervention Action**

- 2.12 Community Schemes that are suspected to be non-compliant will be issued with a verification letter to commence the intervention by CSOS. The letter shall be issued if there is sufficient evidence available to substantiate non-compliance. The letter will bring the non-compliance issue to the Community Scheme's attention and afford the Community Scheme an opportunity to rectify the non-compliance within a reasonable period, or to take the requisite steps to prevent a recurrence.
- 2.13 The verification letter will, state the consequences if the contravention is not rectified or occurs again in the future, indicate that CSOS will consider using its powers, and it may also indicate ways to avoid similar contraventions in the future. A non-compliance letter will be issued if the Community Scheme does not rectify the contravention within a reasonable period or take the requisite steps to prevent the recurrence of the contravention.

### **Verification and compliance action**

- 2.14 CSOS appointed fieldworkers will conduct door-to-door verification measures such as physical verification and validation of registered and unregistered Community Schemes. The CSOS fieldworkers will record the details of those who intentionally refuse to comply and/or grant access to inspect, and the transgression may be reported to the National Prosecution Authority (**NPA**) for enforcement.

- 2.15 The CEI will provide administrative support and monitor cases once they are handed to the NPA. The CEI will record the any reference number against the Community Scheme records held by CSOS.

### **Requests for information**

- 2.16 If CSOS suspects that a contravention has occurred, or has received a complaint of non-compliance, CSOS will write to the Community Scheme or its Representative and request the Community Scheme to provide the relevant information in the manner, as will be specified in the notice.
- 2.17 Failure to provide the information requested within specified timelines or providing false and/or misleading information may lead to a fine and/or imprisonment as set out in section 34(1) and (2) of the CSOS Act.

### **Statutory contraventions**

- 2.18 CSOS may refer a matter to the NPA to issue statutory notices to Community Schemes if the following contraventions have occurred and a remedy is required to ensure compliance:

- 2.18.1 Failure to provide access to any books, accounts, documents, or assets when required to do so under the CSOS Act;
- 2.18.2 Failure to comply with a directive (notice) issued under the CSOS Act;
- 2.18.3 Failure or refusal to give access data or information, or giving of false, misleading data or information when required to do so; or
- 2.18.4 Intentionally refusing to perform a duty or obstructing any person in the exercise of a power or performance of a duty in terms of this Act.

CSOS will apply specific rules governing the use of different statutory notices and such notices will permit or prohibit a Community Scheme to or from a specific action(s) within a specified timeframe. CSOS will consider the specific circumstances in each individual case in deciding the most appropriate course to achieving compliance.

## Reporting of Non-compliant Community Schemes

- 2.19 Any owner, member of the Community Scheme or any third party (the applicant) can file or report any non-compliance within their/a Community Scheme.
- 2.20 Such owners, members or third parties must submit a non-compliance form on the CSOS Connect platform or can alternatively complete the prescribed application for non-compliance form with Community Schemes (Form NC1) – available on the CSOS website and from CSOS - and provide CSOS with all relevant information.
- 2.21 The application form should be submitted to [compliance@csos.org.za](mailto:compliance@csos.org.za) and/or hand-delivered to any CSOS regional office or satellite office.
- 2.22 Under the CSOS Connect platform, non-compliance can be reported in the following manner:
- 2.22.1 The applicant must login to the CSOS Connect platform on [www.csosconnect.org.za](http://www.csosconnect.org.za) and select “Submit non-compliance form”.
  - 2.22.2 The submitted non-compliance form must be signed and accompanied by supporting documents.<sup>2</sup>
  - 2.22.3 The complaint will be captured in the CSOS non-compliance database, and a reference number will be issued.
  - 2.22.4 The complaint will be assessed, and it will be determined if it falls within the CSOS jurisdiction and whether the Community Scheme is compliant or non-compliant.
- 2.23 The CEI will send a non-compliance notice to a Community Scheme if found to be non-compliant. The CEI will send a final reminder notice if the Community Scheme

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<sup>2</sup> The supporting documents are Community Scheme rules, special resolution, AGM minutes and financial statements.

has not adhered to remedying the non-compliance status. Notices are signed off by the Regional Ombud.

- 2.24 If the non-compliance status has not been rectified, the CEI will refer the matter to the CSOS legal department for assessment, which may result in a recommendation to refer the non-compliance to the National Prosecuting Authority in terms of section 34 of the CSOS Act for possible enforcement action.
- 2.25 Furthermore, the CEI will refer the Community Scheme to the finance department to issue a compliance certificate if the Community Scheme is found to be compliant.
- 2.26 If the non-compliance status has been rectified, the CEI will withdraw the non-compliance notice to a Community Scheme.

## **CONSEQUENCE OF NON-COMPLIANCE**

### **Offences and Penalties**

- 2.27 In accordance with the provisions of section 34 of the CSOS Act, any person or Community Scheme who fails to comply with the directive under the CSOS Act will be subjected to the penalties prescribed in the CSOS Act.
- 2.28 The following conduct constitutes non-compliance in terms of the CSOS Act, namely:
  - 2.28.1 Failure to provide access to any books, accounts, documents, or assets when required to do so under the CSOS Act;
  - 2.28.2 Failure to comply with a directive(notice) issued under the CSOS Act;
  - 2.28.3 Failure or refusal to give access data or information, or giving of false, misleading data or information when required to do so; or
  - 2.28.4 intentionally refuses to perform a duty or obstructs any person in the exercise of a power or performance of a duty in terms of this Act

- 2.29 Persons found guilty of any of the above conduct will be liable on conviction to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- 2.30 Where a person is found guilty of a second or subsequent conviction for an offence contemplated under clause 2.26, he or she is liable to a fine or imprisonment for a period not exceeding 10 (ten) years or to both a fine and such imprisonment.

## ANNEXURE A: LIST OF SUPPORTING DOCUMENTS FOR REGISTRATION OF A COMMUNITY SCHEME

### **New Community Schemes:**

- ☐ Completed CS 1 Form (signed).
- ☐ Schedule of levies payable by each unit within the Community Scheme (if Applicable).

### *Any of the following supporting documents*

- ☐ Certificate of incorporation
- ☐ Constitution
- ☐ Rules (management or conduct)
- ☐ Articles of association
- ☐ Memorandum of incorporation
- ☐ Terms and conditions of Community Scheme
- ☐ Copy of registration certificate with CIPC
- ☐ Copy of the title deed
- ☐ Use agreement

### **Existing Community Schemes**

- ☐ Completed CS 1 Form (signed)
- ☐ Schedule of levies payable by each unit within the Community Scheme (mandatory)
- ☐ The financial statements of the Community Scheme (mandatory)

### *Any of the following supporting documents*

- ☐ Certificate of incorporation

- ☐ Constitution
- ☐ Rules (management or conduct)
- ☐ Articles of association
- ☐ Memorandum of incorporation
- ☐ Terms and conditions of Community Scheme
- ☐ Copy of registration certificate with CIPC
- ☐ Copy of the title deed
- ☐ Use agreement

### **New Developments**

- ☐ General information (mandatory)
- ☐ Scheme Registration documentation (mandatory)
- ☐ Executive Committee details (If available)
- ☐ Managing Agent (available if registered by a Managing Agent)
- ☐ Financial details (If available)
- ☐ Authorized Representative details (If available)
- ☐ Solemn Declaration

### **Sectional Titles**

- ☐ Conduct and/or Management Rules (mandatory)
- ☐ Certificate of Incorporation (optional)
- ☐ Sectional Title Plans (optional)
- ☐ Schedule of Levies (mandatory)
- ☐ Title Deed (optional)
- ☐ Any other governance documentation (optional)



**Homeowners Association**

- ☐ Constitution (mandatory)
- ☐ Levy schedule (mandatory)
- ☐ Any other governance documentation (optional)

**Share Block Companies**

- ☐ Conduct and/or Management Rules (mandatory)
- ☐ Levy schedule (mandatory)
- ☐ Any other governance documentation (optional)

**Housing Co operatives**

- ☐ Conduct and/or Management Rules (mandatory)
- ☐ Levy schedule (mandatory)
- ☐ Any other governance documentation (optional)

**Retired Persons**

- ☐ Conduct and/or Management Rules (mandatory)
- ☐ Levy schedule (mandatory)
- ☐ Any other governance documentation (optional)

**Dual Scheme**

- ☐ Constitution (mandatory)
- ☐ Memorandum of Incorporation
- ☐ Conduct and/or Management Rules (mandatory)
- ☐ Levy schedule (mandatory)
- ☐ Section 11(3)(b) of the Section Titles Act schedule of condition
- ☐ Sectional Title Deed/ Title Deed
- ☐ Management Association Agreement (optional)
- ☐ Any other governance documentation (optional)

**Master Association**

- ☐ Constitution (mandatory)
- ☐ Conduct and/or Management Rules (mandatory)
- ☐ Levy schedule (mandatory)
- ☐ Any other governance documentation (optional)

**Mixed Use Development**

- ☐ General information (mandatory)
- ☐ Scheme Registration documentation (mandatory)
- ☐ Executive Committee details (If available)
- ☐ Managing Agent (available if registered by a Managing Agent)
- ☐ Financial details (If available)
- ☐ Authorized Representative details (If available)
- ☐ Solemn Declaration

## CHAPTER 1 PROCESS FLOW

### Registration of a Community Scheme

Step	Activity
1.	An applicant submits documentation to request registration of a Community Scheme via the CSOS Connect Platform <a href="http://www.csosconnect.org.za">www.csosconnect.org.za</a>
2.	The Data officer validates the data
2.1.	If the Data is correct, the Data Officer captures the scheme information, and a reference number is generated
2.2.	The Data Capturer issues a Registration Certificate
3.	If the data is incorrect, then the Data officer issues a Request for Information
3.1.	If the data is not received within 7 days, then the Data officer issues a follow up letter
3.2.	When the Data is not received, the Compliance and Enforcement process commences
3.3.	If the data is received, then the data officer validates the data and continues with the process
4.	The process ends.

### Registration of a Dual Scheme

Step	Activity
1.	An applicant will navigate to the dashboard and clicks on “Register Scheme” via the CSOS Connect Platform <a href="http://www.csosconnect.org.za">www.csosconnect.org.za</a>
2.	The applicant will choose the “New Scheme” option to proceed with the registration process.
3.	The applicant will be prompted to provide the following information: Scheme Name Scheme Type (e.g., Sectional Title Development) Physical Address
3.1.	The applicant will be prompted to click “ <b>Search</b> ” and to check if the scheme is already registered.
3.2.	If the scheme is not registered, the applicant must click on the “ <b>Register Scheme</b> ” link to begin the registration process.

	<i>Note: The system will not allow registration if the scheme is already registered.</i>
4.	The applicant will be prompted to read and agree to the Terms and Conditions by checking all the required boxes.
5.	The applicant will be prompted to: Enter the Date of Establishment by capturing the scheme's date of establishment. If not available, the applicant must use the following date: 2016 October 7.
5.1	The applicant must then fill in the Levy Schedule <i>Note: For Dual schemes, specify 2 units</i>
6.	If the levy amount is unavailable, the applicant must use R0.00 or R1.00 – Normal Levy (depending on system acceptance).
7.	The applicant must register an Executive Committee by populating the details for two members: a. Select the ID Type as "South African ID" or "Passport" if applicable. b. Include ID number, names, email address and contact number for each member. c. Use Dates of appointments as 2016 October 08 if not available. d. Tick the box for "Authorized bank signatory".
8.	The applicant must register the Managing Agent (If Applicable) by: a. Populating all required information as per the form. b. Providing Fidelity Certification Validation Date: if not available 2016 October 08 – 2017 October 08.
9.	The applicant must register banking details and use the following placeholder information if no banking details are available: a. Account Holder (Name of the Duet Scheme) b. Bank Number (Select any bank from the list) c. Bank Account Number (Five zeros 00000) d. Branch Code (prepopulated) e. Bank Account Type (Select one from the list) f. Account friendly name (Name of the Scheme).
10.	The applicant must provide the following: a. Auditors Company name (Scheme Name) b. The financial year end should be CSOS FY 31 March 20 c. Contact Details: Name, Contact Number, and Email of the person registering the scheme

11.	The applicant must register the Authorized Representative by toggling the option to active so that the details are prepopulated or the applicant will be required to manually input the information for the applicant.
12.	The applicant will be required to upload supporting document, if available.

### Registration of New Development

No	User	Activity	Description
1.	Applicant	Register New scheme	The applicant registers a new scheme
2.	Applicant	Capture Scheme details and specifies role to scheme	Specifies role to scheme
3.	Applicant	Registers New Scheme	If role to scheme is not Developer, Managing Agent, Attorney Registers New Scheme as per current
4.	Applicant	Registers New Development	If role to scheme is Developer, Managing Agent, Attorney Registers New Development
4.1.	Applicant	Registers New Development General Details	Completes General Section
4.2.	Applicant	Registers New Development Levy Schedule Details	Completes Levy Schedule
4.3.	Applicant	Registers New Development Supporting Documents	Uploads new development supporting documents
4.4.	Applicant	Registers New Development submission	Submits the registration of a new development
4.5.	Applicant	Registers New Development submission	Receives notification acknowledging the Registration submission
5.	Registration Administrator	Get Next	Selects Get Next to allocate the next available ticket that is on the queue

6.	Registration Administrator	Quality Assure Application	Selects to view the application and the supporting documentation to quality assure the application
7.	Registration Administrator	Request Outstanding information	Refer the application to request the outstanding information/documentation
8.	Registration Administrator	Approve Application	Approve the application
9.	Registration Administrator	Issue Section 59 Registration Certificate	Notify applicant for the successful registration of the New Development and issue the Section 59 Registration Certificate
10.	Registration Administrator	Submit Application to the Compliance Enforcement Investigator	

### Lodgement/Notifications of Rules

No	User	Activity
1.	Applicant Login	Only a logged-in user should be able to submit an application for the lodgement of rules.
2.	Applicant Register User	Redirects a user to the registration page if the applicant is not registered.
3.	Applicant Search Development	Enables the applicant to search for a development.
4.	Applicant Complete Form B Online	Allows completion of Form B and Form B1 online. All schemes must use the same form. Fields and validations refer to use case UC01.
5.	Attach Supporting Documents	New development to upload the following documents (signed): <ul style="list-style-type: none"> <li>Form B or B1 signed by Developer or Conveyancer</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Scheme rules (mandatory)</li> <li>▪ Approved sectional plan (mandatory)</li> <li>▪ Consolidated Rules (mandatory) or</li> <li>▪ Annexure 1 and 2 of the STSMA regulation are adopted</li> <li>▪ Conveyancer Certificate to confirm the adoption (mandatory)</li> </ul> <p>Existing development to upload the following documents:</p> <ul style="list-style-type: none"> <li>▪ Form B or B1 signed by 2 trustees, or 1 trustee and the Managing Agent</li> <li>▪ Consolidated Rules</li> <li>▪ Signed Minutes of the General meeting where the rules were tabled</li> <li>▪ Signed unanimous resolutions if the scheme submits Management Rules or Signed special resolutions the scheme submits Conduct Rules</li> <li>▪ An option to view current Rules</li> </ul>
6.	Applicant Submit Application	Allows submission of scheme rules lodgement application after all mandatory fields and documents are completed. Applicant receives an acknowledgement email.
7.	Applicant Restrict Submit Button	Submit button is restricted if any mandatory fields or documents are incomplete.
8.	Applicant Upload Amended Documents	Applicants receive a notification when documents are referred back. They may re-upload amended documents incorporating CSOS feedback.
9.	Applicant View and Download Approved s10 and s4 Certificate	Applicant receives a notification when the certificate is approved and may view/download the approved certificate.

<b>10.</b>	Applicant View and Download Approved Rules	Allows the applicant to view and download approved, stamped scheme rules.
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# **CHAPTER 2: SCHEME GOVERNANCE**

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### **3. SCHEME GOVERNANCE UNDER THE DISASTER MANAGEMENT ACT AND REGULATIONS**

#### **SCOPE OF APPLICATION**

- 3.1 This section applies to Community Schemes as defined in the CSOS Act, all persons who own and occupy units in such Community Schemes and all persons who manage such Community Schemes.

#### **DISASTER MANAGEMENT ACT AND REGULATIONS**

- 3.2 The Disaster Management Act No.57 of 2002 (**DMA**) aims to provide disaster management policies that focus on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery.
- 3.3 CSOS caters for instances whereby a state of disaster is declared in terms of the DMA and certain sanctions are imposed by the Government of the Republic of South Africa. However, CSOS as an entity is susceptible to being adversely affected by any state of disaster, therefore in the event of a declaration of a state of disaster at a national, provincial or municipal level, CSOS should be afforded an opportunity to make contingency plans in line with its disaster management policy and/or business continuity policy.
- 3.4 In instances whereby a state of disaster at a national, provincial or municipal level is declared and such declaration has a direct impact on Community Schemes, Community Schemes must adhere to this Practice Directive.
- 3.5 In the event of any conflict or inconsistency between the provisions of the DMA and the provisions of the CSOS Act, STSM Act or this Practice Directive, the provisions of the DMA shall prevail. Any rules, guidelines, or provisions contained herein shall be interpreted and applied in a manner consistent with the DMA and where necessary, shall be deemed modified to the extent required to comply with the DMA.

## **MEETINGS OF COMMUNITY SCHEMES**

### **Sectional Titles Schemes**

#### Trustee Meetings

3.6 The trustees of a Body Corporate can convene a meeting in accordance with the provisions of the Disaster Management Regulations. However, CSOS prescribes the following ways to convene a meeting:

3.6.1 In accordance with the provisions of Prescribed Management Rule (**PMR**) 11(5) of Annexure 1 of the Regulations to the STSM Act, the trustees may make arrangements for attendance at a trustee meeting by telephone or any other method, if the method is accessible to all trustees and other persons entitled to attend the meeting, permits all persons participating in the meeting to communicate with each other during the meeting and permits the chairperson to confirm, with reasonable certainty, the identity of the participants.

3.6.2 The requirements relating to the time period for calling for the meeting, quorum and voting remain applicable.

#### Owners Meetings

3.7 The owners' meetings may be convened through video-conferencing platforms. Provided all participants have access to such platforms.

3.8 Other requirements relating to the notice period, quorum or voting remain applicable.

3.9 Alternatively, the members can pass the necessary resolution by means of round robin.

3.10 Members must be aware that they can waive the time limits for calling the meeting in accordance with the STSM Act.

### Special and Annual General Meetings

- 3.11 If restrictions on the holding of gatherings are applicable in terms of Disaster Management Regulations, the Special and Annual General Meetings (**AGM**) must be held in accordance with the provisions of PMR 17(2) and PMR 17(9).
- 3.12 In accordance with PMR 17(2), the Body Corporate is not obliged to hold an AGM if, before or within 1 (one) month of the end of a financial year, all members in writing waive the right to the meeting and consent in writing to motions that deal with all the items of business that must be transacted at the AGM; provided that if two or more persons are jointly entitled to exercise a vote, all of them waive the right to the meeting and consent to the resolutions in writing.
- 3.13 In accordance with PMR 17(9), the Body Corporate does not have to hold a special general meeting to consider a resolution if all members waive the right to the meeting and consent to the resolution in writing, provided that two or more persons are jointly entitled to exercise a vote, all of them must waive the right to the meeting and consent to the resolution in writing.
- 3.14 If there is a matter on the agenda that must be deliberated on or discussed and cannot be resolved in terms of a procedure provided in PMR 17(2) or PMR 17(9), then the meeting can be held by other means as provided in PMR 17(10).
- 3.15 PMR 17(10) provides that a Body Corporate may make arrangements for attendance at a Special or/and AGM by telephone or any other method; if the method is accessible to all members and other persons entitled to attend the meeting, permits all persons participating in the meeting to communicate with each other during the meeting and permits the chairperson to confirm, with reasonable certainty, the identity of the participants.
- 3.16 The agenda for the AGM must still comply with the provision of PMR 17(6)(j) and PMR 17(7).
- 3.17 The notice period for the meeting must also be complied with unless waived by all members.

- 3.18 All meetings that will be held telephonically or via video-conferencing platforms. The meeting must be recorded, and the minutes must be taken.

### **Home or Property Owners Association**

- 3.19 HOAs can be incorporated as non-profit companies in terms of the Companies Act or established according to the common law. Meetings for a HOA registered as a non-profit company must comply with the requirements of the respective HOA's memorandum of incorporation for the calling of the meeting and voting. Meetings for a HOA established according to the common law must adhere to the provisions of the constitution governing that association.<sup>3</sup>
- 3.20 The Companies Act, which governs the HOA registered as a non-profit company, provides that the meetings can be conducted entirely by electronic communication.<sup>4</sup>

### **Share Block Company**

- 3.21 Share Block Companies must comply with the provisions of the founding legislation and the use agreement on the requirements for calling the meeting and voting.
- 3.22 The actual meeting may be held telephonically or via video-conferencing platforms The meeting must be recorded, and the minutes must be taken.

### **Housing Co-operatives**

- 3.23 Housing Co-operatives must comply with the provisions of the constitution for a Housing Co-operative for the calling of the meeting and voting.
- 3.24 The actual meeting may be held telephonically or via video-conferencing platforms. The meeting must be recorded, and the minutes must be taken.

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<sup>3</sup> The rules contained in the memorandum of incorporation must be consistent and similar to those submitted to the CIPC.

<sup>4</sup> Section 63(2)(a) of the Companies Act.



## **Housing Scheme for Retired Persons**

- 3.25 Housing Schemes for Retired Persons must comply with the provisions of the constitution for the Housing Scheme for Retired Persons for the calling of the meeting and voting.
- 3.26 The actual meeting may be held telephonically or via video-conferencing platforms The meeting must be recorded, and the minutes must be taken.

## **HEALTH AND SAFETY OF EMPLOYEES AND SCHEME MEMBERS**

- 3.27 Community Schemes must ensure the safety of their employees during a state of disaster by providing the necessary risk mitigation kits.
- 3.28 If the necessary risk mitigation measures cannot be implemented, the common facilities must be closed.
- 3.29 Safety measure notices must be visibly displayed at the Community Scheme entrance and common areas.

## **BIOMETRIC SYSTEMS**

- 3.30 If the use of finger scanning systems, facial recognition systems or any other form of biometric system pose a biological hazard, its use must be suspended under the circumstances.

## **USE OF THE COMMON AREA DURING A STATE OF DISASTER**

- 3.31 Owners and occupiers (Including tenants) living in Community Schemes may only use the common property (such as the common driveway shared by all residents in the scheme or essential common property facilities such as the laundry room, the refuse removal area or club house) insofar as access is necessary and/or is essential.
- 3.32 Community Schemes are required to publish a list of essential common property facilities necessary for use during this period. Community Schemes must take precaution and ensure that the published list authorising use of the common property facilities is permitted and is in compliance with the Disaster Management Regulations.

- 3.33 The Community Schemes are tasked with ensuring compliance with the regulations. Community Schemes must also ensure that only a limited number of individuals gather or utilise the shared essential common facilities at one time. They may also implement any other measures within the Community Scheme in order to ensure the safety of all the residents.
- 3.34 These implementation measures developed by Community Schemes do not require any prior approval by CSOS insofar as they enhance compliance with the regulations. Provided such measures are not prejudicial to any person residing within the Community Scheme. If any of the measures in relation to disaster management results in the amendment of the rules, such rules must be submitted to CSOS
- 3.35 Owners and occupiers are not permitted to walk around or perform any sort of activity on the common property, unless classified as essential by the DMA and its regulations. An owner may occupy his/her Exclusive Use Area (**EUA**), and owners are advised to peruse the title deed of the unit or the rules of the Community Scheme to ascertain whether there is an EUA allocated to them.
- 3.36 CSOS will not penalise any Community Scheme for scheduling an AGM after a lockdown period, after sanctions are terminated or whatever restrictions that may be imposed. Community Schemes will submit their annual return to CSOS directly after their AGM. However, it will not be necessary for Community Schemes to complete an application for condonation for late filing of their annual returns. Should an AGM be scheduled after a lockdown period, sanctions or whatever restrictions imposed, the AGM should be recorded, and the minutes must be taken.
- 3.37 Transgression of the Regulations may result in a fine or imprisonment as prescribed in the Disaster Management Regulations.
- 3.38 It is inevitable that a state of disaster will have a negative impact on the economy of South Africa; therefore, Executive Committee Members are encouraged to enter into reasonable payment arrangements or relief plans with homeowners adversely affected and are not able to meet their monthly levy obligations in the short term. Executive Committee Members are reminded to comply with the Disaster Management Regulations as amended from time to time when carrying out their functions.

## **DISPUTE RESOLUTION DURING A STATE OF DISASTER**

*Any dispute that arises will be resolved in accordance with the provisions under Chapter 4 (Dispute Resolution) of this Practice Directive.*

## **4. APPROVAL OF SPECIAL AND UNANIMOUS RESOLUTIONS FOR SECTIONAL TITLE SCHEMES (SECTION 6(9) OF THE STSM ACT)**

### **SCOPE OF APPLICATION**

- 4.1 This section applies to Sectional Title Schemes, all persons who own such schemes, all persons who manage such schemes and the CSOS.
- 4.2 The section only applies to applications in terms of section 6(9) of the STSM Act, which stipulates that *“a Body Corporate or an owner who is unable to obtain a special or unanimous resolution, may approach the Chief Ombud for relief”*.
- 4.2.1 It should be noted that at least 75% (seventy-five) or more of members entitled to vote both in number and value should have voted in favour of the unanimous resolution prior to the approval of the application by the Chief Ombud; or
- 4.2.2 At least 50% (fifty) or more of members entitled to vote both in number and value should have voted in favour of the special resolution.
- 4.3 For HOAs or any other Community Scheme besides those mentioned above, see No. 5 below.

