

What complaints are mandated to be considered by the Community Scheme Ombud Service

In terms of the CSOS Act 2011 and the published regulations, there are specific topics that are defined in Chapter 3 of the Act and specifically Section 38 and Section 39 of the Act that are called “prayers for relief” that are given under 7 headings. These are listed below.

It is important to realise that a dispute, in terms of the definition of a dispute found in Chapter 1 of the Act, can only be considered by the CSOS, if the following criteria have been met

- (a) Is it a community scheme as defined in the act (*the test here is: is there shared used of, and a shared responsibility for parts of the land and buildings?*)
- (b) Does the complaint relate to the administration of the scheme
- (c) Do both parties have a material interest in the scheme
- (d) One of the parties must be an owner, occupier or the association its self.

There is also a requirement **that disputes are first dealt** with through an **internal process** by the community scheme, and documentary evidence of such must be provided as part of the application by the aggrieved party including the outcome of such a process. 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.

Community Schemes must have a clearly defined internal dispute resolution process that will allow any of the defined parties in the Act, to raise a grievance that must be considered in a fair and reasonable manner by a duly appointed body, appointed for the purpose of hearing such disputes by the trustees. Such a body may be a single person, the managing agent, or have a number of representatives (such as the elected trustees) but must be seen to be acting in a fair and impartial manner when considering the grievance.

If the party is not satisfied with the outcome of the internal process and the nature of their dispute meets the criteria then they must follow the procedure as defined in the CSOS Act section 38. The application must be made in the prescribed manner at their local CSOS office, accompanied by the prescribed fee. The process and documentation can be found on www.csos.org.za, and there is also an electronic format for lodging a complaint.

CSOS Prayers for Relief - CSOS Act 2011

39. An application made in terms of section 38 must include one or more of the following orders:

(1) In respect of **financial issues**—

- (a) an order requiring the association to take out insurance or to increase the amount of insurance;
- (b) an order requiring the association to take action under an insurance policy to recover an amount;
- (c) an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for the adjustment of the contribution to a correct or reasonable amount or an order for its payment in a different way;

(d) an order requiring the association to have its accounts, or accounts for a specified period, audited by an auditor specified in the order;

(e) an order for the payment or re-payment of a contribution or any other amount; or

(f) an order requiring a specified tenant in a community scheme to pay to the association and not to his or her landlord, all or part of the rentals payable under a lease agreement, from a specified date and until a specified amount due by the landlord to the association has been paid: Provided that in terms of such an order—

(i) the tenant must make the payments specified and may not rely on any right of deduction, set-off or counterclaim that he or she has against the landlord to reduce the amount to be paid to the association;

(ii) payments made by the tenant to the association discharge the tenant's liability to the landlord in terms of the lease; and

(iii) the association must credit amounts received from the tenant to the account of the landlord.

(2) In respect of **behavioural issues**—

(a) an order that particular behaviour or default constitutes a nuisance and requiring the relevant person to act, or refrain from acting, in a specified way; (*note : a nuisance definition is found in common law where a there is continued and unreasonable use of the property*)

(b) if satisfied that an animal kept in a private area or on common areas is causing a nuisance or a hazard or is unduly interfering with someone else's peaceful use and enjoyment of his or her private area or common area, an order requiring the owner or occupier in charge of the animal—

(i) to take specified action to remedy the nuisance, hazard or interference; or

(ii) to remove the animal;

(c) an order declaring that an animal is being kept in a community scheme contrary to the scheme governance documentation, and requiring the owner or occupier in charge of the animal to remove it; or

(d) an order for the removal of all articles placed on or attached illegally to parts of a common area or a private area.

(3) In respect of **scheme governance issues**—

(a) an order requiring the association to record a new scheme governance provision consistent with a provision approved by the association;

(b) an order requiring the association to approve and record a new scheme governance provision;

(c) an order declaring that a scheme governance provision is invalid and requiring the association to approve and record a new scheme governance provision to remove the invalid provision; or

(d) an order declaring that a scheme governance provision, having regard to the interests of all owners and occupiers in the community scheme, is unreasonable, and requiring the association to approve and record a new scheme governance provision—

(i) to remove the provision;

(ii) if appropriate, to restore an earlier provision;

(iii) to amend the provision; or

(iv) to substitute a new provision.

(4) In respect of **meetings**—

(a) an order requiring the association to call a general meeting of its members to deal with specified business;

(b) an order declaring that a purported meeting of the executive committee, or a purported general meeting of the association, was not validly convened;

(c) an order declaring that a resolution purportedly passed at a meeting of the executive committee, or at a general meeting of the association—

(i) was void; or

(ii) is invalid;

(d) an order declaring that a motion for resolution considered by a general meeting of the association was not passed because the opposition to the motion was unreasonable under the circumstances, and giving effect to the motion as was originally proposed, or a variation of the motion proposed; or

(e) an order declaring that a particular resolution passed at a meeting is void on the ground that it unreasonably interferes with the rights of an individual owner or occupier or the rights of a group of owners or occupiers.

(5) In respect of **management services**—

(a) an order requiring a managing agent to comply with the terms of a person's contract of appointment and any applicable code of conduct or authorisation; or

(b) an order declaring that the association does or does not have the right to terminate the appointment of a managing agent, and that the appointment is or is not terminated.

(6) In respect of **works pertaining to private areas and common areas**—

(a) an order requiring the association to have repairs and maintenance carried out;

(b) an order requiring the relevant person—

(i) to carry out specified repairs, or have specified repairs made; or

(ii) to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out or to be carried out in respect of the property by the applicant;

(c) an order requiring the association—

(i) to carry out, within a specified time, specified works to or on the common areas for the use, convenience or safety of owners or occupiers; or

(ii) not to carry out specified works;

(d) an order declaring that the association's decision to reject a proposal to make improvements on or alterations to common areas is unreasonable, and requiring the association—

(i) to agree to the proposal; or

(ii) to ratify the proposal on specified terms;

(e) an order requiring the association—

(i) to acquire, within a specified time, specified property for the use, convenience or safety of owners or occupiers;

(ii) not to acquire specified property; or

(iii) to dispose of specified property, within a specified time;

(f) an order declaring that an owner or occupier reasonably requires exclusive use rights over a certain part of a common area, that the association has unreasonably refused to grant such rights and requiring the association to give exclusive use rights to the owner or occupier, on terms that may require a payment or periodic payments to the association, over a specified part of a common area; or

(g) an order obliging an owner or occupier to accept obligations in respect of a defined part of a common area.

(7) In respect of **general and other issues**—

(a) an order declaring that the applicant has been wrongfully denied access to information or documents, and requiring the association to make such information or documents available within a specified time; or

(b) any other order proposed by the chief ombud.