

Disputes in Community Scheme

Owners in Community schemes can lodge disputes with the Community Schemes Ombud Service (“CSOS”) which was established in terms of the Community Scheme Ombud Service Act, 2011 (Act 9 of 2011) and the regulations published in the government gazette on the 7 October 2016.

The CSOS has been established to resolve disputes arising in community schemes between owners and between owners / residents and the elected management of the community scheme (directors or trustees). Community Schemes include townhouses, flats, complexes, golfing estates, retirement homes, homeowner’s associations and other forms of communal living which have a group of managing members, and in many instances a managing agent, that govern the common property on behalf of the owners in the community scheme.

The definition of a community scheme is one where there is a shared used of, and a shared responsibility for parts of the land and buildings that form a part of the community scheme.

Prior to a dispute being lodged the CSOS does require that an internal dispute resolution process be followed by the two parties involved in the dispute, and that some decision has been made by the person or body who heard and administered the dispute.

The aggrieved party should have first filed a complaint with their community scheme using a complaint form as per Sectional Titles Scheme Management Act (STSMA) Annexure 4.1 (available from Whitfields) requesting an internal dispute resolution process to be instituted. Following the internal dispute resolution process Annexure 4.2 of the STSMA is required to be filled out which is the Record of Decision by the Body Corporate in regard to the complaint lodged.

If a resident or owner is still aggrieved by the decision of the internal dispute process and if the nature of the dispute is covered by Section 38 of the CSOSA and the prayers of relief found in the CSOS Act, Section 39, they can lodge a dispute with the Ombud Service in writing (usually using email) or via their website <http://csos.org.za/>.

If the dispute is found to have merit by the Ombud, and falls within their ambit as covered by the CSOS Act, the dispute will be sent for conciliation. The Ombud service will appoint a qualified conciliator from within the Ombud Service to act as a conciliator in terms of the CSOS Act.

Should conciliation not be successful further investigation by the ombud will be undertaken and the matter sent for adjudication. At adjudication the ombud will issue an order which is legally enforceable through the courts.

The time frames envisaged for the resolution of disputes are 30 days for conciliation, 1 day for quick-resolution matters and 60 days for adjudication matters.

Section 4.1 (d) of the CSOS Act – Functions of the service provides for public access electronically or by other means to sectional title scheme governance documentation and other scheme governance documents. These documents are required to be registered with the CSOS within a prescribed period of 30 days from the scheme coming into existence.

Section 34 of the CSOS Act provides for offences and penalties where a person has failed to provide access to documents as required by the Act or fails to comply with a directive issued under the Act.

Guilty parties on conviction can be fined or imprisoned for a period not exceeding 5 years for a first offence, and 10 years of imprisonment and or a fine for repeat offenders.