### **ADMINISTRATIVE PROCEDURE**

- 4.4 As per clause 4.2 above, the applicant must complete the prescribed resolution – Form ST 1, on the CSOS Connect platform.
- 4.5 The applicant bears the onus of ensuring that all relevant information has been submitted. The applicant must ensure that the application form is correctly completed and meets all the legislative requirements. The CSOS Scheme Governance Officer (**SGO**) cannot complete application forms for applicants, nor can it instruct applicants on how to complete their application form, unless the applicant is unable to read and write or has some physical impairments. The CSOS SGO may provide guidance in so far as

it relates to the approval of the resolution by the Chief Ombud however the CSOS SGO cannot provide advice in relation to the merits of the case.<sup>5</sup>

- 4.6 The application form and any attachments may either be typed or handwritten, provided it is legible and easy to read. All applications must be in English however CSOS does recognise and make provision for other official languages.
- 4.7 If an application is not clear and legible, the applicant shall be requested to resubmit a new application to the CSOS SGO. Timelines are triggered by the completeness and legibility of the application.
- 4.8 If the applicant requires multiple approvals, a separate application for each approval sought must be submitted or one form with separate annexures per request for approval must be submitted.
- 4.9 The application form must be signed by the applicant or the applicant's authorised Representative.
- 4.10 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., trustees, managing agent, etc.).
- 4.11 An applicant submitting the application for approval of a unanimous or special resolution must ensure that the application and any supporting material contains only information that the applicant is prepared to disclose to all the other parties to the dispute. Should the application and supporting material contain Personal Information of others, i.e. Data Subject, consent from the Data Subject is required. The information submitted by the applicant shall not be classified as private and confidential. The applicant waives its right to confidentiality, and the applicant shall provide adequate proof that the consent of the Data Subject has been obtained.
- 4.12 The application must be made within a period of 90 (ninety) business days if the applicant was unable to obtain the required approval. However, should the applicant

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<sup>5</sup> Such guidance being timelines, the documentation required and whether the applicant qualifies to bring such an application.

fail to bring the application within the mentioned timeframe, condonation can be granted by the Chief Ombud.

#### **SPECIAL AND UNANIMOUS RESOLUTIONS APPROVAL PROCESS**

- 4.13 Prior to submission of an application to the Chief Ombud for the approval of a unanimous resolution, such application must have been tabled at a meeting or through a round robin. The application to the Chief Ombud must be made as a last resort after all the internal processes have been exhausted.
- 4.14 The notice of the scheduled date of the meeting for the purpose of approval of a special or unanimous resolution should be issued within at least 30 (thirty) business days prior to the date of the scheduled meeting except where the rules provide for shorter notice.
- 4.15 The requirement for a special resolution is that at least 75% (seventy-five) calculated both in votes in value and in number of the members of the Body Corporate present or duly represented at a general meeting or agreed to in writing by all the members of the Body Corporate holding at least 75% (seventy-five) calculated both in value and in number of all the votes.
- 4.16 The requirement for the unanimous resolution is that it shall be passed unanimously by all members of the Body Corporate at a meeting in which at least 80% (eighty), calculated both in value and in number, of the votes of all the members of a Body Corporate are present or duly 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.
- 4.17 All the above requirements must have been satisfied prior to submission of an application to the Chief Ombud.

#### **SUPPORTING DOCUMENTATION**

- 4.18 Notice of the meeting and proof that all owners received the notice and/or proof that a round-robin was conducted must be submitted where applicable.
- 4.19 Minutes of a duly quorate general meeting reflecting a number of members who attended or were duly represented.

- 4.20 The read receipt notice or member's signature acknowledging receipt will serve as proof that the notice has been received by a member of the Body Corporate.
- 4.21 Confirmation by trustees indicating votes, both in number and value, of members who voted in favour of the resolution.
- 4.22 A list indicating the number of members who voted against the resolution.
- 4.23 Reasons furnished by members who voted for or against the resolution, if provided.
- 4.24 Any other documents in support or against the application.
- 4.25 Any motivations given in support or against the resolution.

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

- 4.26 As soon as an application is received by the CSOS SGO, a new file shall be opened, and a unique file reference number will be allocated. The determined timeline of 30 days will commence once the completed application is received.
- 4.27 The application shall be assessed by the CSOS SGO to determine whether the application complies with the legislative requirements and this Practice Directive.
- 4.28 Where necessary, the CSOS SGO shall contact the applicant and request clarification or any additional information to satisfy the requirements of the STSM Act and this Practice Directive.
- 4.29 The CSOS SGO shall assess the application, taking into consideration whether the approval of the resolution is lawful, reasonable and fair to all Community Scheme members. In the assessment process, the below-stated factors shall be taken into consideration: -
  - 4.29.1 The provision of the STSM Act and its regulations;
  - 4.29.2 The reasons submitted by members who voted against the resolution;

- 4.29.3 The objective and purpose of the resolution; or
- 4.29.4 Whether the resolution will enhance the living conditions of the members residing in the scheme or promote proper governance in the Community Scheme.

## **REJECTION OF APPLICATION**

- 4.30 The CSOS SGO may reject an application that fails to meet the prescribed requirements of the STSM Act or this Practice Directive.
- 4.31 If the CSOS SGO decides to reject an application, the applicant shall be informed in writing and be furnished with reasons for the rejection.
- 4.32 The grounds for rejection of the application may include but not limited to the following:
  - 4.32.1 That the application is part of, or is closely related to the existing proceedings in court;
  - 4.32.2 That the applicant failed or neglected to provide the requested further particulars within the date set by the SGO;
  - 4.32.3 That the application does not fall within the ambit of section 6(9) of the STSM Act; and
  - 4.32.4 That the application does not meet the prescribed requirements.

## **PAYMENT OF PRESCRIBED FEE**

- 4.33 No fee is payable for the processing of the application.

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

- 4.34 Having considered the provisions of section 33 of the Constitution of the Republic of South Africa and the Promotion of Administrative Justice Act 3 of 2000 (**PAJA**), it is imperative that the CSOS SGO notifies any interested and affected parties and



provides them with an opportunity to be heard before a decision is made. This is in line with the principle of *audi alteram partem* rule.

- 4.35 The CSOS SGO shall provide the interested and affected parties with a copy of the notice detailing the nature and purpose of the application received from the applicant.
- 4.36 The Body Corporate must ensure that the said notice is circulated to all its members 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.
- 4.37 The affected parties will have 21 (twenty-one) business days to respond to the notice.
- 4.38 The CSOS SGO shall only consider an extension by 10 (ten) business days if an affected party provides exceptional circumstances for not responding within the given time frame as mentioned above.
- 4.39 If no response is received from the members, as requested, the CSOS SGO shall proceed and make a decision which shall be circulated to the parties within 30 (thirty) business days.

#### **DECISION BY THE CHIEF OMBUD**

- 4.40 Once the Chief Ombud has made a decision, any affected or 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.

## **5. APPROVAL OF SPECIAL AND UNANIMOUS RESOLUTIONS FOR COMMUNITY SCHEMES OTHER THAN SECTIONAL TITLE SCHEMES**

### **SCOPE OF APPLICATION**

- 5.1 This section applies to Community Schemes other than Sectional Titles Schemes, all persons who own property in such schemes, all persons who manage such schemes and the CSOS.
- 5.2 Such schemes or persons may apply to the Chief Ombud for the approval of special and/or unanimous resolutions.

### **ADMINISTRATIVE PROCEDURE**

- 5.3 The applicant must complete the prescribed resolution – Form ST1 on the CSOS Connect Platform.
- 5.4 The applicant bears the onus of ensuring that all relevant information has been submitted. The applicant must ensure that the application form is correctly completed and meets all the legislative requirements. The CSOS SGO cannot complete application forms for applicants, nor can it instruct applicants on how to complete their application form, unless the applicant is unable to read and write or has some physical impairment. The CSOS SGO may provide guidance in so far as it relates to the approval of the resolution by the Chief Ombud however the CSOS SGO cannot provide advice in relation to the merits of the case.<sup>6</sup>
- 5.5 The application form and any attachments may either be typed or handwritten, provided it is legible and easy to read. All applications must be in English however CSOS does recognise and make provisions for other official languages.

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<sup>6</sup> Such guidance being timelines, the documentation required and whether the applicant qualifies to bring such an application.

- 5.6 If an application is not clear and legible, the applicant shall be requested to resubmit a new application to the CSOS SGO. Timelines are triggered by the completeness and legibility of the application.
- 5.7 If the applicant requires multiple approvals, a separate application for each approval sought must be submitted or one form with separate annexures per request for approval must be submitted.
- 5.8 The application form must be signed by the applicant or the applicant's authorised Representative.
- 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., director, 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 contains only information that the applicant is prepared to disclose to all the other parties to the dispute. Should the application and supporting material contain Personal Information of others, i.e. Data Subject, consent from the Data Subject is required. The information submitted by the applicant shall not be classified as private and confidential. The applicant waives the right to confidentiality, and the applicant shall provide adequate proof that the consent of the Data Subject has been obtained.
- 5.11 The application must be made within a period of 90 (ninety) business days if the applicant was unable to obtain the required approval. However, should the applicant fail to bring the application within the mentioned timeframe, condonation can be granted by the Chief Ombud.

#### **HOME OR PROPERTY OWNERS' ASSOCIATION**

- 5.12 A HOA incorporated as a non-profit company in terms of the Companies Act or established according to the common law, must adhere to the memorandum of incorporation and constitution of the scheme respectively.
- 5.13 Sufficient evidence must be shown by the applicant that prior to the submission of an application for the approval of a special and/or unanimous resolution, such resolution

was proposed by at least two members, tabled for approval at a meeting. The application to the Chief Ombud has been made as a last resort after internal processes have been exhausted.

### **SHARE BLOCK COMPANY**

- 5.14 Share Block Companies must comply with the provisions of the founding legislation, the use agreement or its scheme governance documentation.
- 5.15 Sufficient evidence must be shown by the applicant that prior to the submission of an application for the approval of a special and/or unanimous resolution, such resolution was tabled for approval at a meeting. The application to the Chief Ombud has been made as a last resort after internal processes have been exhausted.

### **HOUSING CO-OPERATIVES**

- 5.16 Housing Co-operatives must comply with the provisions of its applicable constitution or its scheme governance documentation.
- 5.17 Sufficient evidence must be shown by the applicant that prior to the submission of an application for the approval of a special and/or unanimous resolution, such resolution was tabled for approval at a meeting. The application to the Chief Ombud has been made as a last resort after internal processes have been exhausted.

### **HOUSING SCHEME FOR RETIRED PERSONS**

- 5.18 Housing Schemes for Retired Persons must comply with the provisions of the constitution for the Housing Scheme for Retired Persons or its scheme governance documentation.
- 5.19 Sufficient evidence must be shown by the applicant that prior to submission of an application for the approval of a special and/or unanimous resolution, such resolution was tabled for approval at a meeting. The application to the Chief Ombud has been made as a last resort after internal processes have been exhausted.

## **SUPPORTING DOCUMENTATION**

- 5.20 Notice of the meeting and proof that all owners received the notice and/or proof that a round-robin was conducted must be submitted where applicable.
- 5.21 Draft minutes of a duly quorate general meeting reflecting a number of members who attended or were duly represented.
- 5.22 The read receipt notice or member's signature acknowledging receipt will serve as proof that the notice has been received by a member of the Community Scheme.
- 5.23 Confirmation by directors indicating votes, both in number and value, of members who voted in favour of the resolution.
- 5.24 A list indicating the number of members who voted against the resolution.
- 5.25 Reasons furnished by members who voted for or against the resolution, if provided.
- 5.26 Any other documents in support of or against the application.
- 5.27 Any motivations given in support of or against the resolution.

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

- 5.28 As soon as an application is received by the CSOS SGO, a new file shall be opened, and a unique file reference number will be allocated. The determined timeline of 30 days will commence once the completed application is received.
- 5.29 The application shall be assessed by the CSOS SGO to determine whether the application complies with the scheme governance documentation and this Practice Directive.
- 5.30 Where necessary, the CSOS SGO shall contact the applicant and request clarification or any additional information to satisfy the requirements of the scheme governance documentation and this Practice Directive.

5.31 The CSOS SGO shall assess the application, taking into consideration whether the approval of the resolution is lawful, reasonable and fair to all Community Scheme members. In the assessment process, the below-stated factors shall be taken into consideration: -

5.31.1 The provisions of the scheme governance documentation;

5.31.2 The reasons submitted by members who voted against the resolution;

5.31.3 The objective and purpose of the resolution; or

5.31.4 Whether the resolution will enhance the living conditions of the members residing in the scheme or promote proper governance in the Community Scheme.

## **REJECTION OF APPLICATION**

5.32 The CSOS SGO may reject an application that fails to meet the requirements set out in the scheme governance documentation or this Practice Directive.

5.33 If the CSOS SGO decides to reject an application, the applicant shall be informed in writing and be furnished with reasons for the rejection.

5.34 The grounds for rejection of the application may include but not limited to the following:

5.34.1 That the application is part of, or is closely related to the existing proceedings in court;

5.34.2 That the applicant failed or neglected to provide the requested further particulars within the date set by the SGO; and

5.34.3 That the application is in contravention of provisions set out in the scheme governance documentation.

## **PAYMENT OF PRESCRIBED FEE**

5.35 No fee is payable for the processing of the application.

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

- 5.36 Having considered the provisions of section 33 of the Constitution of the Republic of South Africa and the Promotion of Administrative Justice Act 3 of 2000 (**PAJA**), it is imperative that the CSOS SGO notifies any interested and affected parties and provides them with an opportunity to be heard before a decision is made. This is in line with the principle of *audi alteram partem* rule.
- 5.37 The CSOS SGO shall provide the interested and affected parties with a copy of the notice detailing the nature and purpose of the application received from the applicant.
- 5.38 The Body Corporate must ensure that the said notice is circulated to all its members 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.
- 5.39 The affected parties will have 21 (twenty-one) business days to respond to the notice.
- 5.40 The CSOS SGO shall only consider an extension by 10 (ten) business days if an affected party provides exceptional circumstances for not responding within the given time frame as mentioned above.
- 5.41 If no response is received from the members, as requested, the CSOS SGO shall provide all the information to Chief Ombud and the Chief Ombud will make a decision which shall be circulated to the parties within 30 (thirty) business days.

## **DECISION BY THE CHIEF OMBUD**

- 5.42 Once the Chief Ombud has made a decision, any affected or 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.

## **6. LODGEMENT OF RULES SUBSTITUTED, ADDED TO, AMENDED OR REPEALED FOR APPROVAL**

### **SCOPE OF APPLICATION**

- 6.1 This section applies to Sectional Title Schemes, all persons who own such schemes, all persons who manage such schemes and CSOS.
- 6.2 The section only applies to applications in terms of section 10(5) of the STSM Act.
- 6.3 For HOAs or any other Community Scheme besides those mentioned above, see No. 7 below.

### **ADMINISTRATIVE PROCEDURE**

- 6.4 The Community Scheme must complete the application for the amendment of rules using the prescribed Form B.
- 6.5 Form B can be completed online on the CSOS Connect platform ([www.csos.connect.org.za](http://www.csos.connect.org.za)) or downloaded from the CSOS website. Alternatively, the form can be obtained at any of the CSOS regional offices or satellite office nationwide.<sup>7</sup>
- 6.6 The completed form must be submitted to CSOS, via any of the following namely online, by post, email, or hand-delivered to any of the CSOS regional offices or satellite offices. The dedicated email address is [sectionalttitle@csos.org.za](mailto:sectionalttitle@csos.org.za).
- 6.7 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 SGO cannot complete the application form for the applicant nor can the SGO instruct applicants on how to complete their application forms, unless the applicant is unable to read and write or has some physical impairments.

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<sup>7</sup> The applicant can login to the CSOS Connect platform as indicated above under clause 1.10. No section 10 certificate will be issued to Sectional Titles Schemes not registered with CSOS.



- 6.8 The application form and any attachments may either be typed or handwritten, provided it is legible and easy to read.
- 6.9 If an application is not clear and legible, the applicant shall be requested to resubmit a new, clear and legible application to the SGO.

## **APPLICATION REQUIREMENTS**

### **Issuance of Section 4 and Section 10 Certificates for Sectional Title Schemes within a Homeowners Association (HOA)**

- 6.10 Regulation 6(4) applies to a Community Schemes which is still to be established and in the process of registration of a sectional titles scheme, the conduct and management rules must be submitted to CSOS for quality assurance.
- 6.11 The application for issuing a section 4 certificate of the STSM Act must be accompanied by the following:
- a) Prescribed Form B (notice of amendment of rules), duly signed by the developer and conveyancer;
  - b) Approved and complete sectional plan by the Surveyor General;
  - c) Consolidated rules;
  - d) Title deed reflecting the Developer's details; and
  - e) Conveyancer's certificate, if Annexures 1 and 2 of the regulation on STSM Act are adopted, confirming such adoption.
- 6.12 Upon receipt of these documents CSOS will issue a section 4 and section 10 certificate.

### **New Community Schemes (Opening of Sectional Titles Register)**

- 6.13 In terms of section 11 of the STA, when a developer seeks approval from the Registrar of Deeds for the opening of the sectional title register, such approval must be accompanied by a certificate issued in terms of section 10 of the STSM Act, approving the rules that will apply to the Community Scheme.
- 6.14 The application for approval of rules in terms of section 10 of the STSM Act must be accompanied by the following:
- a) Prescribed Form B (notice of amendment of rules), duly signed by the developer and conveyancer;
  - b) Approved and complete sectional plan by the Surveyor General;
  - c) Consolidated rules;
  - d) Title deed reflecting the Developer's details; and
  - e) Conveyancer's certificate, if Annexures 1 and 2 of the regulation on STSM Act are adopted, confirming such adoption.<sup>8</sup>

### **Existing Community Schemes**

- 6.15 An application for approval of the amendment of Community Scheme rules must be accompanied by the following documents:
- a) Prescribed Form B, duly signed by two trustees or one trustee and the managing agent);
  - b) Consolidated rules (management and/or conduct rules);

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<sup>8</sup> The Conveyancer's certificate must include the conveyancer's practice number.

- c) Signed minutes of the general meeting where the rules were tabled for approval by the members of the body corporate, including minutes of round robin meetings;
- d) Unanimous resolution where the management rules were submitted; or
- e) Special resolution in respect of conduct rules.
- f) Notice of meeting; and
- g) Attendance register.

## **PROCEDURAL REQUIREMENTS**

- 6.16 The SGO will conduct quality assurance on the scheme's governance documentation received, and specify amendments, if necessary.
- 6.17 The trustees must inform the Body Corporate of the approved amendments, either via email or by affixing the amended rules on the notice board of the body corporate within 7 (seven) business days after the trustees received the section 10 certificate from CSOS.
- 6.18 If the Chief Ombud did not issue a section 10 certificate, the management or conduct rules of the body corporate are not enforceable against the members.

## **QUALITY ASSURANCE**

- 6.19 The scheme governance documentation will be quality assured against the provisions of the STSM Act, the CSOS Act, the Constitution of the Republic of South Africa, municipal by-laws, and any other relevant and/or applicable legislation.
- 6.20 Quality assurance is designed to ensure that the scheme's governance documentation applies fairly and equally to all members of the Community Schemes. Should any provision of the governance document be found to be in conflict with the applicable legislation, such provision will be rendered invalid and must be severed from the document.

- 6.21 The language for the drafting of the documents must be clear and unambiguous and understandable to all members. The use of derogatory or discriminatory words must be avoided. In addition to checking the language used, the SGO shall also check for spelling errors and the layout of the document. Preferably, English should be used in the drafting of the documentation.
- 6.22 All scheme governance documentation must be subjected to a process of periodic review to ensure that the information contained in the document is still correct and accurately reflects current and any changes to legislation.

## **APPROVAL OF THE RULES**

- 6.23 Section 10(2) of the STSM Act states that the management rules may be substituted, added, amended or repealed by the developer or by unanimous resolution of the members of the body corporate. The conduct rules may be substituted, added, amended or repealed by the developer or special resolutions of the members of the Body Corporate.
- 6.24 The commencement of the substitution, addition, amendment and repeal of the rules comes into effect after the approval by the Chief Ombud (i.e., on the date of the issuing of a certificate as contemplated in section 10(5)(c) of the STSM Act.)
- 6.25 The substitution, addition, amendment, or repeal of the rules must be reconciled with the provisions of the Constitution of the Republic of South Africa, the CSOS Act, STSM Act, the prescribed management and conduct rules, any other applicable legislation and relevant by-laws. The substitution, addition, amendment, or repeal of the rules shall not be approved by the Chief Ombud if the Chief Ombud believes they are not reasonable and appropriate for the Community Scheme.
- 6.26 The SGO will examine the proposed substitution, addition, amendment, or repeal. If the proposed substitution, addition, amendment, or repeal is unreasonable, inappropriate or contravenes any other legislation, the SGO shall instruct that those amendments be effected and referred back to the Community Scheme for implementation.
- 6.27 The Chief Ombud shall issue the approval certificate in terms of section 10(5)(c) of the STSM Act in the event that the substitution, addition, amendment or repeal is

reasonable, appropriate and complies with all legislation, or the Community Scheme has effected amendments as instructed by the SGO.

- 6.28 Community Schemes may on request collect or make necessary arrangements to collect their approval certificates from the CSOS Head Office, which is situated at Berkley Office Park, 8 Bauhinia Street, Highveld Technopark, Centurion, Province of Gauteng or as indicated from time to time.
- 6.29 On the written request by a Community Scheme, the approved certificate may be couriered to the CSOS regional offices or satellite offices and may be collected or couriered from those offices.

#### **AMENDMENT OF THE STA**

- 6.30 Section 21 of the STSM Act states that the rules prescribed under the STA (which has been amended by the STSM Act) must continue to apply to New and Existing schemes until the Minister has made regulations prescribing management rules and conduct rules referred to in section 10(2) of the STSM Act.
- 6.31 The implication of section 21 is that the old, PMR (**Annexures 8 and 9**) of the STA have been repealed and replaced by **Annexures 1 and 2** of the regulations on the STSM Act. However, any additions, substitutions and amendments made to the old **Annexures 8 and 9** will continue to apply until amended, substituted, added or repealed in terms of section 10(2) of the STSM Act. It must be noted that the additions, substitutions and amendments that continue to apply will only do so if they are not contrary to the provisions of the STSM Act and **Annexures 1 and 2** of the regulations on STSM Act.
- 6.32 The STA has been amended in terms of section 20 of the STSM Act. The implications of section 20 of the STSM Act are that certain provisions of the STA have either been amended or repealed. The extent of the amendment is published as a schedule under the STSM Act. Consequently, sections of the STA dealing with the rules have been repealed and the Chief Ombud shall not approve rules that still refer to the STA provisions that have been repealed.
- 6.33 If reference is made to the rules of the STA, it must be changed to the STSM Act.

- 6.34 All amendments to the rules must be submitted to CSOS for consideration and approval and are no longer required to be lodged with the Registrar of Deeds.<sup>9</sup>
- 6.35 A special resolution cannot be passed at a trustees' meeting – only ordinary trustees' resolutions (majority votes).
- 6.36 The governance unit of CSOS shall not issue a certificate of approval of the rules if there is a dispute lodged with CSOS regarding the rules.
- 6.37 The SGO shall not under any circumstances accept an unsigned copy of the minutes of a meeting for the approval of the rules.
- 6.38 The Chief Ombud shall not approve rules that do not comply with the prescribed requirements relating to the amendment and approval of rules.

#### **UNDESIRABLE RULES**

- 6.39 To ensure uniform application of the rules and compliance with all the regulatory requirements, CSOS has identified the following as undesirable rules and are relevant for quality assurance purposes. The list is annexed below, marked **Annexure "B"**.

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<sup>9</sup> According to Chief Registrar's Circular no. 13 of 2016, which makes provision for the amendment of the STA by the STSM Act.



## **ANNEXURE B: UNDESIRABLE RULES UNDER THE STSM ACT**

*This annexure is applicable to Sectional Title Schemes as defined in the STSM Act.*

Below is a list of areas of contention within the Community Scheme industry that have to be removed from proposed Community Schemes rules or can be considered in Community Scheme rules. This list is not exhaustive and includes all prohibitions contained in the STSM Act.

### **Enforcement of management and conduct rules:**

- A rule stipulating that any dispute in relation to PMR and/or PCR between the body corporate and an owner, or between owners must be determined by private arbitration is undesirable.
- Such a rule is undesirable because management rule 71 of the STA has been repealed, the CSOS Act provides for the procedure for dispute resolution including adjudication.
- However, an internal dispute resolution process for owners must be embedded in the rules prior for it to be referred to CSOS as it aims to allow owners to be heard and provide a fair and equitable process to deal with such issues.
- Example: *Any dispute concerning any breach of the management and/or conduct rules will be referred to private arbitration and the occupier and/or owner will be liable for all costs.*

### **Contravention of Rules and Laws:**

- If as a result of a breach by an owner of any PMR and/or PCR or any other obligation of the owner, the Body Corporate or the trustee's debits or charges an amount on a member's account based on their own accord, this is contrary to management rule 25(5) contained in Annexure 1 to the STSM Act which states that:

- The Body Corporate must not debit a member's account with an amount that is not a contribution, or a charge levied in terms of the STSM Act or these rules without the members consent or the authority of a judgement or order by a judge, an Adjudicator or arbitrator.
- Therefore, it constitutes an undesirable rule to have any rules that seek to debit or charge members without their consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.
- *Example: Should any Conduct Rule be contravened, the trustees are authorised to or may recover the costs from the owner and/or occupier. This amount may be debited to the owner and/occupier's account and becomes payable immediately.*

***It must be noted that the rules must not be contrary to the provisions of the STSM Act and Annexures 1 and 2 of the regulations on STSM Act. Rules in contravention of the STSM Act and Annexures 1 and 2 of the regulations on STSM Act will not be approved by CSOS.***

#### **Undesirable management rules:**

##### **1. Imposition of penalties without due process**

- A rule that imposes penalties arbitrarily without notice/warning is undesirable.
- The trustees do not have any power to decide on fines and penalties on their own or take any action against an owner or occupier – the fair and equitable procedure as set out in the rules must be followed.
- Fines and/or penalties may not be equal to, or more than the applicable monthly levy of the unit concerned. The fines and/or penalties must be reasonable and should apply equally to all owners of units.
- *Example of undesirable rule: Any occupier and/owner who contravenes any rules of the Body Corporate will be liable to pay a fine of R5 000.*
- A fine and penalty clause should include the following:



FIRST TRANSGRESSION NOTICE	SECOND TRANSGRESSION NOTICE
In writing to member or occupier	In writing to member or occupier
Explain transgression (offence)	Explain transgression (offence) – relates to the same offence as a first offence
Advise to stop	Advise to stop
Give timeframe	Give timeframe
Member or occupier may dispute offence	Member or occupier may dispute offence
Meet with the board of trustees	Meet with the board of trustees
No fine may be imposed	Fine may be imposed

## 2. Disclosure of Personal Insurance and Mortgage bonds

- A rule that when a tenant or occupier amends their personal insurance policy (over their own **movable** property), the trustees should be notified is undesirable.
- Example: *When as an occupier and/or owner, you sign up for personal insurance on your movable property, the Body Corporate must be informed of such insurance or any amendments thereto.*
- In terms of Section 14 of the STSM Act, an owner is permitted to obtain insurance in respect of any damage to their property arising from risks not covered by the policy effected by the Body Corporate.
- It is not an undesirable rule for owners or occupiers to advise the trustees whether first mortgage bonds exist and if so, the name of the financial institution/company which holds the bond.

## 3. Duty of Unit Owners

- An owner of a unit has an obligation to repair and maintain his or her section in state of good repair and, in respect of an EUA, keep it in a clean and neat condition.

- Example: *Outside security gates, burglar bars, canopies, etc. which are situated on the common property is the responsibility of the unit owners.* This is not correct as the maintenance and repair thereof is the responsibility of the Body Corporate.
- The Body Corporate must have a maintenance, repair and replacement plan for the common property.

#### **4. Rule Created Exclusive Use Areas**

- EUA must include a plan to scale of the EUAs to be created – a plan to scale must be drafted by an architect or a draughtsman.
- Therefore, rules that permit an owner to provide a plan to scale of the EUA not professionally drafted by an architect or a draughtsman is undesirable.
- The owner may not let the EUA designated to his unit without the written permission of the board of trustees. Such permission may not unreasonably be withheld.
- Each owner is responsible for the repair and maintenance (flower beds, oil spills, etc.) of the EUA, including the maintenance and repair of any water pipes, electrical wiring, downpipes, security devices, Lapas, verandas and the like, solely servicing that area. Therefore, it is an undesirable rule to require other owners besides the owner of the EUA to repair and maintain the EUA of another.

#### **5. Geyser**

- The Body Corporate may insure against risks associated with water escapes, included but not limited to bursting and overflow of pipes. Furthermore, water-heating installations such as geysers form part of the common property and is insured by the Body Corporate however the owner has an obligation to maintain, repair and if necessary, replace the installation.
- Damage occurring to fittings i.e., windows, carpets, etc. are covered by the complex insurance policy subject to payment of an initial excess, as in a normal homeowner's policy, including that drip trays must be placed underneath geysers.

- Example: *The Body Corporate is responsible for all damage to the geyser. Should it be necessary to replace a geyser, the Body Corporate is liable for the excess payable.*
- The owner is responsible for the payment of the excess for an insurance claim.
- Section 3(1)(a)(i) of the STSM Act places an obligation on the Body Corporate to repair and maintain the common property. Section 13(1)(a) of the STSM Act refers to members allowing maintenance and repairs to be done to their section and/or EUAs. Both these provisions imply that there is a duty on the Body Corporate to maintain and repair common property areas, water heating pumps and water meters form part of the common area and should therefore not be the sole responsibility of the members.
- PMR 31(1) which provides that water –heating installation forms part of the common property and is insured by the body corporate and members will be responsible for maintenance thereof.

## **6. Language Policy**

- English has been widely accepted as the main medium of communication and a language of record for business purposes.
- It is discriminatory, unfair and unconstitutional to use other languages, that will inhibit effective communication amongst members of the Community Scheme.
- Therefore, it is an undesirable rule to stipulate that meetings will be conducted in another language besides English.

## **7. Business Activities**

- The owner must when the purpose for which a section or EUA is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section or EUA to be used for any other purpose: provided that with the written consent of all owners such section or EUA may be used for

that purpose as consented to.<sup>10</sup> Therefore it is an undesirable rule to allow owners to use a section or EUA for business activities purposes it was not intended for.

- Should a member wish to deviate from the purpose which a section or EUA is intended for, consent of **all owners** is required.
- Example: *An owner or occupier of a section may run a business, profession or trade from their section, exclusive use area or on any part of the common property without the trustees' prior written approval.*

## 8. Governance and Management Issues

- The trustee's fiduciary duty expands beyond the term of office as a trustee. Thus, if a dispute arises and it relates to matters in their term of office and they are still a member of the Body Corporate, they will be required to respond and assist the current trustees to respond to the allegations.
- Election of trustees. The STSM Act states that a member may nominate any person to stand for the office of trustee. Thus, a tenant or a third party, if nominated, by an owner may stand for office subject to disqualification as provided in the PMR attached to the STSM Act.
- Therefore, it is an undesirable rule to prohibit tenants from being trustees, and the rules should not absolve a trustee of their fiduciary duty, as stated above they remain liable for matters that arose during their term of office.

## 9. Proxies

- A member may appoint a proxy to represent them at a meeting. The proxy may be any person (i.e., tenant or occupier). This appointment must be in writing; the proxy form is attached to the regulations. A person may not, however, be a proxy to more than two members (not units).<sup>11</sup> Members who are registered as joint owners of the same unit cannot stand as proxy for more than one person.

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<sup>10</sup> Short term rentals do not constitute business activities as they do not deviate from the purpose for which the section or EUA is registered i.e. accommodation, residential purposes.

<sup>11</sup> Section 6(5) of the STSM Act.

- In terms of PMR 20(7), when two or more persons are entitled to exercise one vote jointly, that vote may be exercised only by one person, who may or may not be one of them, jointly appointed by them as their proxy.
- In terms of PMR 20(7), When two or more persons are entitled to exercise one vote jointly, that vote may be exercised only by one person, who may or may not be one of them, jointly appointed by them as their proxy.

## **10. Mandate of Trustees**

- It is recommended that the limitation on trustees be reduced to writing and made known to all members i.e., set limits on the money that can be spent by trustees. Trustee activity must be transparent and recorded in writing. Members are permitted access to records of meetings and to observe meetings (but may not vote at trustee meetings).
- Therefore, it is an undesirable rule to have provisions in the rules that seek to not hold trustees accountable for their actions. All decisions taken by the trustees are subject to the Act, rules and the common law of meetings.

## **11. Interest**

- Interest can be charged at the discretion of the trustees in terms of the PMR 21 (3)(c) subject to a maximum of 24% per annum capitalised monthly in arrears (provided that the interest rate must not exceed the maximum rate of interest payable per annum under the NCA).
- Therefore, rules that seeks to charge a member more than maximum rate of interest payable per annum under the NCA is undesirable.

## **12. Levies**

- There can be no rule preventing members from exercising their voting rights for non-payment of levies.

- Rules preventing the member/tenant/occupier access to the property for non-payment of levies will not be passed. Such rules are classified as undesirable.
- A member's entitlement to vote on ordinary resolutions (not special and unanimous resolutions) can only be restricted in terms of PMR 20(2) if that particular member fails or refuses to pay the body corporate any amount due by that member after a court or adjudicator has given a judgement or order for payment of that amount or that member persists in the breach of any of the conduct rules of the scheme referred to in section 10(2)(b) of the STSM Act after a court or an adjudicator has ordered that member to refrain from breaching such rule.

### **13. Costs**

- Any rule attempting to recover the cost of travel and CSOS dispute resolution processes from a member will not be passed. Such a rule is regarded as undesirable.
- This Practice Directive stipulates that no fees are payable for dispute resolution purposes.

### **14. Phased developments**

- In phased developments, the developer must specify the development period within which the extension will be completed, and which part of the common property will be utilised.
- The development period must have years of the estimated period or when the erven are all sold, whichever comes first, please specify this in the rules – usually only applies to HOAs. However, it may be in the rules of a Sectional Title Scheme.

### **15. Domicile**

- Owners must be allowed to choose an alternative domicile in case they do not reside in their unit. Therefore, it is an undesirable rule to prohibit owners from using alternative domicile. The example below constitutes an undesirable rule.

- Example: *The domicilium citandi et executandi of each owner shall be the address of the section registered in his name within the Community Scheme.*

### **Undesirable conduct rules**

#### **16. Consumption of food in the common property**

- A rule stating that owners or tenants or occupiers are not allowed to eat on the common property is undesirable.
- However, the owner or occupier or tenant must take due care to ensure that there is no litter or other materials on the common property in a way or place likely to interfere with the enjoyment of the common property by another owner or occupier.
- The consumption of alcohol or any intoxicating substances may be prohibited in the common property.<sup>12</sup>
- Example: *No occupier and/or owners of a unit is permitted to consume food in the common property. Therefore, consumption of food shall only be consumed inside the unit of an occupier/owner.*

#### **17. Domestic Employees**

- Rules that domestic workers are not allowed to receive visitors, not allowed to talk to one another on common property or walk around the common property without a name tag or pass or in the instance that trustees may refuse a domestic worker entry to the common property are undesirable, these rules are discriminatory against domestic helpers and maybe contrary to the Constitution of the Republic of South Africa.
- Rules requesting a domestic worker to be registered with the estate manager/security personnel before entering the Community Scheme is not undesirable.

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<sup>12</sup> Refer to below clause regarding the use of cannabis in Community Schemes.

- Example: *No domestic worker may be permitted to walk around the common property without a name tag.*

## **18. Tenant Evictions**

- The Body Corporate cannot force a unit owner to evict his/her tenant, as this is unreasonable, irrational, and unconstitutional.
- CSOS has the authority to review Community Scheme rules, disputes pertaining to tenant evictions should be referred to the Rental Housing Tribunal.
- Example: *The Body Corporate is permitted to inform the owner of a unit to evict an occupier of a unit.*

## **19. Vehicles**

- It is an undesirable rule to stipulate in the rules that a vehicle will be towed. Trustees cannot authorise the towing of a vehicle but may impose a penalty or provision for the clamping of the wheels of the illegally parked vehicle if this is in the respective rules.
- Example: *The trustees may cause any vehicle to be towed away, at the risk and expense of the owner of the vehicle, any vehicle parked and/or standing or abandoned on the common property.*

## **20. Slaughtering**

- The slaughtering of animals for cultural or religious purposes cannot be prohibited in terms of the Constitution of the Republic of South Africa.
- Conditions for slaughter may, however, be imposed, for example:
  - o At least 2 (two) weeks' written notice of the intended religious or cultural event requiring such ritual slaughter shall be given to the trustees for approval;
  - o The date and time of the proposed slaughtering;



- o The type of animal to be slaughtered;
- o The name and qualification of the person registered by the relevant authority to perform the religious or cultural slaughtering;
- o Confirmation that the animal will be brought onto the premises immediately prior to the ritual or cultural slaughtering and that all remains of the animal will be removed immediately from the premises after the act of ritual or cultural slaughtering;
- o A notice from the local authority must accompany the notice confirming that all by-laws with regards to the ritual or cultural slaughter have been/will be complied with;
- o A certificate from the Society for the Prevention of Cruelty towards Animals (SPCA) must accompany the above notice confirming that an official from the SPCA will be present at the proposed event to ensure that the animal to be slaughtered will not endure unnecessary pain and suffering during such slaughter;
- o Notice must be given to the Executive Committee Members. The Executive Committee Members will provide notice to all adjacent units of the date and time of the proposed slaughter and proof of the receipt of such notice by the owner/tenant responsible for the unit must be timeously submitted to the Executive Committee Members;
- o Failure to comply with the requirements set out above will entitle the body corporate to prevent the act of ritual or cultural slaughtering from taking place on the premises or penalising the owner with a fine.

## **21. Animals and Pets**

- The Community Scheme may prohibit pets entirely; however, that prohibition would not apply to a member or occupant who can show that he or she needs medical assistance and/or guide, hearing or assistance dog (animal). Such animals are automatically permitted.
- Where the Community Scheme introduces a 'no animal' rule, where previously they permitted pets, they must consider pre-existing pets. An owner that had a pet

prior to the coming into effect of the rules must be permitted to retain that pet but may be prohibited from replacing that pet if it dies – the so-called ‘grandfather clause’.

## **22. DSTV/Solar Panel Installations**

- A DSTV dish or solar panels, including solar geyser panels, may only be installed by an expert; – a DSTV or solar certified professional installer.
- Therefore, it is not an undesirable rule to state that installations should be conducted by experts.

## **23. Property Practitioners**

- Only a certain property practitioner may let or sell a unit, this is discriminatory, unreasonable and prejudicial to unit owners. Therefore, it is an undesirable rule to only allow certain property practitioners to let or sell a unit within the Community Scheme.
- This rule imposes an unreasonable limitation on the rights of an owner in the Community Scheme to market, sell and let his or her unit through a property practitioner of his or her choice, and the CSOS will not register a rule of this nature.

## **24. Short term rental aggregators <sup>13</sup>**

- Example: The owners may only utilise the services of Airbnb for the short-term rental of his/her unit.
- Only a certain short term rental aggregator may be utilised for the listing, booking and letting of short-term rentals, this is unreasonable to unit owners and to renters as it creates consumer autonomy and market monopolies.

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<sup>13</sup> Short term rental aggregators are platforms that enable property owners to list their properties and provide accommodation to others on a short-term basis. Examples of short-term rental aggregators are Airbnb, Booking.com and Lekkeslap.

- This rule imposes an unreasonable limitation on the rights of an owner in the Community Scheme to market and let his or her unit through a short-term rental aggregator of his or her choice, and the CSOS will not register a rule of this nature.
- For security purposes, it is not an undesirable rule to require the short-term rental aggregators to be registered with the community scheme manager, e.g. estate manager

## **25. Restriction, disconnection of utilities**

- Any rule that seeks to restrict and/or disconnect water and/or electricity supply to members due to non-payment of levies is not undesirable.
- Due process must be followed by the Body Corporate prior to the discontinuation of utilities. Letters should be sent to the owner informing them of the consequences of non-payment. Should the correspondence be unsuccessful, the Body Corporate must approach the court to gain the necessary authority to disconnect utilities. Such recovery procedure should not involve self-help mechanisms where the Body Corporate disconnect the electricity without a notice and a court order. Written resolutions passed by trustees must be enforced by way of court order.

## **26. Alterations Inside the Unit**

- A unit owner is at liberty to make any alteration to the inside of his or her section provided that such alteration does not affect the structural integrity of his or her section or the Community Scheme as a whole, subject to the provisions of the STSM Act, the STA (reciprocal servitudes of subjacent and lateral support) as well as the management and conduct rules in toto. This includes the rules relating to nuisance.
- The provisions of section 5(h) of the STSM Act read with section 24 of the STA (extension of sections) cannot be amended by the conduct rules.
- Example: *whereas an owner intends to effect alteration to the interior of his section, work may be done to weight-bearing wall without the approval and consent of the trustees.* Such a rule is undesirable since it contradicts of the provisions of the STSM Act.

## **27. Use of cannabis**

- A rule that seeks to restrict the use and growth of cannabis in an owner's unit is undesirable.
- The use or possession of cannabis by an adult in private for an adult's personal consumption in private is permissible.

## **7. VOLUNTARY SUBMISSION OF RULES AND SCHEME GOVERNANCE DOCUMENTS FOR ALL COMMUNITY SCHEMES, OTHER THAN SECTIONAL TITLE SCHEMES**

### **SCOPE OF APPLICATION**

7.1 This section applies to:

7.1.1 HOAs;

7.1.2 Housing Schemes for Retired Persons;

7.1.3 Housing Co-operatives;

7.1.4 Any other Community Scheme contemplated in the CSOS Act other than a Sectional Title Scheme; and

7.1.5 the CSOS.

7.2 The application shall be voluntary and non-submission to CSOS does not invalidate the scheme's governance documentation.

### **ADMINISTRATIVE PROCEDURE**

7.3 The Community Scheme must complete the application for amendment of rules form - Form B1.

7.4 Form B1 may be completed on CSOS Connect or downloaded from the CSOS website at [www.csos.org.za](http://www.csos.org.za). Alternatively, the form may be obtained at any of the CSOS regional offices or satellite offices nationwide.

7.5 The completed form may be submitted to the CSOS either online, or hand-delivered to any of the CSOS regional offices or satellite offices.

- 7.6 The applicant bears the onus of ensuring that all relevant information has been submitted. The applicant must ensure that their application form is correctly completed and meets the requirements of this Practice Directive. The SGO cannot complete application forms and/or can the CSOS instruct applicants on how to complete their application form unless the applicant is illiterate or physically impaired.
- 7.7 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.
- 7.8 If an application is not clear and eligible, whether typed or handwritten, the applicant will be requested to submit a revised application that is clear and legible to a SGO.

## **APPLICATION REQUIREMENTS**

- 7.9 The application for approval of rules must be accompanied by the following documents:
- a) Form B1, duly signed by the two directors or one director and managing agent;
  - b) Signed and approved minutes of the meeting where governance documentation was tabled for approval by an appropriate body;
  - c) Consolidated governance documentation;
  - d) Signed resolution confirming the amendment of governance documentation; and
  - e) In case of amendment of rules, the Community Scheme's constitution or memorandum of incorporation must be attached to confirm the resolution required to amend the rules.

## **PROCEDURAL REQUIREMENTS**

- 7.10 The SGO shall conduct quality assurance on the scheme's governance documentation received, and specify amendments, if necessary.
- 7.11 The Community Scheme must inform all owners of the required amendment and ensure that amendments are made in the scheme's founding governance documentation.

## QUALITY ASSURANCE

- 7.12 The Community Scheme's governance documentation will be quality assured against the Constitution of the Republic of South Africa, municipal by-laws, and any other relevant and applicable legislation.
- 7.13 Quality assurance is designed to ensure that the scheme's governance documentation applies fairly and equally to all members of the Community Scheme. Should governance documentation be found to be in contravention of any legal prescript, the Community Scheme may be advised to amend such document by the SGO.
- 7.14 The SGO may refer back the rules to the Community Scheme for amendment of the sections that are not compliant with legislation. The Community Scheme must amend the rules within a period of 30 (thirty) business days.
- 7.15 For the referred back rules which are overdue by 5 (five) months, CSOS will send fieldworkers to inspect and report on the compliance of the Community Scheme. Should the Community Scheme fail to amend or rectify the referred back rules, the SGO will consider closing the file. The Community Scheme will be required to apply again if the file is closed.
- 7.16 The SGO will issue a quality assurance certificate (**QAC**) to the Community Scheme soon after the completion of quality assurance. A QAC which is stamped and issued by the Chief Ombud will be sent to the Community Scheme by email.
- 7.17 No QAC will be issued by the SGO if a Community Scheme is not registered with CSOS.

## UNDESIRABLE RULES

To ensure uniform application of governance documentation, CSOS has identified undesirable rules, and these rules are relevant for quality assurance purposes. The rules are annexed below, marked **Annexure "C"**.



## **ANNEXURE C: UNDESIRABLE RULES IDENTIFIED BY CSOS**

*These rules are applicable to HOAs, Housing Schemes for Retired Persons, Housing Co-operatives and Any other Community Scheme contemplated in the CSOS Act, other than Sectional Title Schemes.*

### **5. Enforcement of Rules**

- CSOS recognises that any person has a choice to approach any tribunal to have his/her dispute resolved; however, the CMO may not contract members outside the ambit of the CSOS dispute resolution process.
- Therefore, a rule that seeks to direct the CSOS dispute resolution process outside its ambit is undesirable.

### **2. Domestic Employees**

- Rules that domestic workers are not allowed to receive visitors, not allowed to talk to one another on common property or walk around the common property without a name tag or pass or in the instance that trustees may refuse a domestic worker entry to the common property are undesirable, these rules are discriminatory against domestic helpers and maybe contrary to the Constitution of the Republic of South Africa.
- Rules requesting a domestic worker to be registered with the estate manager/security personnel before entering the Community Scheme is not undesirable.
- Example: *No domestic worker may be permitted to walk around the common property without a name tag.*



### **3. Tenant Eviction**

- The Community Scheme cannot force a member to evict his/her tenant, as this is unreasonable, irrational, and unconstitutional.
- The Community Scheme cannot force a member to evict his/her short-term rental tenant, due to non-compliance with the Community Scheme rules. The Community Scheme can however enforce penalties for non-compliance with the Community Scheme rules.

### **4. Slaughtering**

- The slaughtering of animals for cultural or religious purposes cannot be prohibited in terms of the Constitution of the Republic of South Africa.

Conditions for slaughter may, however, be imposed, for example.'

- At least 2 (two) weeks' written notice of the intended religious or cultural event requiring such ritual slaughter shall be given to the trustees for approval;
  - o The date and time of the proposed slaughtering;
  - o The type of animal to be slaughtered;
  - o The name and qualification of the person registered by the relevant authority to perform the religious or cultural slaughtering;
  - o Confirmation that the animal will be brought onto the premises immediately prior to the ritual or cultural slaughtering and that all remains of the animal will be removed immediately from the premises after the act of ritual or cultural slaughtering;
  - o A notice from the local authority must accompany the notice confirming that all by-laws with regards to the ritual or cultural slaughter have been/will be complied with;
  - o A certificate from the Society for the Prevention of Cruelty towards Animals (SPCA) must accompany the above notice confirming that an official from the SPCA will be present at the proposed event to ensure that the animal to be

slaughtered will not endure unnecessary pain and suffering during such slaughter;

- o Notice must be given to the Executive Committee Members. The Executive Committee Members will provide notice to all adjacent members of the date and time of the proposed slaughter and proof of the receipt of such notice by the owner/tenant responsible for the unit must be timeously submitted to the Executive Committee Members;
- o Failure to comply with the requirements set out above will entitle the body corporate to prevent the act of ritual or cultural slaughtering from taking place on the premises or penalising the owner with a fine

## **5. Nature and Wildlife Estates**

- Community Schemes classified as nature and/or wildlife estates, with conserved fauna and flora are permitted to prohibit the slaughtering of wild animals conserved with the Community Estate.
- Therefore, it is not an undesirable rule to include rules that prohibit the slaughtering of wild animals however the slaughtering of livestock not conserved in the estate may be permitted.

## **6. Restriction and disconnection of essential utilities**

- Any rule that seeks to restrict and/or disconnect water and/or electricity supply to members due to non-payment of levies is not undesirable.
- Due process must be followed by the Community Scheme prior to the discontinuation of utilities. Letters should be sent to the owner informing them of the consequences of non-payment. Should the correspondence be unsuccessful, the Community Scheme can approach the court to gain the necessary authority to disconnect or restrict utilities. Such recovery procedure should not involve self-help mechanisms where the scheme disconnects the electricity without a notice and a court order. Written resolutions passed by trustees must be enforced by way of court order.

## **8. APPOINTMENT AND APPLICATIONS FOR EXECUTIVE MANAGEMENT AGENTS**

### **SCOPE OF APPLICATION**

- 8.1 This section applies to Sectional Title Schemes, all persons who own such schemes, all persons who manage such schemes and CSOS.
- 8.2 The section only applies to appointments in terms of PMR 28(1) and PMR 28(2) of the STSM Act.
- 8.3 For HOAs or any other Community Scheme besides those mentioned above, see No. 8.20 below.

### **APPOINTMENT OF EMAs**

- 8.4 In terms of PMR 28(1), the Body Corporate may, by special resolution, appoint an EMA to perform the functions and exercise the powers that would otherwise be performed and exercised by the trustees.
- 8.5 In terms of PMR 28(2), members entitled to 25% (twenty-five) total quotas of all sections may apply to the CSOS for the appointment of an EMA.

### **ADMINISTRATIVE PROCEDURE**

- 8.6 Under the CSOS Connect platform, the authorised Representative must follow the following steps in order to commence with the application:
  - 8.6.1 Open the CSOS Connect platform on [www.csosconnect.org.za](http://www.csosconnect.org.za) and select “Login”;
  - 8.6.2 The applicant will be prompted to register the Community Scheme if not yet registered – as indicated on 1.10 above.

- 8.6.3 If the Community Scheme is registered, the authorised Representative will be prompted to search the Community Scheme and will then be prompted to select “application for scheme EMA”.
- 8.7 In the completion of the application in terms of PMR 28(2), the applicant must follow the prompts and complete all the fields in the application process.
- 8.8 In the event that a Community Scheme has resolved to appoint an EMA in terms of PMR 28(1) but does not have details of EMAs, the Community Schemes may approach CSOS and request a copy of their panel list.
- 8.9 Upon receipt of the request, CSOS will provide the Community Scheme with the panel list, and the Community Scheme will select their preferred EMA.

## **SUPPORTING DOCUMENTS**

- 8.10 Appointments in terms of PMR 28(2) require the applicant to submit the following documents:
- 8.10.1 Valid fidelity fund certificate;
- 8.10.2 Proof of the notice to members of the Body Corporate accompanied by an agenda;
- 8.10.3 Minutes of the meetings; <sup>14</sup>
- 8.10.5 Proof of 25% (twenty-five) voting quota of the members of the total quota of all the section; and
- 8.10.6 Voting register with signatures.

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<sup>14</sup> The minutes must indicate the attendees, quorum, proxies held and results of the voting of all motions.

## **PROCEDURAL REQUIREMENTS**

- 8.11 The CSOS shall conduct quality assurance on the documents received for compliance with legislative requirements.
- 8.12 Should the CSOS require more information, a request letter requesting for further information will be sent to the applicant. The applicant shall respond to the letter within 7 (seven) business days. The applicant will not be considered if the mandatory information requested is not provided.
- 8.13 The Chief Ombud shall issue a notice to all members of the Body Corporate advising them of the application for an appointment received.
- 8.14 Members of the Body Corporate will be provided an opportunity to confirm knowledge of the application and file objections if any. Members of the of the Body Corporate must provide responses within 7 (seven) business days.
- 8.15 Should the applicant provide the requested information within 7 (seven) business days, it will be resolved that the Community Scheme has appointed an EMA in terms of PMR 28(1). If the appointment is in terms of PMR 28(2), the CSOS will appoint the EMA from their panel of EMAs and issue an appointment letter.
- 8.16 The Chief Ombud will provide a memorandum to the Community Scheme and an approval letter to the EMA, if more than one EMA has been appointed by the Chief Ombud, in relation to PMR 28(2) appointments.

## **REMOVAL OF EMAs APPOINTED IN TERMS OF PMR 28(2)**

- 8.17 Section 4(2)(d) of the CSOS Act empowers CSOS to deal with any matter as may be necessary to give effect to the objectives of the CSOS Act. Such as:
  - 8.17.1 Ensuring that EMA's appointed by CSOS conduct themselves in a manner which aligns with the principles of good governance and accountability, CSOS issues all appointed EMAs with a code of conduct. An EMA who does not adhere to the code of conduct and grossly violates the principles of good governance may be removed by CSOS.

8.18 An EMA takes over the functions and powers exercised by the trustees during the tenure of their appointment. The tenure of a CSOS appointed EMA is 3 (three) years, however the appointment can be terminated prior to the expiry of 3 (three) years.

8.19 The process of removal will be initiated by an application lodged against the EMA with CSOS.

8.19.1 Application procedure entails the following:

- (a) Trustees must apply in writing to [csosemapanel@csos.org.za](mailto:csosemapanel@csos.org.za);
- (b) The application form must be accompanied with notice to members of the Body Corporate calling for a SGM accompanied by an agenda that includes the decision to consider revoking the EMA's mandate; minutes of the meeting including a resolution and tabled reasons regarding the removal of the EMA, an attendance register and proof of 25% (twenty-five) of the total voting quotas of all the sections;
- (c) Upon receipt of the complaint, a reference number will be allocated to the complainant within 7 (seven) business days;
- (d) the EMA will be notified of the application in writing by CSOS;
- (e) The EMA will be advised to make submissions to CSOS on the application for their removal within 14 (fourteen) days of receiving the application;
- (f) The meeting will be held between the EMA, the members of the Community Scheme and a CSOS official after the submission of the EMA has been received, the meeting shall be held within 30 (thirty) business days of receiving the submission;
- (g) A notice of the time, date and place of the meeting will be sent to all parties. The meeting will be chaired by the CSOS official, thereafter a report with findings and recommendations will be prepared.

- (h) The report will be submitted to the Ombuds for recommendation and approval by the Chief Ombud.
- (i) Upon consideration of all information a decision will be made by the Chief Ombud within 15 (fifteen) business days after the meeting;
- (j) The removal will be signed by the Chief Ombud and issued to the members of the Community Scheme and the EMA; and
- (k) The removal decision may be reviewed by the EMA at a court of law with the relevant jurisdiction.

#### **APPOINTMENT AND APPLICATIONS FOR EMAs FOR COMMUNITY SCHEMES OTHER THAN SECTIONAL TITLE SCHEMES**

8.20 A scheme may apply to the CSOS for the appointment of an EMA, as per the scheme governance documentation.

8.21 The above shall apply *mutatis mutandis* (similarly) as per clause 8.6 until clause 8.21 above.

## 9. APPLICATION TO THE OMBUD FOR APPROVAL IN RELATION TO CONSENT FOR USE OF SECTION OR EXCLUSIVE USE AREA (SECTION 13(2) OF THE STSM ACT)

### SCOPE OF APPLICATION

- 9.1 This section applies to Sectional Title Schemes, all persons who own such schemes, all persons who manage such schemes and CSOS.
- 9.2 The section only applies to applications in terms of section 13(2) of the STSM Act

### ADMINISTRATIVE PROCEDURE

- 9.3 Owners and registered schemes must submit an application in respect of section 13(2) of the STSM Act. The applicant must complete the application using the prescribed Form ST2 annexed below, marked **Annexure “D”**.<sup>15</sup>
- 9.4 Form ST2 can be completed online on the CSOS Connect platform ([www.csosconnect.org.za](http://www.csosconnect.org.za)) or downloaded from the CSOS website. Alternatively, the form can be obtained at any of the CSOS regional offices or satellite offices nationwide.<sup>16</sup>
- 9.5 The completed form must be submitted to CSOS, either online, or hand-delivered to any of the CSOS regional offices or satellite offices.
- 9.6 The applicant bears the onus of ensuring that all relevant information has been submitted and that their application form is correctly completed and meets legislative requirements. The SGO cannot complete the application form for the applicant nor can

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<sup>15</sup> The managing agent, trustees or authorised Representative can also sign and complete the application.

<sup>16</sup> The applicant must login to the CSOS Connect platform as indicated above under clause 1.10.



the SGO instruct applicants on how to complete their application forms, unless the applicant is unable to read and write or has some physical impairments.

- 9.7 The application form and any attachments may either be typed or handwritten, provided it is legible and easy to read.
- 9.8 If an application is not clear and legible, the applicant shall be requested to resubmit a new application to the SGO.
- 9.9 The information submitted by the applicant shall not be classified as private and confidential. The applicant waives its right to confidentiality.

## **APPLICATION REQUIREMENTS**

- 9.10 In terms of section 13(2) of the STSM Act, the applicant must make an application to the Chief Ombud within 6 (six) weeks after the date of refusal of consent as stated under subsection (1)(g) of the STSM Act.
- 9.11 The application for approval of consent in terms of section 13(2) of the STSM Act must be accompanied by the following:
  - (a) Prescribed Form ST2, duly signed by the applicant;
  - (b) Notification of the meeting and proof that all members received such notification;
  - (c) Minutes of the general meeting;
  - (d) Confirmation of votes (in favour by number and value);
  - (e) List of those who voted against the reasons;
  - (f) Motivation in support of the application;
  - (g) Copy of proposed alteration with detailed and accurate drawing/plan by an architect /draughtsman;

- (h) Copy of title deed (if available)<sup>17</sup>
- (i) Copy of sectional title plan; and
- (j) Any other supporting documentation.

## **PROCEDURAL REQUIREMENTS**

- 9.12 The SGO will validate the accuracy of the completed form to ensure that it has been signed by the correct applicant.
- 9.13 The SGO will conduct quality assurance on the supporting documentation received and request for further information and/or documents. The applicant must respond within 7 (seven) business days. If no response is received from the applicant, a follow-up reminder will be sent however if after 14 (fourteen) business days no response has been received, the application will be closed.
- 9.14 If all the requirements of the application have been met, the applicant will receive acknowledgement letter from the SGO.
- 9.15 The SGO will assess the application, and in the event that the application still requires additional outstanding information and/or documents, the SGO will request same from the applicant to be provided no later than 14 (fourteen) business days, failing which the file will be closed.

## **NOTICE TO MEMBERS OF THE BODY CORPORATE**

- 9.16 Having considered the provisions of section 33 of the Constitution of the Republic of South Africa and the PAJA; it is imperative that the CSOS notifies any interested and affected parties and provides them with an opportunity to be heard before a decision is made. This is in line with the principle of *audi alteram partem* rule.
- 9.17 The SGO shall provide the interested and affected parties with a copy of the notice detailing the nature and purpose of the application received from the applicant.

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<sup>17</sup> If not available, a copy of the title deed can be requested from the Registrar of Deeds.

- 9.18 The CSOS requires the Body Corporate to ensure that the said notice is circulated to all its members and provide proof to that effect. The read receipt notice or member signature on the acknowledging receipt will serve as proof that the notice has been received by a member.
- 9.19 The affected parties will have 10 (ten) business days to respond to the notice.
- 9.20 The SGO shall only consider an extension of 5 (five) business days or more if the affected party provides exceptional circumstances for not responding within the specified time frame as mentioned above.
- 9.21 If no response is received from the members, as requested, the SGO shall proceed and make recommendation for the approval by the Chief Ombud.
- 9.22 The SGO shall assess the application, taking into consideration whether refusal of consent of another owner is unfairly prejudicial, unjust or inequitable to the applicant. Each application will be assessed on its own merits.
- 9.23 Assessment of applications will not take more than 30 (thirty) business days, from the date that all the information is received from the applicant.

#### **DECISION BY THE OMBUD**

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

#### **PAYMENT OF PRESCRIBED FEE**

- 9.25 No fee is payable for the processing of the application.

## ANNEXURE D: APPLICATION FOR CONSENT IN TERMS OF SECTION 13(2) OF THE STSM ACT



Completed forms must be emailed: [sectionaltitle@csos.org.za](mailto:sectionaltitle@csos.org.za)

### APPLICATION FOR CONSENT IN TERMS SECTION 13(2) OF STSMA - ST2 FORM

*Kindly complete the form in a legible manner and all pages must be completed.*

#### Details of person making this application:

##### Please fill in Block Letters

Full Names:																																
Surname:																																
ID Number:																																
Tel No: (home/work):											Cell Phone:																					
Email:																																
Race:											Age:			Gender:																		

#### Address:

Name of Scheme:																										Unit No:					
Street Name																															
Suburb:																															
City:																															
Province:																										Postal Code:					

#### Postal address of applicant (if different from above):

PO Box No:											Suburb:																				
City:																															
Province:																										Postal Code:					

#### The application pertains to which type of communication scheme living:

☐ Sectional title development

☐ Others (please specify)

#### Person / association making the application (applicant):

Tick applicable ☐

☐ Owner

☐ Other (please specify)

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### Details of the community scheme you are making the application against:

*(If more than one person, please state details under additional information)*

[illegible]

## Details of the Trustees

(if more than two people, please state details under additional information)

Details	
Address:	
Tel no (home/work):	
Email:	
Details	
Address:	
Tel no (home/work):	
Email:	

### Details of the Managing Agent

Details	<input type="text"/>
Address:	<input type="text"/>
Tel no (home/work):	<input type="text"/>
Email:	<input type="text"/>

**Details of the Consent required:**

Please legibly set out all the facts which you consider having bearing on this application, including dates, places and persons involved. (facts which indicate that the refusal is unfairly prejudicial, unjust, or inequitable to the applicant)

**Exhaustion of internal remedies:**

Please advise what has been done to try to resolve this application? Please describe what you have done, who you have talked to and what they offered to do.

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**Are there any financial implications should the consent be approved, if yes, please specify?**

(I.e. special Levy, insurance etc.)

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**Will there be any structural alteration should the consent be approved, if yes, please specify?**

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**Are there any health and safety implications should the consent be approved, if yes, please specify?**

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**Supporting Documentation:**

Please tick one or more of the boxes ☐

I have the supporting documentation or other evidence to supply with my application:

<input type="checkbox"/>	A copy of the Scheme Governance documentation (including: any rules, regulations, terms and conditions or other provisions that control the administration or occupation of private areas and common area)
<input type="checkbox"/>	A copy of the Sectional Title Plan
<input type="checkbox"/>	A copy of the Title Deed
<input type="checkbox"/>	All documentation, including correspondence with the Respondent (party you are making the application against) relevant to the application.
<input type="checkbox"/>	



	A copy of the proposed alteration
	Notice sent to all owners requiring consent.
	Photographs
	A list of the owners who have consented (list of the owners' signatures)
	Other <input type="text"/>
	I do not have supporting documentation

Declaration and signature of applicant or representative:

I declare that the above information is true and correct to the best of my knowledge. I agree that the information I have given in this form may be used or disclosed to process this application.

Name:	Capacity:
Signature:	
Name:	Capacity:
Signature:	
Name:	Capacity:
Signature:	

## **10. APPOINTMENT AND REPORTING OF ADMINISTRATORS TO CSOS**

### **SCOPE OF APPLICATION**

- 10.1 This section applies to Sectional Title Schemes, all persons who own such schemes, all persons who manage such schemes and CSOS.
- 10.2 This section applies to appointments in terms of section 16 of the STSM Act.
- 10.3 This section does not apply to HOAs or any other Community Schemes besides those mentioned above.

### **APPOINTMENT OF ADMINISTRATORS**

- 10.4 An administrator is a suitably qualified and independent person appointed to serve as the administrator of a Body Corporate.
- 10.5 A Body Corporate, a local municipality, a judgment creditor of the Body Corporate or any owner and other person having a registered real right in or over a unit may apply to a Magistrate's Court for the appointment of an administrator. CSOS may also be requested by the Magistrate Court to recommend an administrator from the CSOS Panel. In addition, stakeholders in the Community Scheme sector may request and chose an administrator for appointment from the CSOS panel.
- 10.6 The CSOS has a legal mandate to oversee and regulate Community Schemes and ensure good governance, therefore, the CSOS must be notified of the appointment of an administrator and subsequently served with an application. Furthermore, the Body Corporate or any other person mentioned under clause 10.5 should adequately inform CSOS of such an appointment.
- 10.7 The Magistrate's Court may appoint an administrator for a fixed period if it finds evidence of serious financial or administrative mismanagement and that there is a reasonable probability that, if it is placed under administration, the Body Corporate will be able to meet its obligations and be managed in accordance with the requirements of the STSM

Act. The Magistrate Court will issue a court order for the appointment of the administrator.

- 10.8 Once the Magistrate Court has issued a court order for the appointment of the administrator, the administrator has a duty to report to CSOS in accordance with Section 16(4) of the STSM Act.
- 10.9 The appointed administrator must give notice and convene a meeting as prescribed under section 6 of the STSM Act.

#### **REMOVAL AND EXTENSION OF APPOINTMENT OF THE ADMINISTRATOR**

- 10.10 The Magistrate Court may on application by the administrator or any person or body referred to under clause 10.5 above remove the administrator from office, replace the administrator, extend the terms of the administrator's appointment or amend his or her terms of appointment and may make an order for the payment of costs.
- 10.11 In the event that the Magistrate Court appoints an administrator from the CSOS panel, CSOS does not have the authority to remove or extend the appointment of the administrator.

#### **ESTABLISHMENT OF A PANEL OF ADMINISTRATORS**

- 10.12 This section applies to administrators appointed by a Magistrate's Court in accordance with section 16 of the STSM Act.
- 10.13 CSOS will establish and maintain a panel of administrators, which the Court may refer to when considering the appointment of an administrator.
- 10.14 An administrator appointed by the Court must submit quarterly reports to the CSOS in accordance as directed by the relevant court order.
- 10.15 Any person who seeks to be included on the panel of administrators must submit a formal application to the CSOS, via the CSOS Connect platform on [www.csosconnect.org](http://www.csosconnect.org), accompanied by the following supporting documents:
- 10.15.1 A comprehensive Curriculum Vitae;

- 10.15.2 Proof of Company Registration (where applicable)
  - 10.15.3 Documentary proof of regulatory compliance such as professional body membership (if applicable); and
  - 10.15.4 At least two recommendation letters from trustees or managing agents, (optional).
- 10.16 CSOS will conduct thorough due diligence through background checks and verification of qualifications and experience on receipt of an application.
- 10.17 A successful applicant will be formally placed on the panel of administrators and be required to sign and comply with a Code of Conduct.
- 10.18 Nothing in this Consolidated Practice Directive shall prevent a court from appointing an administrator outside of the CSOS panel of administrators.

## CHAPTER 2 PROCESS FLOW

### Lodgement of Scheme Rules

No.	Role	Activity	Description
1.	Applicant	Submit Lodgment of Rules Request	Submits signed Form B (for sectional title schemes) or Form B1 (for other types of schemes). The form must be completed and signed by a managing agent, trustee, or executive committee member.
2.	Applicant	Submit Supporting Documents	For new schemes: submit scheme rules, conveyancer certificate, and approved sectional plan. For existing schemes: submit scheme rules, special resolutions, and AGM minutes.
3.	Administrator	Validate Data and Documentation	Checks whether the forms are properly completed and signed by authorized personnel. Verifies all required documents are attached.
4.	Administrator	Request Further Information	Requests any missing information or documents. The applicant must respond within 7 working days.
5.	Administrator	Send Follow-up Letter	Sends a follow-up letter to the applicant if outstanding items are still not submitted.
6.	Administrator	Close Application	Closes the application if no response is received after the follow-up letter.

7.	Administrator	Capture Scheme Information	Captures scheme data in an Excel database and stores documents on SharePoint if the application is in order.
8.	Administrator	Allocate Application	Allocates applications to SGOs every Monday. DC updates the database with relevant dates (received, allocated, etc.).
9.	Scheme Governance Officer (SGO)	Conduct Quality Assurance	Performs quality assurance on the rules and advises the applicant if rules are contrary to legislation or unconstitutional.
10.	Scheme Governance Officer (SGO)	Request Amendments as per PD	Sends a letter requesting amendments in line with the practice directive. Applicant has 14 working days to respond.
11.	Scheme Governance Officer (SGO)	Send Follow-up Letter	Sends a follow-up letter if no amendments are received within 7 days. Files all related correspondence per scheme.
12.	Scheme Governance Officer (SGO)	Close Application	Closes the application if there is still no response after the follow-up letter.
13.	Scheme Governance Officer (SGO)	Inform Client	Notifies the applicant that the scheme rules are compliant.
14.	Scheme Governance Officer (SGO)	Draft Section 10 Certificate	Drafts the Section 10 certificate.
15.	Scheme Governance Officer (SGO)	Upload s10 Certificate on DocuSign	Uploads the Section 10 certificate to DocuSign for the Chief Ombud's attention.

16.	Chief Ombud	Sign Section 10 Certificate	Signs the Section 10 certificate.
17.	Administrator	Issue Compliance Certificate	Issues the compliance certificate to the applicant.
18.	Administrator	Stamp Approved Rules	Stamps and dates the approved scheme rules

### Submission of Special or Unanimous Resolution

No.	Role	Activity	Description
1.	Applicant	Submit Application for Special Resolution Request	Submits signed Form ST1, completed by a managing agent, trustee, scheme executive, or authorized representative. Only registered schemes may submit such requests.
2.	Applicant	Submit Supporting Documents	Submits scheme rules, motivation for the special resolution, confirmation of votes, AGM minutes, and other relevant documents.
3.	Administrator	Validate Data and Documentation	Checks if the form is correctly completed and signed and verifies that all required supporting documents are attached.
4.	Administrator	Request Further Information	Requests any missing or additional information. The applicant must respond within 7 working days.
5.	Administrator	Send Follow-up Letter	Sends a follow-up letter to the applicant if the requested documents or information are not submitted.
6.	Administrator	Close Application	Closes the application if the applicant fails to provide

			required documents or submit the form.
<b>7.</b>	Administrator	Capture Scheme Information	Captures scheme details in the Excel database and stores documents on SharePoint, if the application is in order.
<b>8.</b>	Administrator	Allocate Application	Allocates applications to Scheme Governance Officers (SGOs) every Monday. Updates are recorded in the Excel database.
<b>9.</b>	Scheme Governance Officer (SGO)	Conduct Quality Assurance	Reviews the rules to ensure they are legally compliant and not unconstitutional.
<b>10.</b>	Scheme Governance Officer (SGO)	Request Amendments as per Practice Directive	Sends a letter requesting amendments in line with the practice directive. Applicant is given 14 working days to respond.
<b>11.</b>	Scheme Governance Officer (SGO)	Send Follow-up Letter	Sends a follow-up letter if no response is received after 14 working days. Files all correspondence for the scheme.
<b>12.</b>	Scheme Governance Officer (SGO)	Close Application	Drafts a rejection letter as per the practice directive if there is still no response after follow-up.
<b>13.</b>	Scheme Governance Officer (SGO)	Send Consolidated Application to Affected Parties	Forwards the consolidated application to all parties affected by the resolution.
<b>14.</b>	Scheme Governance Officer (SGO)	Conduct Resolution Assessment	Reviews whether the special resolutions comply with the practice directive.



15.	Scheme Governance Officer (SGO)	Make Final Decision	Approves or rejects the application based on assessment outcomes.
16.	Scheme Governance Officer (SGO)	Draft Rejection Letter	Prepares a rejection letter if the resolution is non-compliant, for signature by the Chief Ombud via DocuSign.
17.	Scheme Governance Officer (SGO)	Draft Approval Letter	Prepares an approval letter if the resolution is compliant, for signature by the Chief Ombud via DocuSign.
18.	Chief Ombud	Sign Letter	Signs the approval or rejection letter.
19.	Administrator	Send Letter	Sends the signed letter (approval or rejection) to the applicant.

### Submission of Special Resolutions

No.	Role	Activity	Description
1.	Applicant	Login	Only a logged-in user should be able to apply for special and/or unanimous resolutions.
2.	Applicant	Register	Redirects a user to the registration page if they are not already registered.
3.	Applicant	Search Scheme	Searches for a scheme. A user must link their profile to a scheme. Only users linked to a scheme may submit an application for special and/or unanimous resolutions.
4.	Applicant	Complete Form ST1 Online	Completes Form ST1 online. Fields and validations are guided by UC02.

5.	Applicant	Attach Supporting Documents	Uploads required documents including scheme rules, motivation for the resolution, vote confirmations, AGM minutes, notice of the meeting, and other related documents.
6.	Applicant	Submit Application	Allows submission of the application only when all mandatory fields and documents are completed.
7.	Applicant	Restrict Submit Button	The system restricts submission if any mandatory fields or documents are incomplete.
8.	Applicant	Upload Amended Documents	Receives notification if documents are referred back for amendments. The applicant can re-upload updated documents as per CSOS feedback.
9.	System	Notifies Other Scheme Members	Sends notice and application to other scheme members, who must respond within 21 days of receipt.
10.	Scheme Members	Exceptional Circumstances	Allows scheme members to respond up to 10 additional days after the 21-day period, if an extension is requested and approved.
11.	Applicant	View and Download Approved or Rejected Application	Receives notification of CSOS decision and can view/download the approved or rejected application.
12.	Applicant	View and Download Approved Rules	Can view and download the approved special resolutions.

13.	Applicant	Login	Only a logged-in user should be able to apply for special and/or unanimous resolutions.
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#### Submission of Application for Approval in Terms of Section 13(2) – Process Table

No.	Role	Activity	Description
1.	Applicant	Login	Only a logged-in user should be able to apply for approval under Section 13(2).
2.	Applicant	Register	Redirects a user to the registration page if the applicant is not already registered.
3.	Applicant	Search Scheme	Searches for a scheme and links the user's profile to a scheme. Only users linked to a scheme may submit the application.
4.	Applicant	Complete Form ST2 Online	Completes Form ST2 online. Refer to UC02 for specific fields and validations.
5.	Applicant	Attach Supporting Documents	Uploads governance documents, sectional title plan, title deed, all correspondence with the respondent, proposed alteration documents, notice to owners, photographs, list of consenting owners, list of owners who refused, and other relevant documents.
6.	Applicant	Submit Application	Can only submit once all required fields and supporting documents have been completed.

<b>7.</b>	Applicant	Restrict Submit Button	Submission is restricted if mandatory fields or documents are incomplete.
<b>8.</b>	Applicant	Upload Amended Documents	Receives notification if documents are referred back. Can re-upload amended documents as per CSOS feedback.
<b>9.</b>	System	Notifies Trustees	Sends the application and notice to trustees for their acceptance or acknowledgment.
<b>10.</b>	Applicant	View and Download Approval Letter / Rejection Letter	Receives notification once the application has been approved or rejected by CSOS and may view or download the outcome letter.

## Compliance and Enforcement - Process

No.	Role	Activity	Description
1.	Applicant	Pre- and Post-login	Prepopulates the non-compliance form if the user is registered. If not logged in, the user completes the form manually before logging in.
2.	Applicant	Search Scheme	Searches for a scheme on the CSOS Connect database. If the scheme is registered, scheme details are prepopulated. If not registered, the user completes the scheme details manually.
3.	Applicant	Attach Supporting Documents	Uploads supporting documents. All supporting documents are optional.
4.	Applicant	Report Non-compliance	<p>Submits the non-compliance form after all required fields are completed. The user may report one or more of the following non-compliance categories:</p> <ul style="list-style-type: none"> <li>• Failure to submit annual returns</li> <li>• Failure to pay levies</li> <li>• Failure to register a scheme</li> <li>• Failure to submit scheme rules</li> </ul>
5.	Applicant	Receive Compliance or Non-Compliance Notice	Receives a notification when the compliance monitoring process is finalised. If the report was submitted before

			login, the user receives a compliance certificate. If submitted after login, the user receives a notification via the notification centre.
6.	Applicant	Receive Verification Letter	Receives a verification letter or notification when the compliance monitoring process is initiated.
7.	Applicant	Receive Remedial Plan	Receives a remedial plan or notification when the compliance monitoring process is initiated and the scheme has requested a remedial plan.

### Waiver Application Process

No.	Role	Activity	Description
1.	Applicant	Login	Only a logged-in user should be able to submit a waiver application.
2.	Applicant	Register	Redirects the user to the registration page if they are not already registered.
3.	Applicant	Search Scheme	Searches for a scheme and links the user's profile to the scheme. Only users linked to a scheme may submit a waiver application.
4.	Applicant	Complete Form CS 3A or 3B Online	Completes form CS 3A or 3B online. Two options are available: "individual" or "on behalf of scheme." The correct form is displayed based on the selected option.

5.	Applicant	Attach Supporting Documents	<p>Uploads required supporting documents based on the selected waiver reason:</p> <ul style="list-style-type: none"> <li>i. SASSA Beneficiary – Clear picture of SASSA card (front and back)</li> <li>ii. Frail Care Living – Letter or documents confirming living conditions</li> <li>iii. Retired Person Residing in Scheme – Letter or documents confirming condition</li> <li>iv. Levies ≤ R500 – Statement of levies for individual units</li> <li>v. Net Household Income &lt; R5,500 – Income statement (3 months for individual; 3 years for scheme) or payslip</li> </ul>
6.	Applicant	Submit Application	Allows submission of the online form only when all mandatory fields and documents are completed.
7.	Applicant	Restrict Submit Button	Submission is restricted if any mandatory fields or documents are not completed.
8.	Applicant	Upload Amended Documents	Receives a notification when documents are referred back for amendments. The applicant may re-upload amended documents as required by CSOS.

9.	Applicant	View and Download the Approved Section 29 Certificate	Receives notification when the Section 29 certificate is approved and can view/download the certificate.
	Public Portal	Get Full Access	Grants full system access to the appointed EMA and revokes access from the previous managing agent, trustee, or scheme executive

### Court-Appointed Scheme Administrator Process

No.	Role	Activity	Description
1.	Applicant	Login	Only a logged-in user should be able to notify CSOS regarding the appointment of a court-appointed scheme administrator.
2.	Applicant	Register	Redirects the applicant to the registration page if they are not registered.
3.	Applicant	Search Scheme	Searches for a scheme and links the user's profile to the scheme. Only users linked to a scheme may notify CSOS of a court-appointed administrator.
4.	Applicant	Attach Supporting Documents	Uploads the following supporting documents: <ul style="list-style-type: none"> <li>• Court Order (Mandatory)</li> <li>• Meeting Minutes convened by the administrator (Mandatory)</li> <li>• Copies of Notices (Mandatory)</li> <li>• Section 16 Report (Mandatory)</li> </ul>



			<ul style="list-style-type: none"> <li>• Other (Optional</li> </ul>
5.	Applicant	Submit Application	Can submit the online form once all required fields and mandatory documents have been completed.
6.	Applicant	Restrict Submit Button	Submission is restricted if any mandatory fields or documents are missing.
7.	Applicant	Upload Amended Documents	Receives a notification if documents are referred back for amendments and can re-upload the updated documents accordingly.
8.	Applicant	View and Download Approval Letter	Receives a notification once the appointment is approved by CSOS and can view and download the approved Section 59 certificate.

# **CHAPTER 3: PAYMENT, COLLECTION OF CSOS LEVIES AND SUBMISSION OF ANNUAL RETURNS**

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## **11. PAYMENT AND COLLECTION OF CSOS LEVIES**

### **SCOPE OF APPLICATION**

11.1 This section applies to:

- 11.1.1 Affected persons in Community Schemes but not limited to property owners, managing agents, board of trustees and directors, estate managers, association for retired persons and committee members and any other person to whom the CSOS Act and its regulations apply; and
- 11.1.2 the CSOS.

### **GENERAL**

- 11.2 When making a payment to CSOS, all Community Schemes must adhere to the payment procedure stipulated in this Practice Directive to ensure that payments received are accurately allocated.
- 11.3 It remains the full responsibility of the Community Schemes to ensure that payment is received by CSOS within 30 (thirty) business days of receiving the invoice or when the levy becomes due and payable to avoid any penalties and/or interest being charged.
- 11.4 Community Schemes that have not yet been issued with a CSOS registration number should contact CSOS to follow up on the status of their registration.
- 11.5 Upon registration, the Community Scheme will receive a CSOS registration number which should be used at all times when effecting payment of the CSOS Levy.
- 11.6 All Community Schemes that were registered before the commencement of CSOS Connect, will receive a new CSOS registration number after linking their Community Scheme as indicated in clause 1.10.
- 11.7 All members of the Community Schemes (residents and owners) have a right and an obligation to ensure that the levy amount contributed in respect of CSOS levies is duly paid to the CSOS. This obligation includes Community Scheme members enquiring

and ascertaining at appropriate intervals with their Community Scheme management that CSOS levies collected for and on their behalf have been duly remitted to CSOS.

- 11.8 CSOS is listed as a public recipient with various banking institutions for purposes of making all CSOS-related payments. The CSOS bank account confirmation number is attached below and marked as **Annexure “E”**.
- 11.9 Payment processes differ from one bank to another, the payment procedure for each bank, is attached below and marked as **Annexure “E”** below.
- 11.10 Payment should be done through electronic funds transfer (EFT or Internet Banking) or ATM deposit or e-commerce i.e., online credit card collections or credit push. Community Schemes must register to have their obligation posted on their online banking profile. Only under circumstances where it is impossible to pay through EFT, may payment be made over the counter at the bank and additional charges may apply for cash deposits.
- 11.11 Cash payment of levies or fees at CSOS regional offices and satellite offices is strictly prohibited.

## **PROCESSING OF PAYMENTS**

- 11.12 When a payment is made, the correct CSOS registration number must be quoted as a reference number to ensure that payments are correctly allocated to the Community Scheme's account.
- 11.13 Incorrect referencing will result in CSOS not being able to make the correct allocation or reconciliation and may amount to inaccurate customer statements and invoices.
- 11.14 The new CSOS registration number after linking the Community Scheme on CSOS Connect platform will be as follows **YEAR / PROVINCE NUMBER / 6-DIGIT NUMBER**. The following should be noted:
  - 11.14.1 Each province is represented by a number, and all provinces must adhere to this format (1 = Eastern Cape; 2 = Free State; 3 = Gauteng; 4 = KwaZulu Natal; 5 = Limpopo; 6 = Mpumalanga; 7 = North West; 8 = Northern Cape; 9 = Western Cape.).

- 11.14.2 The old CSOS registration number sequence is as follows:  
**REG/YEAR/PROVINCE/6 DIGIT NUMBER**. This format of the registration number is no longer in use.
- 11.15 As an example, in the past, the CSOS registration number would have been **CSOS/REG/22/GP/123456**. However, going forward, the CSOS registration number will be **2023/9/012345**.<sup>18</sup>
- 11.16 Should the Community Scheme require assistance with any other levy related enquiries including payments, the Community Scheme may log a query on the CSOS Connect platform or send an email to the following email address: [levyqueries@csos.org.za](mailto:levyqueries@csos.org.za).
- 11.17 After the Community Scheme has paid the CSOS Levy, the Community Scheme must email proof of payments and a schedule detailing both the members admin levy and the CSOS Levy to enable the CSOS to do a reconciliation of the amount paid by each unit to the following email address: [levypayments@csos.org.za](mailto:levypayments@csos.org.za). The CSOS registration number must appear on all the documentation as per the CSOS Levy calculator which is available on the CSOS Connect platform: [www.csosconnect.org.za](http://www.csosconnect.org.za) upon request.
- 11.18 Community Schemes should not remit payments using the sectional plan number (SS Number) as allocated by the Registrar of Deeds, the company registration number as allocated by the CIPC or the scheme name as the CSOS registration number. Community Schemes are urged to use the CSOS registration number as allocated by CSOS as the reference number when remitting payment.
- 11.19 CSOS will not be able to provide the affected schemes with accurate statement of accounts until such time as the correct registration number is used.
- 11.20 Community Schemes will receive their account statements and invoices at the end of each quarter or as and when the Community Scheme requests a statement of

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<sup>18</sup> Community Schemes registered after 2023 have been issued with a scheme registration number that follows the following sequence: **YEAR/PROVINCE NUMBER /6-DIGIT NUMBER**

account. Community Schemes should contact CSOS at the following email address:  
[levypayments@csos.org.za](mailto:levypayments@csos.org.za).

- 11.21 Community Schemes should note that any correspondence not related to the statement of account or the CSOS registration number to the above email address will be directed to the relevant CSOS department.

## PAYMENT OF THE CSOS LEVY

- 11.22 In terms of section 22 of the CSOS Act, the funds of CSOS include the levies collected from Community Schemes. The Minister has prescribed the applicable levies under the Regulations on Levies and Fees, 2016.
- 11.23 In terms of section 59 (a) of the CSOS Act, read together with Regulation 11 of the CSOS Regulations, each Community Scheme has an obligation to pay to CSOS the prescribed levies at the rate set in the schedule of levies, payable by each unit.
- 11.24 Community Schemes are therefore obliged to collect an amount from their members on a monthly basis to be paid over to the CSOS. The CSOS Levy is equal to 2% (two) of the amount by which the monthly admin levy exceeds R500, but not more than R40.00 per unit per month. The 2%(two) is based on the admin fund levy and excludes the reserve fund portion which shall be amended by the Minister from time to time.
- 11.25 The amount to be paid is determined by using the CSOS Levy calculator [www.csos.org.za/payment-of-levies/](http://www.csos.org.za/payment-of-levies/) under “payments of levies” as follows:

CSOS Levies Calculator:			Scheme CSOS Levy
Unit number	Scheme levy	Unit CSOS levy	R 180.00
1	R 500.00	R -	
2	R 1,000.00	R 10.00	
3	R 1,500.00	R 20.00	
4	R 2,000.00	R 30.00	
5	R 2,500.00	R 40.00	
6	R 3,000.00	R 40.00	
7	R 3,500.00	R 40.00	

Add as many rows as necessary.

Copy this formula into ALL rows.

- 11.26 The special levy and payments related to the maintenance of the EUA levy are excluded from the calculation of the CSOS Levy.
- 11.27 Community Schemes that do not include all payment items that would normally be part of the administrative fund levy in the calculation of the scheme levy are committing an act of dishonesty and CSOS will be entitled to refer the matter to the National Prosecuting Authority to take appropriate steps where necessary, in line with section 34 of the CSOS Act which pertains to penalties and offences.

#### **PAYMENT OF LEVIES IN A SCHEME WITHIN A COMMUNITY SCHEME**

- 11.28 If the unit owner of a sectional title is a member of a HOA, a levy may be payable to both the Sectional Title Scheme and the HOA.
- 11.29 Where there is a Community Scheme within Community Schemes, a levy will be paid if the Body Corporate is billed at Community Scheme level, then the member shall pay only one levy, for instance, R10.00.
- 11.30 However, if the Body Corporate is billed at unit level, the sectional title member will pay, for instance, R10.00 plus a HOA levy of, for instance, R10.00, thus equating to R20.00.
- 11.31 CSOS shall bill the HOA, and the HOA must then ensure that the sectional title scheme is billed accordingly and that the CSOS Levy is paid.

#### **INVOICING AND STATEMENT OF ACCOUNTS**

- 11.32 Community Schemes must use the levy calculator to correctly calculate the CSOS levies. All Community Schemes must submit their levy schedules to CSOS in order for CSOS to accurately calculate CSOS levies and allocate same. Should CSOS not receive the levy schedule, an estimate will be charged to the Community Scheme.
- 11.33 As a directive, all Community Schemes must, on the dates stipulated in this Practice Directive, make payment to CSOS by depositing the amount due to CSOS into the CSOS bank account.



- 11.34 In the event of underpayment, CSOS will charge interest at the rate prescribed by the NCA and/or as determined by the CSOS from time to time.
- 11.35 If the Community Scheme did not receive an invoice from CSOS, this does not absolve the Community Scheme from paying CSOS levies.
- 11.36 Self-managed Community Schemes and managing agents must ensure that Form CS1A is completed on the CSOS Connect platform when there is a change in the board of directors or trustees to ensure that when the receipt statements are sent out, they are sent to the correct managing agent. The CS 1A Form is to be sent to the following email address: [registration@csos.org.za](mailto:registration@csos.org.za).

## **PAYMENT INTERVALS**

- 11.37 CSOS is listed as a public recipient/beneficiary on various banking institutions.
- 11.38 Levies are payable to CSOS on a quarterly basis on or before the dates below. The CSOS financial year is 1 April to 31 March of the following year.
- 11.38.1 Quarter 1 (1 April – 30 June)
- 11.38.2 Quarter 2 (1 July – 30 September)
- 11.38.3 Quarter 3 (1 October – 31 December)
- 11.38.4 Quarter 4 (1 January – 31 March)
- 11.39 For the Community Schemes where payment of the scheme levy is made annually, Community Schemes can opt to pay the annual CSOS Levy in advance on 31 March in line with the CSOS financial year end. There must be an indication that the payment is for the annual CSOS levy.
- 11.40 After receiving an invoice, payments must be made to CSOS within 30 (thirty) business days following the end of the quarter as follows, failing which interest will accrue:

- 11.40.1 Quarter 1 – 30 April
- 11.40.2 Quarter 2 – 30 July
- 11.40.3 Quarter 3 – 30 October
- 11.40.4 Quarter 4 – 30 January

## **NON-PAYMENT OF LEVIES AND FEES**

- 11.41 Non-payment of levies on the due date will attract interest calculated at a rate as prescribed in the NCA.
- 11.42 Non-payment of levies shall constitute non-compliance to this Practice Directive issued in terms of the CSOS Act and constitutes an offence under section 34 (1) (b) of the CSOS Act.

## **CSOS LEVIES DUE AND PAYABLE**

- 11.43 In terms of Regulation 11 (1) of the CSOS Regulations, 2016, *“every Community Scheme must pay the levy referred to in the Community Schemes Ombud Service Regulation: Levies and Fees on a quarterly basis”*.
- 11.44 If the Community Scheme existed before January 2017, the CSOS Levy needs to be backdated from January 2017 to the present, regardless of whether the Community Scheme was registered in 2017 or recently.
- 11.45 If the Community Scheme existed after January 2017, the CSOS Levy must commence from such date of existence.
- 11.46 In the event that the unit owner has not paid, the Community Scheme must use the normal debt collection mechanism by following the CSOS dispute resolution process and handing the member over to collect the levies from the defaulting unit owner.
- 11.47 For unoccupied units, owners should ensure that the CSOS Levy is still paid over to the Body Corporate.

## **WAIVER OF LEVIES**

- 11.48 In case of a unit owner who has been exempted from paying the CSOS levies as per clause 12.4 below, the scheme must, when submitting a levy schedule to CSOS, indicate that the unit owner is a SASSA grant recipient or that the unit owner falls in the category of persons residing within frail care or assisted living/mid care living, or that a person is receiving an income of less than R5 500.00. The provisions in this Practice Directive must be adhered to.

## **VAT PAYMENT**

- 11.49 CSOS is not registered as a VAT vendor and as such CSOS Levy does not attract VAT.

## **CHANGE OF CSOS BANK ACCOUNT**

- 11.50 If CSOS makes any changes to its bank account or details, this Practice Directive will be amended accordingly. Community Schemes are advised to only make use of the bank accounts supplied by CSOS as attached to this Practice Directive. CSOS shall never send an email notification to Community Schemes advising them that the bank account number has changed. Any losses suffered by a Community Scheme as a result of utilising bank account information not officially supplied by CSOS, shall be the responsibility of the Community Scheme and CSOS shall not be held liable for such losses.



## **ANNEXURE E: ELECTRONIC PAYMENTS (INTERNET BANKING)**

Here are some easy-to-follow steps for when making an EFT payment. Please take note of the different procedures applicable to each bank, more particularly the use of the CSOS registration number.

### **FIRST NATIONAL BANK (FNB)**

Login to FNB Online Banking with your personal access details.

Click on the “Payments” tab.

Click on “Add Recipient” on the left of your page.

Click on “Public Recipient”.

Type in “CSOS” and then click “go”.

Select “CSOS” from the drop-down list and then “add”.

Scroll to the bottom of the page and click “Add Recipient”.

Do not forget to insert the registration number like: CSOS/Reg/year/province/OOOOOO.

An example of the format the scheme registration number must follow is: 20254000001(**YEAR -PROVINCE NUMBER - SIX DIGIT NUMBER**)

Confirm recipient by entering your one-time pin.

Return to your “Payments” page; the new recipient will show up with all other recipients.

### **CAPITEC**

Login to Capitec Online Banking with your personal access details.

On Transact, click on the “Payments” tab.

Click on “Add Recipient”.

Click on “Capitec-Registered”.

Select “CSOS” from the drop-down list and then “add”.

Do not forget to insert the registration number like: CSOSRegyearprovince000000.

When transacting from Capitec Bank, delete the strokes (/) that appear on your registration number.

An example of the format the scheme registration number must follow is: 20254000001(**YEAR -PROVINCE NUMBER- SIX DIGIT NUMBER**)

### **STANDARD BANK**

Electronic payments (Internet banking)

Create a beneficiary.

Choose beneficiary type "Company".

Type in "Community Schemes Ombud Services".

Click on "Search".

Next screen: Select "Community Schemes Ombud Services".

Add CSOS Registration number as reference.

Do not forget to insert the registration number like: CSOSRegyearprovince000000.

When transacting from Standard Bank, delete the strokes (/) that appear on your registration number.

An example of the format the scheme registration number must follow is: 20254000001(**YEAR- PROVINCE NUMBER- SIX DIGIT NUMBER**)

### **ABSA**

Electronic payments (Internet banking)

Create a beneficiary.

Choose beneficiary type "public recipient".

Click "Search".

Click or select "Community Schemes Ombud Services".

Enter CSOS Registration number as reference

Do not forget to insert the registration number like: CSOSRegyearprovince000000.

When transacting from Absa Bank, delete the strokes (/) that appear on your registration number.

An example of the format the scheme registration number must follow is: 20254000001(**YEAR- PROVINCE NUMBER- SIX DIGIT NUMBER**)

## **NEDBANK**

Electronic payments (Internet banking)

Create a beneficiary.

Choose beneficiary type “public recipient”.

Click “Search”..

Click or select “Community Schemes Ombud Services”.

Enter CSOS Registration number as reference.

Do not forget to insert the registration number like: Regyearprovince000000.

When transacting from Nedbank, delete the strokes (/) that appear on your registration number.

An example of the format the scheme registration number must follow is:  
20254000001(**YEAR- PROVINCE NUMBER- SIX DIGIT NUMBER**)

## **INVESTEC**

Electronic payments (Internet banking)

Create a beneficiary.

Choose beneficiary type “public recipient”.

Click “Search”.

Click or select “Community Schemes Ombud Services”.

Enter CSOS Registration number as reference.

Do not forget to insert the registration number like: RegyearprovinceOOOOOO.

When transacting from the Investec Bank, delete the strokes (/) that appear on your registration number.

An example of the format the scheme registration number must follow is:  
20254000001(**YEAR- PROVINCE NUMBER - SIX DIGIT NUMBER**)

## **12. WAIVER OF LEVIES AND FEES**

### **SCOPE OF APPLICATION**

12.1 This section applies to:

12.1.1 Applicants for waiver of fees under this section;

12.1.2 Community Schemes Executive Committee as defined in the Act; and

12.1.3 the CSOS.

12.2 Section 29(1) (c) and (e) of the CSOS Act authorises the Minister to make regulations setting out Community Schemes and persons who may be entitled to discount or waiver of fees respectively.

12.3 The Minister has, under CSOS regulation on Levies and Fees, 2016, published the criteria for determining the persons and Community Schemes which qualify for discounts or waivers.

### **CATEGORY OF COMMUNITY SCHEMES AND PERSONS GRANTED WAIVER**

12.4 Category of persons who qualify for a waiver

12.4.1 The Minister has in terms of section 29(1) (c) of the CSOS Act prescribed that the following category of persons qualify for a waiver of levies and fees:

- (a) Individual units within a Community Scheme for which the monthly admin levies not exceeding R500.00 are charged by the Community Scheme and effectively granted a 100% (one hundred percent) waiver of CSOS levies, which shall be amended by the Minister from time to time; or
- (b) Any person or category of persons whose monthly net household income (gross income less PAYE) is below R5 500, is entitled to a

100% (one hundred) waiver, which shall be amended by the Minister from time to time.

12.4.2 Where it is necessary to determine whether a group or class of persons or a specific Community Scheme qualifies for a waiver, CSOS may cause a sufficient number of the Means Test to be conducted in order to determine if that group or class qualifies as an indigent group.

12.4.3 The Chief Ombud has determined the following group as persons who qualify for 100% (one hundred) waiver of fees and levies:

12.4.3.1 Any person receiving the SASSA grant;

12.4.3.2 Any person residing within the Community Scheme for retired persons who are in frail care; or

12.4.3.3 Any person residing within the Community Scheme for retired persons who are in assisted living/mid-care living.

12.4.4 It is not necessary for the category of persons listed in clause 12.4.3 to apply for a waiver to CSOS.

12.4.5 The Schemes Executive Committee must keep a file and submit copies of the unit owner's SASSA proof of income. When submitting a levy schedule to CSOS, the Schemes Executive Committee must indicate the names of unit owner/s who are the recipient of a SASSA grant or whether the unit owner falls in a category of persons residing within the frail care, assisted living or mid-care living units.

## **PROCEDURE FOR APPLYING FOR DISCOUNT OR WAIVER**

### **12.5 STEP 1: Completing the prescribed waiver form**

(a) Any person or category of persons who may not qualify in terms of the criteria mentioned in clause 12.1. above may lodge an application for waiver for consideration by the Chief Ombud by completing Form CS3A or CS3B depending on the type of applicant.



- (b) Should the applicant's financial situation improve, CSOS must be notified within a period of 30 (thirty) business days. Should the new application not be received by CSOS within 30 (thirty) business days of the anniversary of the first application, then the waiver will fall away until such time that a new application has been submitted to CSOS.
- (c) The prescribed form may be obtained from the CSOS Connect platform or CSOS regional offices or satellite offices nationwide.
- (d) The applicant must complete the prescribed form in full, clearly indicating the details of the applicant, the basis for application of a waiver and proof of the income and liabilities where necessary. If the application for waiver is submitted by the Community Scheme, the audited financial statement for the past 3 (three) financial years must accompany the submission.
- (e) If the application does not contain all the relevant information as indicated in (d) above, the application will not be considered and if the applicant does not furnish the required information within ten (10) business days of the request, the application will automatically be rejected.
- (f) The form must be signed by the applicant personally and if the applicant is signing in a representative capacity, submit proof of authority to represent.

#### 12.6 **STEP 2: Submission of the application**

- (a) The applicant must submit the application form by email to [waivers@csos.org.za](mailto:waivers@csos.org.za) or hand-deliver the application to any of CSOS regional offices or satellite offices nationwide.
- b) The applicant may apply for waivers through the CSOS Connect platform ([www.csosconnect.org.za](http://www.csosconnect.org.za)) and attach all necessary supporting documents.

#### 12.7 **STEP 3. Assessment of application – Means Test**

- (a) The Chief Ombud has the power to assess and make a decision whether to grant or refuse the discount or waiver.

- (b) In exercising this power, the Chief Ombud shall consider the objectives of the Act and the personal circumstances of the applicant, such as whether the applicant is from a 'child-headed' household or an indigent family.
- (c) The Chief Ombud shall apply the Means Test by considering the income, expenditure, assets and liabilities of the applicant.
- (d) The Chief Ombud may verify the information and documents submitted in support of the application to satisfy themselves that the application meets the criteria set in this Practice Directive and the CSOS Act.
- (e) The Chief Ombud may request the applicant to submit any additional information where necessary. The applicant will have 10 (ten) business days to furnish the additional information.
- (f) Once the Chief Ombud has finalised conducting a Means Test, he can either grant a waiver, or a discount, or refuse the application.
- (g) The Chief Ombud shall communicate the decision within 30 (thirty) business days on whether to grant or refuse the application by providing the applicant with the confirmation of discount or waiver or a refusal letter.
- (h) Where the application has not been granted, the Chief Ombud shall furnish the applicant with the written reasons for such refusal.
- (i) The Chief Ombud shall provide a copy of the confirmation of discount or waiver to the Community Scheme Executive Committee where necessary.

## **GROUNDINGS FOR REFUSAL**

12.8 The application for discount or waiver may be refused or withdrawn under the following circumstances:

- (a) If the application does not meet the criteria set in this Practice Directive, read together with the CSOS Act;
- (b) The applicant is not indigent;
- (c) The applicant has the financial means to pay the levies or fees; or

- (d) If the applicant is not physically residing within the Republic of South Africa.

#### **WITHDRAWAL OR TERMINATION OF WAIVER**

12.9 The discount or waiver shall be terminated under the following circumstances:

- (a) In case of fraud;
- (b) The financial situation of the applicant changes;
- (c) In the event that the applicant files a vexatious and/or a frivolous application;  
or
- (d) Where the applicant abuses the dispute resolution process.

#### **REMEDIES**

12.10 Any applicant who is not satisfied with the decision of the Chief Ombud for the refusal, withdrawal, or termination of either discount or waiver may lodge a review application in the High Court, in terms of the provisions of the PAJA.

## **13. THE OPENING OF A BODY CORPORATE BANK ACCOUNT IN TERMS OF THE STSM ACT**

### **SCOPE OF APPLICATION**

13.1 This section applies to the following persons: -

13.1.1 Sectional Title Schemes, all persons who own units in such schemes, and all persons who manage such schemes.

13.1.2 the CSOS.

13.1.3 In respect of other Community Schemes, the opening of the bank account shall be in accordance with the scheme governance documentation, management rules and applicable legislation.

### **BODY CORPORATE TRUST ACCOUNT**

13.2 In terms of section 3 of the STSM Act, the trustees must open and operate a bank account with any bank or financial institution registered in terms of the Banks Act No. 94 of 1990.

13.3 In terms of PMR 21, contained in Annexure 1 of the STSM Act, the trustees must ensure that all monies received by the Body Corporate are deposited into an interest-bearing bank account in the name of the Body Corporate or a trust account opened in terms of either the Property Practitioner's Act 22 of 2019 or the Legal Practice Act 28 of 2014.

13.4 Should the Body Corporate be managed by a managing agent; the managing agent may operate a centralised trust bank account into which individual members of each managed sectional title scheme deposit their levy and other contributions.

13.5 The operation of a bank account for and on behalf of the Body Corporate as provided must be consistent with the purpose and programmes of the Body Corporate as provided for in the Body Corporate resolutions and/or its founding documents.

## **ADMINISTRATIVE PROCEDURE**

13.6 The following documents are required to open a Body Corporate bank account, namely:

13.6.1 Proof of address (the domicile of the Body Corporate);

13.6.2 Copies of the identity documents of the signatories (trustees' resolution must be signed for such appointment of signatories);

13.6.3 A copy of the founding documents (certificate of establishment, audited financial statements of the Body Corporate); and/or

13.6.4 Any other document as required by the financial institution/bank.

## **14. THE SUBMISSION OF ANNUAL RETURNS OF A COMMUNITY SCHEME**

### **SCOPE OF APPLICATION**

- 14.1 This section applies to Community Schemes as defined in the CSOS Act, all persons who own and occupy units in such schemes, and all persons who manage such schemes.

### **SUBMISSION OF ANNUAL RETURNS**

- 14.2 In terms of section 59(b)(i) of the CSOS Act and regulation 18(2)(a) (i), all Community Schemes must file their annual returns to CSOS within 4 (four) months after the end of the Community Scheme's financial year.

- 14.3 The submission of annual returns must be accompanied by the following documents:

14.3.1 Prescribed Form CS2, duly signed by the developer or two scheme executives, or one scheme executive and the managing agent;

14.3.2 Signed off annual financial statements by two trustees/directors or one trustee/director and the managing agents;<sup>19</sup>

14.3.3 Draft AGM minutes;

14.3.4 Approved resolution; and

14.3.5 Approved levy schedule.

- 14.4 Listed below are the most recent scheme governance documentation (as amended and approved) which must be included in the submission as and when required: -

(a) Rules (management or conduct);

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<sup>19</sup> Community Scheme must submit audited financial statements within 4 months after submission of annual returns.

- (b) Constitution;
- (c) Regulations;
- (d) Memorandum of incorporation (articles of association);
- (e) Use of agreement;
- (f) Sectional title plan; and
- (g) Any relevant supporting documents

## **PROCEDURAL REQUIREMENTS**

- 14.5 Scheme executives of Community Schemes and managing agents must ensure that their Community Schemes are complaint and that financial records are submitted timeously and in accordance with these Practice Directives.
- 14.6 CSOS shall peruse the Community Schemes annual returns and conduct quality assurance on the documentation and whether the Community Scheme is compliant with the CSOS Act, STSM Act and the regulations and any other applicable legislation.
- 14.7 If the Community Scheme is found to be compliant, the Chief Ombud will issue a section 59(b)(i) compliance certificate, and such certificate shall be valid for a period of 3 (three) years from the date of issue.
- 14.8 Non-compliant Community Schemes will be notified and issued with a non-compliant certificate and be required to comply within a specified period. Failure to comply shall attract the allocation of an account executive/officer to enforce compliance. The officer's report shall determine whether a fine is imposed.
- 14.9 CSOS shall peruse the list of non-compliant Community Schemes from the IRBA and notify those Community Schemes which are non-compliant and issue a non-compliance certificate.

- 14.10 CSOS shall take all reasonable steps to enforce that this Practice Directive is in accordance with enforcement provisions of clauses 2.8 and 2.9 above.
- 14.11 A list of all supporting documents as indicated in Form CS2 must be attached. The list of supporting documents is annexed hereto as **Annexure “F”**.

#### **AMENDMENT OF SCHEME EXECUTIVES’ PARTICULARS**

- 14.12 When there is a change in the scheme executives of a Community Scheme, the relevant form should be completed indicating the contact details of the Existing scheme executives and the contact details of the new scheme executives.
- 14.13 Form CS 1A must be accompanied by a special resolution.
- 14.14 Form CS 1A must be forwarded to CSOS together with Form CS2 for the submission of annual returns to the following email address: [annualreturn@csos.org.za](mailto:annualreturn@csos.org.za) on an annual basis.



## ANNEXURE F: LIST OF SUPPORTING DOCUMENTS FOR SUBMISSION OF ANNUAL RETURNS OF A COMMUNITY SCHEME

According to the CSOS Act and regulations, the following documents need to be submitted at CSOS for a compliant annual return submission:

### **Sectional Title Scheme**

- ☐ Completed CS2 Form with a signed declaration.
- ☐ Audited financial statements (mandatory)
- ☐ Signed minutes of the most recent AGM
- ☐ Up-to-date levy schedule
- ☐ Details of Executive Committee (including names, ID numbers, and contact details)
- ☐ All relevant documentation relating to the rules, resolutions and constitution of the Community Scheme
- ☐ Copy of registration certificate with CIPC/Copy of the title deeds.
- ☐ Maintenance, Repair and Replacement Plan
- ☐ Valuation schedule of the common property
- ☐ Judgements for/or against the Community Scheme

### **Home Owners' Association**

- ☐ Completed CS2 Form with a signed declaration.
- ☐ Reviewed or audited financial statements (mandatory)
- ☐ Signed minutes of the most recent AGM
- ☐ Up-to-date levy schedule
- ☐ Details of Executive Committee (including names, ID numbers, and contact details)

- ☐ All relevant documentation relating to the rules, resolutions and constitution of the Community Scheme
- ☐ Copy of registration certificate with CIPC/Copy of the title deeds.
- ☐ Judgements for/or against the Community Scheme

#### **Property Owners Association**

- ☐ Completed CS2 Form with a signed declaration.
- ☐ Reviewed or audited financial statements (mandatory)
- ☐ Signed minutes of the most recent AGM
- ☐ Up-to-date levy schedule
- ☐ Details of Executive Committee (including names, ID numbers, and contact details)
- ☐ All relevant documentation relating to the rules, resolutions and constitution of the Community Scheme
- ☐ Copy of registration certificate with CIPC/Copy of the title deeds.
- ☐ Judgements for/or against the Community Scheme

#### **Share Block companies**

- ☐ Completed CS2 Form with a signed declaration.
- ☐ Audited financial statements (mandatory)
- ☐ Signed minutes of the most recent AGM
- ☐ Up-to-date levy schedule
- ☐ Details of Executive Committee (including names, ID numbers, and contact details)
- ☐ All relevant documentation relating to the rules, resolutions and constitution of the Community Scheme
- ☐ Copy of registration certificate with CIPC/Copy of the title deeds.
- ☐ Judgements for/or against the Community Scheme

#### **Housing Scheme for Retired Persons**

- ☐ Completed CS2 Form with a signed declaration.
- ☐ Audited financial statements (mandatory)

- ☐ Signed minutes of the most recent AGM
- ☐ Up-to-date levy schedule
- ☐ Details of Executive Committee (including names, ID numbers, and contact details)
- ☐ All relevant documentation relating to the rules, resolutions and constitution of the Community Scheme
- ☐ Copy of registration certificate with CIPC/Copy of the title deeds.
- ☐ Judgements for/or against the Community Scheme

**Housing Co-operatives**

- ☐ Completed CS2 Form with a signed declaration.
- ☐ Audited financial statements (mandatory)
- ☐ Signed minutes of the most recent AGM
- ☐ Up-to-date levy schedule
- ☐ Details of Executive Committee (including names, ID numbers, and contact details)
- ☐ All relevant documentation relating to the rules, resolutions and constitution of the Community Scheme
- ☐ Copy of registration certificate with CIPC/Copy of the title deeds.
- ☐ Judgements for/or against the Community Scheme

## Chapter 3 Process Flow

### Annual Returns Process

No.	Role	Activity	Description
1.	Applicant	Login	Only a logged-in user should be able to submit annual returns.
2.	Applicant	Register	Redirects the applicant to the registration page if not registered.
3.	Applicant	Search Scheme	Searches for a scheme and links the user's profile to it. Only users linked to a scheme may submit an annual return application.
4.	Applicant	Complete Form CS2 Online	Completes Form CS2 online.
5.	Applicant	Attach Supporting Documents	Uploads the required supporting documents: scheme rules, statement of financial position, AGM minutes, levy schedule, special resolutions, copy of CIPC registration certificate or title deed, and other documents.
6.	Applicant	Submit Application	Can only submit the online form once all required fields and documents have been completed.
7.	Applicant	Restrict Submit Button	Submission is restricted if any required fields or supporting documents are missing.
8.	Applicant	Upload Amended Documents	Receives a notification if documents are referred back

			for amendments and may re-upload the corrected documents.
<b>9.</b>	Applicant	View and Download Approved Section 59 Certificate	Receives a notification when the application is approved by CSOS and can view and download the approved Section 59 certificate.
<b>10.</b>	Applicant	View Rejection Letter	Receives a notification if the annual return application is rejected and can view the rejection letter.

# **CHAPTER 4: DISPUTE RESOLUTION**

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## **15. DISPUTE RESOLUTION OF COMMUNITY SCHEMES**

### **SCOPE OF APPLICATION**

15.1 This section shall apply to all applications submitted to CSOS for dispute resolution.

### **ADMINISTRATIVE PROCEDURE**

15.2 The applicant must have the legal standing/ capacity or right to bring the matter before CSOS. The applicant must either be an owner (as per the title deed) or the occupier of a unit in a Community Scheme, the board of directors, sectional title trustees, or the management association for retired persons in the Community Scheme concerned or show that he/she has sufficient material interest in the scheme or the representative of a juristic person who is an owner.

15.3 Applicants must complete the prescribed CSOS application Form DR 1 in order to lodge an application for dispute resolution.

15.4 The form can be completed from the CSOS Connect website at [www.csos.org.za/forms/](http://www.csos.org.za/forms/). Alternatively, the form may be obtained from any CSOS regional offices or satellite offices. The completed Form DR 1 may be submitted to CSOS online on the CSOS Connect platform or by way of email, hand-delivery or courier to the relevant CSOS regional office or satellite office, depending on the area of jurisdiction the Community Scheme falls under.

### **ONLINE SUBMISSION (CSOS CONNECT)**

15.4.1 The applicant must open the CSOS Connect platform on [www.csosconnect.org.za](http://www.csosconnect.org.za) and select "Login";

15.4.2 The applicant will be prompted to register the Community Scheme if not yet registered – as indicated on 1.10 above.<sup>20</sup>

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<sup>20</sup> The applicant can register in their personal capacity if the Community Scheme is not registered and/or does not have capacity to register the Community Scheme.

- 15.4.3 If the Community Scheme is registered, the applicant will be prompted to search the Community Scheme and will then be prompted to select “submit application for dispute resolution”.
- 15.4.4 The applicant must complete the application form and upload supporting documents.
- 15.4.5 An acknowledgement email will be sent to the applicant.
- 15.4.6 The matter will be allocated to a CMO within 3 (three) business days of receiving and opening a file.

#### **HAND DELIVERY**

- 15.4.7 The applicant will receive a dispute resolution application form issued by the receptionist or CMO or any other CSOS delegated employee who assisted the walk-in applicant.
- 15.4.8 After completion of the application form by the applicant, the receptionist, CMO or delegated CSOS employee will stamp the application form.
- 15.4.9 DRGA will open a file with the supporting documents thereafter.

#### **COURIER**

- 15.4.10 The applicant may courier the dispute resolution application form with supporting documents
- 15.4.11 The applicant must ensure that the dispute resolution application form is delivered at the correct CSOS regional or satellite office.
- 15.4.12 The couriered document must contain a cover letter specifically indicating which department the dispute resolution application form is directed to. All couriered dispute resolution application forms must be directed to the CSOS dispute resolution and governance department.

- 15.5 The applicant bears the onus of ensuring that all relevant information has been submitted. The applicant must ensure that the application form is fully and correctly completed and, in addition, meets legislative requirements in respect of section 39 of the CSOS Act. The full names, cell phone numbers and telephone numbers, email address and physical address of each person the applicant considers to be affected materially by the application, as well as the grounds on which the relief is sought must be provided by the applicant.
- 15.6 CSOS shall not register an application form that is not fully completed. All the sections in the application form must be completed by the applicant, unless otherwise indicated.
- 15.7 CSOS may not complete the application form for the applicant. However, the CMO may guide the applicant on how to complete the application form but shall not assist the applicant in formulating a statement of the case. If the applicant is unable to read and write or is physically impaired, the CMO may assist the applicant in completing the form.
- 15.8 The application form and any attachments may either be typed or handwritten. If typed, the font must be clear. Handwritten applications must be both clear and legible.
- 15.9 The applicant shall limit himself to not more than 10 (ten) typed pages of submissions (if necessary), excluding documents, photographs and the like submitted in evidence. If the maximum number of pages is exceeded, the application shall be referred to the applicant for a re-submission. At the discretion of the CMO and based on the complexity of the matter, the applicant's submission can exceed 10 (ten) typed pages.
- 15.10 If an application is not clear and legible, whether typed or handwritten, the applicant shall also be requested to submit an amended application that is clear and legible. The applicant will be required to re-submit the amended application within 3 (three) business days.
- 15.11 If the applicant has different disputes against multiple respondents, then the general rule is that separate applications for dispute resolution in respect of each matter will be required to be submitted.

- 15.12 If the relief is sought against the Community Scheme, its current Executive Committee Members (e.g. the trustees of the Body Corporate, or the directors of the HOA), must be cited on the application as respondents and not cited in their personal capacity. In each application the CSOS will unilaterally include the Body Corporate or the HOA if not cited per se.
- 15.13 If the application is from more than one applicant, and the dispute relates to similar or related matters, then the application may be submitted in the name of one applicant and the other applicants may be identified and listed in an annexure attached to the application form, together with a power of attorney authorising same.
- 15.14 If the same relief is sought against multiple respondents on several issues or disputes, one application may be submitted in one form. Each dispute and the relief sought in respect of each dispute must be recorded in separate annexures and the annexures must be numbered and accurately cross-referenced.
- 15.15 Where the applicant is a Community Scheme, a copy of the resolution by the Executive Committee Members of the Community Scheme, signed by at least 2 Scheme Committee Members authorising the lodgement of the application must be attached to the application.
- 15.16 The application form must be dated and signed by the applicant, unless the application form is signed by the applicant's authorised Representative, which must be indicated in the application form.
- 15.17 Where an applicant is represented by another person, 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 or managing agent).
- 15.18 Either the original or a certified copy of the Representative's authority must be attached, e.g. a signed power of attorney, resolution, contract or mandate.

## **COMMUNICATION WITH APPLICANTS**

- 15.19 CSOS will communicate directly with an applicant unless the applicant has authorised a Representative to act on his/her behalf and shall use the contact details supplied on the application form unless the applicant advises otherwise.

- 15.20 In the event that an applicant is represented, CSOS shall include the applicant in all communication directed to such Representative.
- 15.21 Where there are multiple applicants in an application, CSOS shall be responsible for transmitting any relevant notice, information, or any request from CSOS to each of the named applicants.
- 15.22 CSOS retains the discretion to contact a party directly regarding an application or to decline to communicate with a nominated Representative where CSOS is of the view that the urgency of the circumstances requires the party to be contacted directly.
- 15.23 Communication from all the parties shall always remain cordial and professional regardless of the difference of opinion.

## **RELIEF SOUGHT**

- 15.24 The applicant must provide a short statement of the expected outcome or relief sought in the application form. The application must comply with the provisions of section 38 of the CSOS Act. The expected outcome must fall within section 39 of the CSOS Act.
- 15.24.1 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 relief as set out in section 39 of the CSOS Act, and
- 15.24.2 The full names, cell phone and telephone numbers, email and physical address of each person the applicant considers to be affected materially by the application, as well as the grounds on which the relief is sought. Information included in the application assists the CSOS, the respondent(s) and any affected party, to understand the relief that the applicant is seeking, and the reasons for the application.

## **CONDONATION APPLICATIONS**

- 15.25 If the relief sought by an applicant relates to an order declaring any decision of an association or an executive committee to be void, and 60 (sixty) business days has elapsed since the decision was taken, the applicant must simultaneously apply to the

Ombud, together with the application for dispute resolution, for condonation for the late submission of the application in terms of section 41(1) of the CSOS Act.

- 15.26 The application for condonation must include reasons for the failure to submit the application within the prescribed timeframe as provided for in the CSOS Act, and the applicant is required to account for each day that the application is late.
- 15.27 The CMO will furnish the applicant with Form DRC 1 “applying for condonation” and request the applicant to complete the form and return within a period of 5 (five) business days. The completed application Form DRC 1 may be submitted to CSOS either online on the CSOS Connect platform, by courier, by email, or by hand-delivery to the relevant CSOS regional office or satellite office, depending on the area of jurisdiction in which the Community Scheme is situated.
- 15.28 The respondent will be granted an opportunity to make further submissions as to whether the late filing of the application should be granted or not. This is in line with the principles of *audi alteram partem* rule.
- 15.29 The Ombud has the discretion to grant or refuse condonation after considering whether the applicant has shown good cause for the late filing of the application and, provided that the respondent has presented his submissions within the 7 (seven) business day period.
- 15.30 Although the CSOS Act does not explicitly define the term “good cause,” legal precedent has firmly established that, during the assessment of a condonation application, the Ombud must apply his/her discretion.
- 15.31 A decision by the Ombud, be it the approval or denial of the application for condonation, shall be communicated in writing to the applicant and the respondent/s, accompanied by a brief explanation for the decision, within 10 (ten) business days from the date of submission of the application for condonation to the Ombud.
- 15.32 The decision by the Ombud is final.

## **INFORMATION SUBMITTED BY AN APPLICANT IS NOT CONFIDENTIAL**

- 15.33 Section 43(1) of the CSOS Act requires CSOS to give notice to the association and any person affected by an application. An applicant submitting the application for dispute resolution must ensure that all other parties to the dispute are contactable from the given information. The application and any supporting material contain only information that the applicant is obligated to make available to all the other parties. The information submitted by the applicant will not be classified as private and confidential, however, Personal Information will be redacted.

## **INTERNAL DISPUTE RESOLUTION**

- 15.34 All applicants must first attempt to resolve the dispute internally, within the Community Scheme, before seeking relief from CSOS.
- 15.35 The applicant must submit proof that any prescribed internal processes for resolution of the dispute have been exhausted.
- 15.36 The provisions of clause 15.34. above will not apply if the applicant can prove:
- 15.36.1 that the respondent has failed and/or refused to participate in any internal dispute resolution process;
  - 15.36.2 that the respondent rejected any invitation to internal dispute resolution process; or
  - 15.36.3 there is no functioning scheme executive committee.

## **RESPONSE TO CORRESPONDENCE**

- 15.37 The CSOS staff will not personally acknowledge the receipt of all correspondence to CSOS. The applicant bears the onus to ensure that he/she has utilised the correct email address/es.
- 15.38 A formal written response shall be sent to the applicant within 5 (five) business days of the email being sent, couriered or hand delivered. The time period for a response will depend on the urgency of the matter and the resources of CSOS. Formal written

correspondence signed by the Ombud will be sent to the applicant, informing him/her whether the application has been accepted or rejected.

## **PRESCRIBED FEE**

15.39 There is no application fee payable.

## **REGISTRATION AND ASSESSMENT OF DISPUTE**

15.40 As soon as an application for dispute resolution is received by CSOS, a new file shall be opened electronically, and a unique file reference number will be allocated.

15.41 As stated under clause 15.38, The application will be assessed by a CMO, within 5 (five) business days from the date that the application is assigned to him/her to assess. The CMO will determine the validity and jurisdiction of the application, and whether the applicant has the requisite *locus standi* to lodge the application.

15.42 For an accurate assessment of the application, it is required that an applicant provides facts pertaining to the matter. It is required that the applicant presents the facts in a concise and truthful manner, supported by relevant documentation, without unnecessary embellishments. The applicant is encouraged to follow these guidelines in order to ensure the submission of a clear and well-substantiated application.

15.43 If it is determined that CSOS has jurisdiction, the CMO will proceed with issuing statutory notices in terms of the CSOS Act.

15.44 On the 6<sup>th</sup> (sixth) business day following the assessment, the CMO will send a section 43 notice to the respondent, to consider and respond to the dispute received.

15.45 The respondent will then have 5 (five) business days to respond to the applicant's application for dispute resolution.

15.46 Once CSOS has received the respondent's submission to the applicant's application for dispute resolution, the CMO will send a section 44 notice to the applicant along



with the respondent's response, all within 5 (five) business days of receiving the response.

15.47 The applicant will have 5 (five) business days to reply to the respondent's submission and confirm their intention to proceed. No new issues should be raised at this stage of the proceedings. The parties are to ensure all parties to the proceedings are copied in all correspondences.

15.48 Where necessary, the CMO will contact the applicant to:

15.48.1 request clarification of certain information contained in the application;

15.48.2 request additional information or further documentation to satisfy the requirements of the CSOS Act; and

15.48.3 information in terms of section 40 of the CSOS Act

within 5 (five) business days after applicant has replied to the respondent's response in relation to the application for dispute resolution.

15.49 At any stage, while the CMO is in contact with the parties to garner additional information/documentation or request clarification on the matter, and it becomes clear to the CMO that the possibility of a settlement between the parties exists, the CMO is encouraged to pursue the possibility of such settlement between the parties. Should a settlement agreement be reached between the parties, the CMO may only draft the settlement agreement after the issuing of statutory notices in terms of section 43 and 44 of the CSOS Act.

15.50 In the event that a dispute is referred to CSOS, parties are encouraged to reach settlement to achieve the most desirable outcome for all parties.

15.51 CSOS will only consider an extension of five (5) business days if exceptional circumstances are provided by the affected party for failure to respond within the given timeframe.

## **REFERRAL TO CONCILIATION OR ADJUDICATION**

- 15.52 CSOS will make a decision to refer a matter to conciliation or adjudication within 5 (five) business days after receiving all responses from the affected parties. If CSOS does not receive a response from the respondent within the time period provided, CSOS will initiate a referral to adjudication within 5 (five) business days after the due date for the section 43 notice has lapsed.

## **REJECTION OF APPLICATION**

- 15.53 CSOS may reject an application in terms of section 42 of the CSOS Act or this Practice Directive.
- 15.54 If CSOS rejects an application, CSOS will inform the applicant/s in writing of the reason/s for the rejection.
- 15.55 In addition to the grounds set in section 42 of the CSOS Act, the application for dispute resolution may be rejected in the event that the dispute is part of, or closely related to, existing court proceedings.
- 15.56 Other incidences upon which applications for dispute resolution may be rejected by CSOS are as follows:
- 15.56.1 The managing agent of a Community Scheme has completed and signed the Form DR1 (dispute resolution application form) on behalf of the scheme, but has failed to attach the signed resolution of the scheme executives in terms of which the managing agent is authorised to act on the scheme's behalf;
  - 15.56.2 If the applicant is a company, but there is no written and signed directors' resolution authorising a particular director to bring the application to the CSOS on its behalf;
  - 15.56.3 The applicant is neither an owner nor an occupier of a unit at the Community Scheme and is unable to show sufficient material interest in the matter;

- 15.56.4 Both applicant and respondent are Community Schemes, but are not members of the same HOA, and there is no legal *nexus* between them, they just occupy adjacent erven (in other words, they are neighbours on the same street in a suburb); and
- 15.56.5 The applicant is represented by another person but has failed to disclose details of such Representative including a copy of the capacity in which such Representative acts (i.e. power of attorney, trustee, managing agent).

#### **NOTICE TO AFFECTED PERSONS (SECTION 43 OF THE CSOS ACT) AND NOTICE TO THE APPLICANT (SECTION 44 OF THE CSOS ACT )**

- 15.57 The application form (Form DR 1) and all attachments to the form will be served on the respondent/s and/or each person CSOS considers to be materially affected by the application. The provisions of section 43 of the CSOS Act will apply with regard to the notice to affected parties.
- 15.58 Once CSOS has received a response from the respondent and from interested persons, CSOS will share same with the applicant in terms of section 44 of the CSOS Act and allow the applicant a period of 5 (five) business days to inspect the submission, submit a written response relating only to the issues raised in the submissions, and confirm whether he/they wish to proceed with the application.
- 15.59 CSOS will only consider a further extension of the 5 (five) business day period referred to above, if exceptional circumstances exist as to why an affected party cannot respond within the given timeframe as mentioned above. The extension to be considered in exceptional cases is a maximum period of 5 (five) business days.

#### **AMENDMENT OR WITHDRAWAL OF APPLICATION**

- 15.60 An applicant may request to amend his/her application or provide additional information prior to the referral of the matter to conciliation.

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

**INSTANCES WHERE MATTERS WILL BE REFERRED DIRECTLY TO ADJUDICATION AS OPPOSED TO CONCILIATION:**

15.62 Instances where matters referred to CSOS shall be referred directly to adjudication include, but are not limited to, the following:

- Where the parties have specifically requested and shown good cause that the matter be referred directly to adjudication;
- Urgent matters as stated under clause 15.129;
- Where it is clear to CSOS that a matter is not capable of settlement between the parties;
- Where the respondent has failed, alternatively neglected to reply to the section 43 notice; and
- 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 it is evident that a conciliation process would be a futile exercise.

**CONCILIATION PROCESS/RULES FOR CONCILIATION**

15.63 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-adversarial manner.

15.64 The role of the Conciliator is to facilitate discussions and assist parties to resolve issues that they are unable to resolve themselves.

15.65 Conciliators are trained to provide general information on the legislation relevant to the issues in dispute and to discuss possible resolutions with the parties. Conciliators may also refer parties to previous decisions of Adjudicators, as well as courts, which

have interpreted and applied provisions of the relevant legislation applicable to issues in dispute.

- 15.66 Conciliators do not provide legal advice nor have decision making powers, or what the outcome of the dispute should be.

## **NOTICE OF CONCILIATION**

- 15.67 CSOS shall notify the parties of the date and time of a conciliation hearing by making use of all available methods and information to contact the parties at any given time, being, for example, email, telephone, SMS and/or WhatsApp.
- 15.68 The Conciliator shall give the parties 7 (seven) business days' notice of the conciliation hearing, by way of notice of set down.
- 15.69 Conciliation must be conducted in the shortest time possible.
- 15.70 The parties must attend the hearing scheduled by the Conciliator.
- 15.71 Applications for postponements will only be considered at the discretion of the Conciliator, should receipt of valid reasons for same be furnished within 2 (two) business days of receiving notice as per clause 15.68.
- 15.72 Conciliation sessions are scheduled for 1 (one) hour and may take more time depending on the complexity of the matter.
- 15.73 Parties must represent themselves in the conciliation proceedings and actively contribute towards discussions to resolve the dispute. Parties may not have legal representation during the conciliation process.
- 15.74 The Conciliator shall conduct all matters by way of a virtual hearing and/or telephonic hearing. Parties may request with motivation for a face-to-face hearing to be conducted.
- 15.75 Should a virtual conciliation hearing be held as opposed to a face-to-face hearing:

- 15.75.1 The Conciliator shall connect the parties to the conciliation session on a conference call;
- 15.75.2 The Conciliator shall record the proceedings and inform the parties accordingly, The recording of the conciliation hearing is only for internal use of the CSOS, and the proceedings and records of the conciliation hearing remain 'without prejudice'.
- 15.75.3 The Conciliator shall explain the process to the parties and inform them of their rights and obligations;
- 15.75.4 If the parties reach a settlement, the Conciliator shall draft a settlement agreement and read the entire agreement to the parties;
- 15.75.5 The parties will be requested to confirm the content of the agreement;
- 15.75.6 The Conciliator shall subsequently send a copy of the above-mentioned settlement agreement to both parties for their records and confirm the settlement agreement, should the settlement agreement not be returned within 24 (twenty four) hours, the matter will be referred to adjudication.
- 15.75.7 The Conciliator shall request that all parties sign the agreement in the space provided and return a signed copy only by email for CSOS' filing, unless the circumstances of the matter deem it impossible or impractical for the parties to do so. Should it be impossible or impractical, the matter will be referred to adjudication.
- 15.75.8 The CSOS conciliation file will thereafter be finalised and closed after receipt of the signed agreement.
- 15.76 Should the Conciliator determine that, in his/her opinion, a face-to-face conciliation hearing is to be held:<sup>21</sup>

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<sup>21</sup> Should either party refuse to attend face-to-face consultation, the CSOS cannot compel any party to attend, however a hybrid conciliation ought to follow in these circumstances.

- 15.76.1 The appointed Conciliator shall convene the conciliation hearing at a CSOS regional or satellite office nearest to the address of the scheme and notify the parties of the date and time at which the hearing will be held;
- 15.76.2 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 in dispute;
- 15.76.3 Each party must listen to the other party's points of view in order to understand the issues in dispute;
- 15.76.4 Prior to the commencement of the conciliation hearing, parties shall be invited to submit and share with one another all relevant documents, plans or photographs that might assist in resolving the dispute;
- 15.76.5 The parties shall not use foul, disrespectful, abusive or threatening language;
- 15.76.6 Unless the other party to the dispute consents, a party cannot produce any additional information or evidence during the conciliation hearing that has not been disclosed to the other party. This is meant to allow the other party to the dispute adequate time to prepare for the conciliation hearing. Any information that has not been disclosed prior to the conciliation date will not be allowed at the hearing in the event that consent is not granted by the other party; and
- 15.76.7 If the parties do not agree on an appropriate or mutually acceptable settlement of their dispute, the Conciliator shall issue a certificate of non-resolution incorporating an automatic referral to adjudication, unless the applicant elects to abandon or withdraw the matter.

#### **ATTENDANCE AT THE CONCILIATION HEARING**

- 15.77 The Conciliator makes the final decision as to who is permitted to attend the conciliation hearing. Only the parties directly involved in the dispute are permitted to attend and take part in the conciliation hearing. The parties who attend the hearing

are expected to have the authority to negotiate and enter into an agreement to resolve the dispute. Proof of the resolution signed by two trustees, mandate, letter of authority or power of attorney to represent the principal must be submitted to the Conciliator prior to the commencement of the conciliation hearing.

- 15.78 The Conciliator may not allow a person who is not a party to attend the conciliation hearing even if he/she believes that it may help to resolve the dispute.
- 15.79 The Community Scheme may be represented at the conciliation hearing by the managing agent, the trustees, the administrator appointed in terms of section 16 of the STSM Act, or the scheme executives of the Community Scheme, provided that the Representatives are duly authorised thereto in writing by way of a duly signed resolution authorising them to do so.
- 15.80 The nature of conciliation is non-adversarial and provides an environment which encourages parties to talk openly to one another and work together to resolve their dispute/s. Once the Conciliator has called the conciliation process to a close, the Conciliator has no further legislative role in relation to the dispute.
- 15.81 The Conciliator may not engage in any discussion with any person that is not a party to the conciliation proceedings.
- 15.82 The information shared, and the evidence relied on in relation to a dispute during a conciliation hearing is without prejudice and is inadmissible in an adjudication process or any other legal proceedings, unless there is a court order. This is meant to encourage an open flow of information between the parties in a confidential manner and assist in resolving the dispute in a way that satisfies the parties.
- 15.83 If one of the parties does not attend the conciliation hearing on the date set down for conciliation, the Conciliator shall, on the same day, attempt to communicate with the absent party telephonically, by SMS and/or email 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 the conciliation hearing. If acceptable reasons are not furnished by the respondent, the Conciliator shall regard the matter as not



resolved, shall issue a non-resolution certificate on the same day and refer the matter for adjudication.

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

### **CONCILIATOR CONDUCT**

- 15.85 The conduct of the Conciliator shall be dealt with in terms of the code of conduct attached to this Practice Directive marked as **Annexure “G”**.

### **MATTERS THAT MAY BE REFERRED DIRECTLY TO ADJUDICATION**

- 15.86 All parties must attempt to resolve the dispute through conciliation with the CSOS Conciliator before the matter can be referred for adjudication.
- 15.87 This Practice Directive sets out some of the factors under clause 15.62 that CSOS may consider in deciding whether a dispute is not appropriate for conciliation; this list is not exhaustive.
- 15.88 The CMO shall consider the circumstances of each dispute before deciding whether the matter may be referred directly for adjudication.
- 15.89 CSOS 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.
- 15.90 To determine whether a dispute should be referred directly for adjudication, CSOS shall consider the following factors: -
- 15.90.1 Any circumstance or aspect of urgency associated with the issue/s in dispute,

- 15.90.2 Where the applicant seeks an order that will have an impact on the Community Scheme or all owners within the Community Scheme;
- 15.90.3 Whether the application is seeking the return of Body Corporate property, such as records or documents necessary for the continued operation, management, or administration of the Body Corporate;
- 15.90.4 Where a Body Corporate has no functioning executive committee and is not able to appoint Representatives to act on its behalf at the conciliation hearing;
- 15.90.5 Where the application involves numerous applicants and respondents, rendering a conciliation hearing impractical;
- 15.90.6 Where it relates to governance issues, meetings, a declaration invalidating a scheme rule and the termination of a managing agent's contract; or
- 15.90.7 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 it is evident that a conciliation process would be a futile exercise.

## **ADJUDICATION PROCEEDINGS**

- 15.91 Where the dispute has not been resolved through conciliation, the matter must be referred to an Adjudicator.

## **PROCEDURE FOR THE CONDUCTING OF ADJUDICATIONS**

- 15.92 Most adjudication matters are able to be determined on the papers submitted by the parties, and these include amongst other things, matters dealing with:
  - 15.92.1 Section 39(1) financial issues;
  - 15.92.2 Section 39(2) behavioural issues;

- 15.92.3 Section 39(3) governance issues;
- 15.92.4 Section 39(4) meeting issues;
- 15.92.5 Section 39(5) managing agent issues;
- 15.92.6 Section 39(6) private and commons area related issues; and
- 15.92.7 Section 39(7) general issues and other issues.

### **FACE-TO-FACE ADJUDICATIONS**

- 15.93 Either party has the right to request that a face-to-face adjudication hearing be held, but the final decision lies with the Adjudicator.
- 15.94 The Adjudicator may at his/her discretion decide on a face-to-face adjudication, depending on the nature, and surrounding circumstances of the dispute.
- 15.95 A notice of set down of the adjudication hearing shall be sent to the parties by email or by courier to the address provided by the parties during the conciliation process.
- 15.96 In addition to the email as indicated above, an SMS may be sent to the parties using the mobile number provided during the conciliation process.
- 15.97 The electronic delivery notification or “read receipt” confirming that the email was sent to the dedicated email address of a party shall, on production thereof, be deemed to constitute conclusive proof that the notice was served on the party.
- 15.98 A managing agent/Body Corporate may be asked to serve a notice of the adjudication hearing on the respondent, if no email address for the respondent is provided. Two persons from the managing agent/Body Corporate will be requested to physically deliver the notice of the adjudication hearing on the respondent’s physical address/known *domicilium citandi et executandi* as provided, with one person attending to the hand-delivery, and the other confirming in writing the fact that he delivered the notice.
- 15.99 Should the notice of set down land in a party’s ‘junk’ email box, it is the responsibility of that party to ensure that all his/her email boxes are checked regularly.

15.100 The Adjudicator shall:

- 15.100.1 Preside over a hearing and shall observe the principles of procedural fairness;
- 15.100.2 Determine the approach in handling the dispute, wherein, oral submissions are made, and written documents are presented.

15.101 The Adjudicator may:

- 15.101.1 If none of the parties are present for the hearing and reasonable attempts to locate the parties have been unsuccessful, the Adjudicator may remove the matter from roll;
- 15.101.2 If the respondent is not present for the hearing, determine the matter in the absence of the respondent after the applicant has lead evidence in respect of the matter;
- 15.101.3 If the applicant is not present, adjudicate on the matter and make a determination notwithstanding an applicant's failure to attend hearings or to provide information as requested; and;
- 15.101.4 Meet with the parties jointly as is necessary from time to time if the hearing is held face-to-face;
- 15.101.5 Make use of his/her specialist knowledge, which must be informed and be consistent with other Adjudicator's decisions, decided court cases or independent research to arrive at an appropriate determination;
- 15.101.6 Require a party to submit, within a set period, any further information, document, or evidence that he/she may reasonably require to make a determination;
- 15.101.7 Review and revise any opinion, instruction, determination, certificate, or valuation related to the dispute;
- 15.101.8 Approve or refuse requests for postponement by either of the parties;

15.101.9 Adjudicate on the matter and make a determination notwithstanding a party's failure to attend hearings or to provide information as requested; and

15.101.10 The appointed Adjudicator shall, at his/her discretion, determine the procedure and manner in which the adjudication hearing shall be conducted (*subject to the provisions of the CSOS Act, Regulations and this Practice Directive*) after having granted the matter due consideration, and shall take into consideration, amongst other things:

- a. The nature of the dispute;
- b. Number of witnesses;
- c. Where the parties are situated and their ability to travel to the CSOS regional offices or satellite offices; and
- d. The parties' access to the requisite technology to engage in a virtual hearing (which may include a telephonic hearing).

#### **DOCUMENT-BASED ADJUDICATIONS, WITH NO FACE-TO-FACE HEARING**

15.102 If it is determined by the Adjudicator that the adjudication shall be conducted based on documents filed by the parties, and the parties to the adjudication have not requested a face-to-face hearing, further written submissions, documents, and information (including evidence in the form of affidavits and photographs) may be requested by the appointed Adjudicator and/or CSOS official in terms of section 51 of the CSOS Act.

15.103 If the adjudication hearing is to be conducted telephonically or virtually, parties to the dispute are requested to have sufficient data, bandwidth, battery-life, or connectivity for the duration of the adjudication hearing. Either of the parties can elect to go to the nearest CSOS regional office or satellite office and a hybrid hearing shall be conducted.

15.104 Once the adjudication file is received by an adjudicator he/she shall notify the parties that he/she is in receipt of the matter and shall call for final written submission. The

Adjudicator shall request confirmation from the parties that they are in receipt of the other party's submissions. The referral to adjudication shall be accompanied by a request for final written submissions sent out by the CMO or Conciliator where applicable.

15.105 All parties must always be copied in on all correspondence pertaining to the matter.

15.106 The Adjudicator must consider the following issues/factors:

15.106.1 Application for dispute resolution, which is to be submitted by the applicant, and which must comprehensively set out the nature of the dispute, and accompanied by all evidence, including photographs and other supporting documents.

15.106.2 The relief sought in terms of section 39 of the CSOS Act.

15.106.3 The response to the section 43 notice, submitted by the respondent refuting or providing an explanation to the applicant's claim or admitting the applicant's claim as well as the response to the section 44 notice.

15.106.4 Any reply from the applicant to the respondent's answer.

15.106.5 Evidence refuting the applicant's claim. The CSOS Act does not make provision for the respondent to make a counterclaim.

15.106.6 Should a party fail to timeously make a written submission to CSOS and the other party regarding a matter, as requested by the CMO, the CEI, or the Adjudicator, he/she shall forfeit an opportunity to make any further submissions thereafter, unless compelling circumstances exist that are approved by the Adjudicator.

15.106.7 No further submissions shall be permitted hereafter. All submissions must be in plain English, and there is no need to use legal jargon. If an Adjudicator does not understand anything pertaining to the matter, he/she shall contact both parties in terms of section 51 of the CSOS Act and ask for clarity. CSOS reiterates the requirement for a fair and transparent process.

15.106.8 Considering the timeframe within which to dispose of disputes, the 90 (ninety) business day turn-around period for dispute resolution shall refer to business days, which excludes weekends and public holidays.

#### **NON-ATTENDANCE AT THE ADJUDICATION HEARING BY EITHER OF THE PARTIES**

15.107 In the event that any party to the dispute does not attend a face-to-face adjudication hearing after being served with the notice of set down, the Adjudicator shall proceed with the adjudication hearing in his/her absence.

15.108 Prior to the commencement of the adjudication hearing, the Adjudicator shall, however, attempt to communicate with the absent party or parties by way of email, SMS or telephonically to ascertain the reason for the party's absence.

15.109 The Adjudicator may call for any supplementary submissions.

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

15.111 Should any Party fail to attend the adjudication meeting, he or she may nevertheless elect to provide the Adjudicator with submission for consideration.

15.112 The Adjudicator may postpone the adjudication hearing to a new date at his or her discretion for the parties to attend.

15.113 The Adjudicator has a duty to record any non-attendance in the dispute file.

15.114 The Adjudicator must make reference to the issue of non-attendance in the adjudication order.

- 15.115 The Adjudicator may determine an order for cost against any party, if he or she deems it necessary.

## **INVESTIGATIVE POWERS OF THE ADJUDICATOR**

- 15.116 The Adjudicator has the power to conduct investigations

- 15.116.1 The Adjudicator may investigate a dispute in terms of Section 50 and 51 of the CSOS Act.
- 15.116.2 CSOS receives numerous applications for dispute resolution relating to a claim by Community Schemes against unit owners for the payment of outstanding levies. An application is lodged for the payment of the outstanding levies. The sum claimed at the time of lodgement of the dispute differs from the sum owing (i.e the current outstanding levies) at the date an adjudication order is determined.
- 15.116.3 This aspect of the Practice Directive relates to affording the respondent (i.e unit owner) an opportunity to respond to an application for arrear levies where the possibility exists that the Adjudicator may determine an order for the payment of the payment current outstanding levies as at the date of the adjudication rather than the payment of arrear levy amount applied for at the lodgement of the dispute.
- 15.116.4 The payment of admin levies by a unit owner is vital for the financial sustainability of the Community Scheme.
- 15.116.5 In respect of prayers for relief in accordance with Section 39(1)(e) of the CSOS Act, with specific reference to matters pertaining to arrear levies, should the adjudicator require the applicant to provide an up to date levy statement, the adjudicator must ensure that the statement comes to the attention of the respondent, and should attempt to engage with the respondent in respect of the amount indicated as outstanding in respect of arrear levies as at the date of the adjudication hearing. The applicant must categorically request for the payment of the current outstanding



levies in the application or in further submissions to the Adjudicator in terms of Section 51 of the CSOS Act.

15.116.6 The Adjudicator must consider all the relevant evidence presented before him/her fairly and objectively, without showing any appearance of bias or impropriety. The Adjudicator 's decision must be based on the evidence presented and the applicable law.

15.116.7 Where necessary in these disputes relating to a potential order for the payment of a different or increased sum of arrears from that claimed, the adjudicator must hear the other side (i.e. the respondent) and afford him or her an opportunity to state their case or provide their response to the relief sought on the said increased or different sum claimed. This, the adjudicator may do by way of emails, a telephone call, a virtual or physical hearing. The submissions of the parties must be shared with each other and by the Adjudicator, if necessary, and the parties must be invited to provide any further submissions if needs be.

15.116.8 Such investigation must be outlined in the Adjudication Order.

## **ADJUDICATION PROCESS AND RULES FOR ADJUDICATION**

15.117 The Adjudicator shall be impartial and independent of the parties and shall inform the parties immediately of anything which could affect his/her impartiality or independence.

15.118 The Adjudicator shall not give advice to the parties or their Representatives concerning the matter in respect of which he/she has been appointed other than in accordance with this Practice Directive.

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

15.120 The Adjudicator shall enjoy the same privileges and immunity 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/her duties unless such act or omission is shown to have been in bad faith.

15.121 The Adjudicator shall: -

15.121.1 be bound by the provisions of the CSOS Act, this Practice Directive, code of conduct for Conciliators and Adjudicators and any other provisions of relevant pieces of legislation;

15.121.2 act with fairness and impartiality;

15.121.3 ensure that each party is furnished with a copy of any written submissions sent to or from parties to the dispute; and

15.121.4 adopt the most cost-and-time-effective procedure consistent with fairness to determine the outcome of the dispute.

15.122 The parties are prohibited, of their own accord, from communicating with the Adjudicator for reasons other than those mentioned above. Should a need exist to communicate with the Adjudicator, a party requiring doing so shall ensure that the communication includes the other party/ies to the dispute.

## **LEGAL REPRESENTATION AT THE ADJUDICATION**

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

15.124 Should a party require legal representation, submissions must be made to the Adjudicator, in writing, prior to the adjudication being conducted, either via documents or in a face-to-face hearing.

15.125 The Adjudicator must notify the other party/ies and request his/her/their submissions in respect of the matter before adjudication.

- 15.126 The Adjudicator must apply his/her mind to the matter of legal representation in terms of Section 52 of the CSOS Act, taking into consideration all relevant circumstances and reasons, including a party's constitutional right to legal representation, before making a reasoned decision.

#### **ADJUDICATION ORDER**

- 15.127 The Adjudicator's written adjudication order shall:

- 15.127.1 Be delivered to the parties not later than 14 (fourteen) business days after the date of the final adjudication hearing;
- 15.127.2 Include reasons for the decision given by the Adjudicator.
- 15.127.3 Be adhered to and the parties shall give effect to the order issued by the Adjudicator strictly in terms of the time limit provided in the adjudication order.
- 15.127.4 Be binding on the parties, unless and until such adjudication order is varied or set aside as provided for in terms of section 57 in whole or in part by a High Court of South Africa in terms of section 57 of the CSOS Act and the rules of the High Court. Alternatively, the High Court has issued an order staying the operation of the order appealed against in terms of section 57(3) of the CSOS Act.

#### **RELIEF IN TERMS OF SECTION 39(7)(b) OF THE CSOS ACT**

- 15.128 The Chief Ombud has proposed that relief and an order may be sought in terms of section 39(7)(b) of the CSOS Act, as follows:-

- 15.128.1 An order, on an urgent basis for relief set out in paragraph 15.129.
- 15.128.2 Members or trustees who are dissatisfied with the EMA's performance or conduct may apply for appropriate remedies, which may include removal of the EMA read with section 39(5)(b) of the CSOS Act.

- 15.128.3 The adjudicator may make an order against the scheme for non-compliance with undesirable rules.

## **URGENT APPLICATIONS**

- 15.129 Urgency will be determined based on imminent harm, loss of life, that damage or loss that may occur if the dispute is not handled on an urgent basis, the termination of essential utility services or denial of access to the scheme, common property or common infrastructure or unit.

## **PROCEDURE ON URGENT APPLICATIONS**

- 15.130 An assessment by the CMO, in conjunction with the Chief Ombud, will be undertaken within 24 (twenty-four) hours of receipt and registration of the dispute application.
- 15.131 If the matter is determined to be one of urgency, the section 43 notice will be issued to the respondent, requiring the respondent to respond to the application within 24 (twenty-four) hours of receipt thereof.
- 15.132 Upon receipt of the response to the section 43 notice from the respondent within the 24 (twenty-four) hour period as required, it will be forwarded to the applicant, and the section 44 notice will be issued requiring the applicant to confirm whether he/she wishes to proceed with the adjudication order, which he/she is required to do within 24 (twenty-four) hours of receipt of the section 44 notice.
- 15.133 Upon receipt of confirmation from the applicant that he/she wishes to proceed with the adjudication in terms of section 44 of the Act, CSOS shall refer the matter for adjudication in terms of section 48 of the Act.
- 15.134 The Adjudicator shall issue an order within 48 (forty-eight) hours from receipt of a response pursuant to a section 44 notice.

## **COSTS ORDER**

- 15.135 The parties to a dispute resolution application are required to meet their own cost.

- 15.136 If an Adjudicator dismisses an application on the grounds that it is frivolous, vexatious, misconceived or without substance, the Adjudicator may, in terms of section 53(2)(a) of the CSOS Act, make a cost order against the applicant in favour of the respondent. The costs awarded shall not exceed the sum of R5 000.00 as determined from time to time.

## **ADJUDICATOR'S CONDUCT**

- 15.137 The conduct of the Adjudicator shall be dealt with in terms of the code of conduct attached to this Practice Directive as **Annexure "G"**.

## **ENFORCEMENT OF ADJUDICATION ORDER**

- 15.138 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 an order or judgement handed down by that Court.
- 15.139 An adjudication order for specific performance can only be enforced in the High Court. An adjudication order for specific performance refers to an order that has no quantum or monetary value.
- 15.140 The adjudication order will have an implementation date. If the party against whom the order has been issued has not complied with the adjudication order, the party in whose favour the order is issued must approach CSOS for the issuing of an enforcement order.
- 15.141 The party 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:
- 15.141.1 The original enforcement order signed by the Regional Ombud and an Adjudicator.
  - 15.141.2 A copy of the Adjudicator's order.
  - 15.141.3 Any relevant form/s required by the Magistrates Court or the High Court to be completed.

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

15.141.5 Once the Clerk of the Magistrates Court or Registrar of the High Court has issued the enforcement order and allocated a case number, the party may submit the order to the sheriff of the Court for further execution. CSOS will not be involved in this process and the party applying to have the order made an order of court will bear the costs related to the execution of the order.

## **CORRECTION OF ADJUDICATION ORDERS**

15.142 An Adjudicator has no legal capacity to review or amend a final adjudication order or provide reasons for the order once issued, except, where directed to by a court.

15.143 Where an order or a statement of reasons contains an accidental grammatical error or omission, such as a typographical or spelling mistake, an Adjudicator has the inherent power to issue a further order correcting the error.

15.144 The capacity to correct accidental errors is limited to correctly stating what was decided and intended at the time of the original order. 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.

15.145 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 CSOS senior manager for dispute resolution to issue a correction order.

15.146 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.

15.147 Other parties to the application would not normally be invited to make submissions with respect to the proposed correction.

15.148 Unless otherwise stated the corrected order will have effect from the date that it is issued.

## **URGENT MATTERS**

15.149 As referred to above, an applicant can apply for the matter to be heard on an urgent basis.

15.150 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.

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

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

15.151.2 deprivation of essential services, not limited to disconnection of water, electricity and/or gas without a court order; or

15.151.3 access to the scheme by unit owners or occupiers.

15.152 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.

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

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

15.155 The Ombud has a discretion to permit, or limit, or refuse a request for extension to the submission or the response period where such a request of time or extension has not demonstrated acceptable grounds.

15.156 If it is later found that the matter was not urgent, the Adjudicator may issue a cost order against the applicant in favour of the respondent, or any active participant affected materially by the application.

## **APPEAL PROCESS**

15.157 A party who is not satisfied with the Adjudicator's order may lodge an appeal in the High Court on a question of law only, taking into account the rules of the Superior Courts Act 10 of 2013.

15.158 An appeal against the order must be lodged at the High Court within 30 (thirty) business days after the date of the delivery of the order by the Adjudicator.

15.159 Once an appeal has been lodged as prescribed above, the adjudication order issued by the Adjudicator will remain unenforceable until such time that the appeal process has been finalised.

15.160 Once an Adjudicator issues a final order, they become *functus officio*. CSOS and the Adjudicator have no authority to alter or reopen the order, unless a court so directs.

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

15.162 The Adjudicator's order will be made an order of court and will be enforceable in line with the applicable court processes.



## **THE ROLE OF THE CSOS IN THE APPEAL PROCESS**

- 15.163 Once a final order is made by an Adjudicator to determine a dispute resolution application, the file is closed by CSOS and the Adjudicator is what is known as “*functus officio*”, which means that his function has come to an end. The Ombud and the Adjudicator have no further legislative role in relation to the dispute after the order has been handed down to the parties.
- 15.164 Adjudicators are independent decision-makers and are not subject to the direction of the Ombud when making their orders. The Ombud has no authority to review an Adjudicator’s investigation, findings, order or to direct an Adjudicator to re-open or re-investigate an application, unless the order is corrected as provided for in this Practice Directive.
- 15.165 Once the order is made and reasons are furnished, the Adjudicator is under no obligation to further explain or interpret his/her order.
- 15.166 The Adjudicator has no authority 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.
- 15.167 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.

## **DISPUTE RESOLUTION PROCESS AND CONFIDENTIALITY**

- 15.168 Applications, submissions and replies to submissions provided for the consideration of the Chief Ombud, the Conciliator or an Adjudicator are not confidential.
- 15.169 Parties should also be aware that adjudication orders are published and made available on the CSOS website.
- 15.170 An interested party may request CSOS to provide them with copies of adjudication orders.

15.171 CSOS will not waive the fees, payable to inspect or obtain copies of documents, unless exempted in line with section 22(8) and section 54(8) of Promotion of Access to Information Act No.2 of 2000 (**PAIA**). The adjudication orders shall from time to time be published on the CSOS Connect website.



## ANNEXURE G: CODE OF CONDUCT FOR CONCILIATORS AND ADJUDICATORS

### 1. INTRODUCTION

- 1.1. This code of conduct ("**the code**") applies to all Conciliators and Adjudicators appointed by the CSOS in line with the CSOS Act. Conciliators and Adjudicators are responsible for conducting themselves in a professional and ethical manner. The code serves as a guide and cannot anticipate all possible situations in which the Conciliators and Adjudicators may be called upon to exercise judgement about appropriate conduct.
- 1.2. All persons appointed as Conciliator and Adjudicators are required to comply with the general code of conduct applicable to all CSOS employees and are bound by the following CSOS values:
  - 1.2.1. **Service Excellence:** CSOS will provide the best dispute resolution services to its clients in a timely and responsive manner.
  - 1.2.2. **Independence:** CSOS will act independently and objectively in the undertaking of its activities.
  - 1.2.3. **Transparency:** CSOS will execute its functions in an open and transparent manner and ensure that it is easily accessible to its clients
  - 1.2.4. **Integrity:** CSOS will strive to execute its functions in an honest, ethical, transparent and reliable manner.

1.2.5. **Innovation:** CSOS will strive to apply innovative capabilities to improve its service delivery.

1.2.6. **Fairness:** CSOS will make decisions in a fair and impartial manner that espouses the principles of Batho Pele.

1.3. In addition to the Codes, Conciliators and Adjudicators are required to comply with provisions of the Constitution of the Republic of South Africa Act, 1996, PAJA the CSOS Act and its regulations.

## **2. CODE OF CONDUCT**

### **2.1. Acceptance of Assignment**

2.1.1. Before accepting an appointment to a case, a Conciliator or Adjudicator must ensure that he/she is able to conduct the conciliation or adjudication independently, impartially and expeditiously.

### **2.2. Impartiality**

2.2.1. A Conciliator or Adjudicator must be impartial and fair to the parties and be seen to be so. Following from this, a Conciliator or Adjudicator must disclose to the Chief Ombud any information which may lead to the impression that he/she may not be impartial or fair, including, that:

- a) There is an actual, potential or apparent conflict of interest between the Conciliator or Adjudicator and any of the parties, the Conciliator or Adjudicator must immediately disclose this to the Chief Ombud.
- b) A Conciliator or Adjudicator (or any other member of his/her firm or company) has acted in any capacity for any of the parties on previous matters not related to the dispute at hand.

- c) A Conciliator or Adjudicator has a financial or any other interest (direct or indirect) in any of the parties or the outcome of the dispute resolution process; or
- d) A Conciliator or Adjudicator has any confidential information about the parties or the matter which is the subject of conciliation and/or adjudication derived from external sources.

2.2.2. If, at any stage during the conciliation and/or adjudication proceedings, new circumstances arise that could give rise to doubt as to the impartiality or independence of the Conciliator or Adjudicator, such information must immediately be reported to the Ombud. The Chief Ombud shall have the discretion to appoint a substitute Conciliator or Adjudicator.

2.2.3. A Conciliator or Adjudicator (or any member of his/ her company) is precluded from acting for the parties subsequently in any matter related to or arising out of the subject matter of the conciliation or adjudication while still in the employ of CSOS.

2.2.4. A Conciliator or Adjudicator should not engage in conduct that exploits his/her position of authority.

### **3. CONFIDENTIALITY**

3.1. Any document or information supplied for and/or disclosed in the course of the conciliation or adjudication must be kept confidential. A Conciliator or Adjudicator can only disclose the same if required to do so by law, or pursuant to any order of the court, or with the written consent of all the relevant parties.

3.2. A Conciliator or Adjudicator should not make public comment in the media or any public forum, orally or in writing, on any aspect of a matter before them.

### **4. PREPARATION AND DILIGENCE**

4.1. A Conciliator or Adjudicator must prepare appropriately before the commencement of the conciliation or adjudication.

- 4.2. A Conciliator or Adjudicator should carry out his/her role in a conscientious and diligent manner.

## **5. RULES FOR CONDUCTING CONCILIATION AND ADJUDICATION**

- 5.1. In conducting proceedings, Conciliators or Adjudicators should give special attention to the right of equality before the law and the right of equal protection and benefit of the law and must not unfairly discriminate or display any bias or prejudice based upon a ground set out in Section 9(4) of the Constitution.

- 5.2. Adjudicators should resolve all cases before them by findings of fact and by applying the law (and equity) in a fair hearing. This includes:

5.2.1. The duty to allow both parties to be heard; and

5.2.2. The duty to remain and to be seen as impartial.

- 5.3. Conciliators or Adjudicators should act in accordance with the commonly accepted degree of decorum and require parties, witnesses and the public to act likewise.

- 5.4. A Conciliator or Adjudicator does not exert undue influence to obtain settlement or a concession from any party. In this regard, a member usually refrains from expressing views about the merits or demerits of the case unless requested by both parties.

- 5.5. Adjudicator should apply the law to the evidence in good faith and to the best of their ability. The prospect of disapproval from any person, institution, or community must not deter adjudicators from making the decision that they believe is correct based on the law and the evidence.

- 5.6. Adjudicators shall endeavour to ensure that decisions are rendered in a timely manner. Where written reasons are to be given, Adjudicators should strive to ensure that they are prepared with reasonable promptness having regard to all the circumstances including balancing the rights and interests of the parties, public interest factors, as well as the urgency of the matter, the length of the proceedings and its complexity.

## **6. CONFLICT OF INTEREST**

- 6.1. A Conciliator or Adjudicator recuses him/herself from the case if either a reasonable suspicion of bias or conflict of interest exists based upon objective facts. A Conciliator or Adjudicator does not recuse him/herself on insubstantial grounds.
- 6.2. A Conciliator and/or Adjudicator who is a practising attorney does not sit in any case in which the firm, law centre or legal aid clinic was directly involved as either attorney of record or in any other capacity. An attorney of record refers to an attorney who is formally listed as representing a party in CSOS related legal proceedings. If a Conciliator and/or Adjudicator is also a practicing attorney, and their law firm or organisation is involved in a CSOS related legal matter, they shall recuse themselves. This included practicing advocates and their respective group.
- 6.3. A Conciliator or Adjudicator who is a practising attorney does not sit in any case in which his/her former law firm was directly involved as either the attorney of record or in any other capacity before their appointment until all indebtedness between the Conciliator or Adjudicator and the law firm has been settled.
- 6.4. A Conciliator or Adjudicator who is serving concurrently as the employee or consultant or Representative of a party in any case before the CSOS does not sit in that case.
- 6.5. A Conciliator or Adjudicator who was an employees or consultant or Representative of a party in any case before CSOS does not sit in that case until all indebtedness has been settled.
- 6.6. If the circumstances requiring recusal are not known to the Conciliator and/or Adjudicator prior to the hearing of the case, the Conciliator or Adjudicator discloses the circumstances when they become known to the Conciliator or Adjudicator.
- 6.7. The burden of recusal rests on the Conciliator or Adjudicator. After appropriate recusal and despite the contents of paragraphs 6.1. to 6.5. of the code, the Conciliator or Adjudicator may serve if both parties so request. However, if the Conciliator or Adjudicator believes or perceives that there is a clear conflict of interest, the Conciliator

or Adjudicator should confirm the recusal, irrespective of the expressed desires of the parties.

- 6.8. The Conciliator or Adjudicator must declare that they in fact have an interest in a particular dispute allocated to them and the Ombud will consider this indication and reallocate the dispute.

## **7. MEMBERSHIP OF ORGANISATIONS AND CONTROVERSY**

- 7.1. A Conciliator or Adjudicator does not take part in the activities of any organisation that practises discrimination inconsistent with the Constitution.
- 7.2. A Conciliator or Adjudicator does not become involved in any political controversy or activity as a Conciliator or Adjudicator except where it is necessary to discharge the office of the CSOS.

## **8. GIFTS AND PERSONAL ADVANCEMENT**

- 8.1. A member must not accept any gift, advantage or privilege that directly or indirectly relates to membership of the CSOS panel of Conciliators or Adjudicators or that can be reasonably perceived as being calculated to influence the Conciliator or Adjudicator in the performance of his/her duties.



## Chapter 4 Process Flow

### Complaints Management

No.	Role	Activity	Description
1.	Complainant	Submit Complaint	Submit a complaint regarding an existing or new dispute.
2.	Complaint Recipient	Acknowledge Complaint	Send an acknowledgement email to the complainant confirming receipt of the complaint.
3.	Complaint Recipient	Resolve Complaint	Investigate and resolve the complaint.
4.	Complaint Recipient	Provide Feedback	Provide feedback to the complainant regarding the resolution or progress of the complaint.
5.	Complaint Recipient	Close Complaint	Close the complaint after resolution and communication with the complainant.

### Dispute Resolution Application Process

No.	Role	Activity	Description
1.	Applicant	Online Application	An applicant should be able to access the dispute application function both before and after login.
2.	Applicant	Login	Directs the applicant to the login page when attempting to submit a dispute before logging in.
3.	Applicant	Register	Directs the applicant to the registration page if they do not already have a CSOS Connect account.

4.	Applicant	Post and Walk-in	Allows the applicant to submit a dispute application via walk-in or post, as per the current process. These applications are captured by the Dispute Coordinator (DC) on the admin portal and follow the same process as public portal applications.
5.	Public Portal	Auto Registration	The applicant and respondent are automatically registered on CSOS Connect after successful application submission.
6.	Applicant or Disputes Resolution Governance Administrator	Search Scheme	Searches for a scheme on the CSOS Connect database. If the scheme exists, its information is auto populated.
7.	Applicant or Disputes Resolution Governance Administrator	Register	Allows the user to register a scheme if it is not already on the system.
8.	Applicant or Disputes Resolution Governance Administrator	Manually Complete Dispute	Manually completes scheme details if the scheme is not registered and not registered during the dispute application process.
9.	Applicant or Disputes Resolution Governance Administrator	Complete Dispute Application Online	Completes the online dispute application form according to the relevant use case.

10.	Applicant or Disputes Resolution Governance Administrator	Select Meeting or Resolution Date	Selects a meeting date if the dispute relates to a meeting resolution.
11.	Applicant or Disputes Resolution Governance Administrator	Complete Condonation Form	Completes the condonation application form if the dispute is submitted more than 60 days after the cause of action, as required by the practice directive.
12.	Applicant or Disputes Resolution Governance Administrator	Upload Supporting Documents	Uploads all necessary supporting documents related to the dispute and, where applicable, condonation.
13.	Applicant or Disputes Resolution Governance Administrator	Restrict Submit Button	The system restricts submission if all mandatory fields and documents are not completed.
14.	Applicant or Disputes Resolution Governance Administrator	Submit Application	Submits the completed dispute application form.
15.	Applicant	Re-upload Referred Documents, Capture Comments	Re-uploads referred documents and captures comments either as notes or as attached documents, if CSOS refers the application back.

## Submission of Special Resolutions

No.	Role	Activity	Description
1.	Public Portal	Receive Acknowledgement Email	Sends acknowledgement email after an application has been submitted via the public portal.
2.	Public Portal	Receive Referral Notification and Email	Sends email and in-system notification (if registered) to applicant when documents are referred back via the admin portal.
3.	Public Portal	Receive Info Request Notification and Email	Sends email and notification (if registered) to applicant when additional information is requested via the admin portal.
4.	Public Portal	Re-upload Documents and/or Comments	Allows re-upload of documents and/or comments during the application and assessment process.
5.	Applicant and Respondent	View Application	View the dispute file and all attached documents throughout the application lifecycle.
6.	Respondent	Receive Notification and Email – s43 Notice	Receives s43 Notice via email and system notification (if registered).
7.	Respondent	Submit s43 Response	Submits written response in accordance with Section 43 of the Act.
8.	Applicant	Receive s44 Notice	Receives section 43 response from the respondent via email and notification centre.
9.	Applicant	Submit s44 Response	Submits section 44 response along with comments and supporting documents.

10.	Applicant	Confirm s44 Satisfactory	Confirms whether the response provided under section 43 is satisfactory.
11.	Applicant and Respondent	Receive Allocation Notification, SMS and Email	Notified of the referral of the dispute application to conciliation.
12.	Applicant and Respondent	Receive Conciliation Invite	Receives conciliation invite (may be initiated outside the system).
13.	Applicant and Respondent	Receive Settlement Agreement	Receives a copy of the settlement agreement via email and notification centre.
14.	Applicant and Respondent	Sign Settlement Agreement	Signs the settlement agreement online. If signed offline, upload to case file. Both parties are notified once uploaded.
15.	Applicant and Respondent	Receive Non-Resolution Notification	Notified via email, notification centre and SMS that the matter has been referred for adjudication due to non-resolution.
16.	Applicant and Respondent	Apply for Adjudication Order	Applies online for conversion of settlement letter into an adjudication order.
17.	Applicant and Respondent	Receive Adjudication Order	Receives adjudication order notification. Order is also downloadable from dispute file. Non-registered users receive via email.
18.	Applicant and Respondent	Receive Request Final Submissions	Receives request (via notification and email) for final submission before adjudication.
19.	Applicant and Respondent	Make Final Submissions	Submits final documents as requested by compliance

			officer under sections 50 and 51.
<b>20.</b>	Applicant and Respondent	Receive Reminder	Receives a reminder on the 3rd working day if no final submission has been made.
<b>21.</b>	Applicant and Respondent	Receive Notification for Adjudication Referral	Receives adjudication referral notice (view/download on dispute file or via email if not registered).
<b>22.</b>	Applicant and Respondent	Receive Adjudication Order	Receives adjudication order notification. Can view/download from the file or receive via email if not registered.
<b>23.</b>	Applicant and Respondent	Receive Enforcement Order	Receives enforcement order notification. Can view/download from the dispute file or receive via email/printed copy if not registered.

# **CHAPTER 5: PROTECTION OF PERSONAL INFORMATION AND ACCESS TO INFORMATION**

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## **16. PROTECTION OF PERSONAL INFORMATION AND ACCESS TO INFORMATION**

### **SCOPE OF APPLICATION**

- 16.1 This section applies to scheme members and/or residents' Personal Information to ensure that they are protected and that every member and/or resident of a Community Scheme is entitled to receive or view certain information concerning the administration of the Community Scheme authorised by the CSOS Act and STSM Act.

### **THE PROTECTION OF PERSONAL INFORMATION ACT (POPIA) AND THE PROMOTION OF ACCESS TO INFORMATION ACT (PAIA)**

- 16.2 POPIA and PAIA give effect to section 14 and 32 of the Constitution respectively. PAIA enables individuals to obtain information including copies of records held by a public body or private body. Access to any record held by a private body will be provided if the record is required for the exercise or protection of any rights, the individual requesting for such information complies with the procedural requirements of PAIA and the request for information does not fall within any of the grounds laid down in the PAIA upon which access to information is refused.
- 16.3 POPIA seeks to protect the right to privacy of individuals, POPIA further provides the Data Subject with numerous rights. Furthermore, POPIA regulates the processing of personal information in a manner that gives effect to the right to privacy, whilst recognising that such right may be justifiably limited to protect other rights and important interests. It does so by setting out a number of minimum conditions for the processing of personal information that Responsible Parties must adhere to. Such conditions are set out below under clause 16.4.
- 16.4 The Responsible Party must adhere to the below conditions of lawful processing, when processing the Personal Information of a Data Subject. The 8 (eight) conditions to be observed are as follows:

- 16.4.1 Condition 1: Accountability;

- 16.4.2 Condition 2: Processing limitation;
  - 16.4.3 Condition 3: Purpose specification;
  - 16.4.4 Condition 4: Further processing information;
  - 16.4.5 Condition 5: Information quality;
  - 16.4.6 Condition 6: Openness;
  - 16.4.7 Condition 7: Security safeguards; and
  - 16.4.8 Condition 8: Data subject participation
- 16.5 In the context of Community Schemes, a member of a Community Scheme is deemed, by virtue of ownership or occupation of a unit within a Community Scheme, to have consented to his/her Personal Information being stored and/or shared with the relevant parties by the board of trustees or any governance structure of a Community Scheme for the purposes of managing the affairs of the Community Scheme. Should the Community Scheme instruct an Operator to process Personal Information of Community Scheme members, an Operator's agreement must have been concluded by the Community Scheme and the Operator. Furthermore, the Operator must notify the Community Scheme immediately if there are reasonable grounds to believe that the Personal Information of the Community Scheme members has been accessed or acquired by an unauthorised person.
- 16.6 The processing of information of a member of a Community Scheme must only be limited to the management of the Community Scheme such as collection of levies, compliance with Community Scheme rules, maintenance, and security of the Community Scheme.
- 16.7 The Information Officer of the Community Scheme must ensure that a manual is developed, monitored and made available as prescribed in line with 51 of PAIA. The Information Officer shall upon request by any person provide copies of the manual to that person upon the payment of a fee to be determined by the Information Regulator from time to time.

- 16.8 Sharing Personal Information with members of the Community Scheme or debt collectors relating to the defaulters in terms of levy payments or members who have failed to adhere to the Community Scheme rules, will not require a member's consent.
- 16.9 A member of the Community Scheme shall not be entitled to access members' Personal Information without their consent, other than information readily available in terms of the governance or management of affairs of the Community Scheme.
- 16.10 Executive Committee Members must ensure that appropriate, reasonable, technical and organisational measures are put in place to safeguard the Personal Information of the Community Scheme members against loss, damage, or unlawful possession or access to this information.
- 16.11 The Information Officer must ensure that the Personal Information of members and/or residents and third parties is processed safely and securely. Each Community Scheme must accordingly designate a person to be an Information Officer for the Community Scheme, which may be a member of a managing agent.<sup>22</sup>
- 16.12 Members and/or residents must advise the Information Officer if any of their Personal Information must be updated, amended, or deleted. An Information Officer may be an Executive Committee Member such as a trustee or director, managing agent, executive managing agent, or property administrator and must register with the Information Regulator.
- 16.13 Section 3(1)(n) of the STSM Act states that upon reasonable request, the board of trustees and/or members' names and addresses must be furnished to the requester. The CSOS emphasis is that the request for members' Personal Information protected by POPIA must be reasonable and only be furnished upon consent by the board of trustees or members and it should further comply with the Personal Information principles outlined in POPIA subject to section 32 of the Constitution of the Republic of South Africa read together with PAIA.
- 16.14 PMR 27(2)(b) of the STSM Act states that the Community Scheme must obtain the

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<sup>22</sup> Section 56 of POPIA

following information, which must be kept updated, in relation to trustees, members, and tenants. Their-

16.14.1 full names;<sup>23</sup>

16.14.2 identity numbers or, in the case of non-South African citizens, their passport numbers;

16.14.3 section addresses and mailing addresses, if different;

16.14.4 telephone numbers; and

16.14.5 email or other electronic addresses, if any.

16.15 All the information in clause 16.14 above is classified as Personal Information in terms of POPIA and therefore consent must be obtained from the Data Subject before their Personal Information is transmitted to a third party unless the exemptions in section 18(4) and/or section 38 of POPIA apply.

16.16 Personal Information processed for the purpose of discharging a relevant function is exempt from sections 11(3) and (4), 12, 15 and 18 of POPIA in any case to the extent to which the application of those provisions to the Personal Information would be likely to prejudice the proper discharge of that function.

16.17 Personal Information can therefore only be processed in a lawful manner, if necessary, if consent is obtained and collected directly from the Data Subject.

16.18 Parties involved in dispute resolution proceedings are entitled to access documents and/or information in so far as it relates to the dispute. Such parties are not mandated to follow the POPIA or PAIA process for access to information.

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<sup>23</sup> Full names qualify as personal information if the name appears with other personal information.

## INFORMATION OFFICER

- 16.19 The Information Officer for private bodies must be a chief executive officer or managing director or equivalent officer of the juristic person or any person duly authorised by that officer or any person who is acting as such or any person duly authorised by such acting person and in essence within Community Schemes that would limit it to either a member of the board of trustees and/or directors, including a chairman, a building manager, or an estate manager. However, in the context of the Community Scheme's governance, a managing agent, EMA, administrator of the Community Scheme or any other employee of the Community Scheme may be designated as a deputy Information Officer for the Community Scheme, subject to a resolution of the Community Scheme.
- 16.20 There are certain duties that an Information Officer is required to comply with. These duties include, among other things, promoting and ensuring that the Responsible Party complies with the provisions of POPIA, dealing with requests made under POPIA, and assisting the Information Regulator with any investigations conducted in respect of the Community Scheme.
- 16.21 There are additional duties to be performed by the Information Officers, which include ensuring that:
- 16.21.1 A compliance framework is developed, implemented, monitored, and maintained;
  - 16.21.2 A Personal Information impact assessment is done to ensure that adequate measures and standards exist in order to comply with the conditions for the lawful processing of Personal Information;
  - 16.21.3 A manual is developed, maintained, and made available as prescribed in terms of PAIA;
  - 16.21.4 Internal measures are developed together with adequate systems to process requests for information; and
  - 16.21.5 Internal awareness sessions are conducted regarding the provisions of

POPIA, the regulations, codes of conduct, or any other information obtained from the Information Regulator.

## **ACCESS TO INFORMATION**

- 16.22 A request for access to information must be made by a requester in the prescribed form (Form 2 – request for access to record) which can be obtained from the Information Regulators website ([www.inforegulator.org.za/](http://www.inforegulator.org.za/)) , the form is to be addressed and sent to the Information Officer of the relevant Community Scheme. The form can be delivered via email, by courier or hand delivery to the Information Officer.
- 16.23 The requester shall furnish the following information:
- 16.23.1 particulars of the person making the request;
  - 16.23.2 particulars of the person on whose behalf the request is made (if applicable);
  - 16.23.3 particulars of the record to which access is requested;
  - 16.23.4 the form of access required (inspection, photocopies, etc);
  - 16.23.5 particulars of the constitutional right to be exercised or protected; and
  - 16.23.6 an indication as to how the requester wishes to be notified of the decision regarding the request to the record concerned.
- 16.24 A person who seeks access to a record containing Personal Information concerning that person, is exempted from paying the request fee. A Community Scheme which receives a request for access to a record, and which contains the information should respond by issuing a written notice which can take the form of a letter, requiring the requester to pay the request fee prescribed in the regulations. Unless the information requested is limited to information which is personal to the requester.
- 16.25 If the Information Officer is of the opinion that more than 6 (six) hours will be taken in giving effect to the request, the Information Officer may estimate the amount of

the access fees which will become due and require the requester to pay a deposit of not more than one third of the estimated amount. However, the following persons are exempted from paying the access fee amount, namely:

16.25.1 single persons whose annual income after permissible deductions are made does not exceed R14 712.00 and

16.25.2 married persons, or a person and his or her life partner whose annual income after permissible deductions does not exceed R27 192.00.

16.26 The process for accessing information relating to the various Community Schemes in terms of PAIA are set out below.

## **SECTIONAL TITLE SCHEME**

16.27 PMR 27(4), Annexure 1 of the STSM Act states that a member, a registered bondholder, or a person authorised by a member is entitled to receive the documents and records of a body corporate upon written request.

16.28 The executive committee or the managing agent must provide the member with the documents within 10 (ten) business days of receiving the request in terms of PMR 27(5), but should a member request the rules of the Body Corporate, then this must be sent to the member within 5 (five) business days.

16.29 A request for generic information which does not contain the Personal Information of an identifiable person can be requested via email or otherwise without the completing the prescribed Form 2. However, a request for the below mentioned documents requires the requester to complete the prescribed Form 2 and comprise of:

16.29.1 Minutes of meetings, including AGMs and trustees' meetings;

16.29.2 The CSOS approved management and conduct rules accompanied by a section 10 compliance certificate;

16.29.3 The audited financial statements of the Body Corporate (this will be inclusive of a statement of income and expenditure, assets, and

liabilities);

- 16.29.4 Trustees, by accepting office, automatically consent to their Personal Information being shared and/or accessible to the members of the Community Scheme. In order to satisfy section 32 of the Constitution of the Republic of South Africa, read together with PAIA;
  - 16.29.5 The bank accounts for the administrative and reserve fund;
  - 16.29.6 Procurement decisions;
  - 16.29.7 Election outcomes and process;
  - 16.29.8 Investments for the Community Scheme;
  - 16.29.9 Information relating to security and maintenance of the Community Scheme;
  - 16.29.10 any other information pertaining to the governance of the Community Scheme as may be deemed necessary; and
  - 16.29.11 The Body Corporate's insurance policy as directed in section 3(1)(s) of the STSM Act.
- 16.30 The members can ask for these documents as far back as 6 (six) years, as this is the period for which they must be kept.
- 16.31 When requesting the books of account, the members are entitled to receive information about both the administrative and reserve fund bank accounts, as PMR 26 (1) and (2) state that a Body Corporate must have both accounts and keep separate books for each of these accounts.

#### **HOA'S, HOUSING SCHEME FOR RETIRED PERSONS, SHARE BLOCK COMPANIES, HOUSING CO-OPERATIVES**

- 16.32 The right of a member to have access to information will be set out in the scheme governance documentation; for instance, in a HOA, the right to access certain



information will be found in either the memorandum of incorporation for non-profit companies or in the constitution for common law associations, subject to the requirements set in PAIA.

- 16.33 In the instance where the Community Scheme is a Share Block Company, the access to documentation will be found in the use agreement.
- 16.34 For a Housing Scheme for Retired Persons, it will be in the contract.
- 16.35 Should no provision be made in the scheme governance documentation, then similar documents, as listed in clause 16.29 above for sectional title developments, can be requested from the Community Scheme.

#### **APPLICATION TO ACCESS INFORMATION HELD BY THE CSOS**

- 16.36 As indicated in the CSOS PAIA manual, CSOS is a public body, therefore, a requester must complete the prescribed request form PAIA Form 2 to access information held by the CSOS. Such form must be sent to the deputy Information Officer on the following email [paia@csos.org.za](mailto:paia@csos.org.za).
- 16.37 As per clause 16.25 above, the requester will be liable to pay an amount to be determined by the Information Officer of CSOS unless exempted.

#### **APPLICATION TO ACCESS INFORMATION RELATING TO SCHEME GOVERNANCE**

- 16.38 Should any of the information relating to Community Scheme governance information held by CSOS be requested, the requester should complete prescribed request form PAIA Form 2 to access information and send it to the deputy Information Officer of CSOS .
- 16.39 The completed form should be sent to [paia@csos.org.za](mailto:paia@csos.org.za).
- 16.40 An acknowledgement will be sent within 2 (two) business days of receiving the request advising whether CSOS has the relevant documentation.
- 16.41 PAIA Form 3 will be sent to the requester to pay a sum to be determined in terms of PAIA, for a copy of the scheme governance documentation unless exempted.

16.42 Once payment has been made and the proof of payment is sent to CSOS, the documents will be released. The proof of payment should be sent to [paia@csos.org.za](mailto:paia@csos.org.za).