

THE COMMUNITY SCHEMES OMBUD SERVICE: WHAT'S IT ABOUT AND DO I NEED TO KNOW OF IT?

FOR ESTATE AGENTS AND THEIR CLIENTS:

With the myriad of laws being passed in South Africa at the moment, one can be forgiven for approaching news of a new law with an 'I am not going to bother with it' attitude.

Several hundreds of thousands of homes in South Africa are situated either in sectional title schemes or in homeowners' association developments and the Community Schemes Ombud Services Act 9 of 2011 (CSOS Act), which establishes the Community Schemes Ombud Service (CSOS), is one of the pieces of legislation of which estate agents and many property owners really need to take note. In main, the CSOS Act establishes a dispute resolution forum for owners, occupiers and scheme executives (the individuals managing the scheme such as trustees). The need to acquaint yourself with the CSOS Act arises not only because certain compliance tasks are imposed on the management teams of community schemes, but also because the Act grants valuable rights to owners, occupiers and the management teams.

This note and summary provides a bird's eye view of the Ombud Service that was established on 07 October 2016.

DOES IT APPLY IN MY SCHEME?

The CSOS Act applies to all community schemes. So, if you are part of the management of a homeowners' association, share block scheme, retirement scheme, golf estate, sectional title scheme or an owner or occupier in such a scheme, you have access to the Community Schemes Ombud's Service. It is also important to realise that rights granted in terms of the CSOS Act cannot be waived or limited and a community scheme may not oust the jurisdiction of the Ombud Service or prevent its owners, occupiers or members from using its services.

Having said that, the Ombud's powers are expressly defined by the legislature and only disputes regarding the administration of a Community Scheme may be referred to the CSOS. One is further obliged to exhaust existing internal rules and dispute resolution mechanisms applicable to the scheme before approaching the Ombud.

IS THERE DIFFERENT TREATMENT FOR SECTIONAL TITLE SCHEMES?

The answer here is yes and no! When the Sectional Titles Schemes Management Act 8 of 2011 (STSMA) came out in unison with CSOS Act in 2016, some confusion arose amongst the public as to which of the 'new' provisions apply to all community schemes (in terms of the CSOS Act) and which apply only to sectional title schemes (in terms of the STSMA). Generally, the dispute resolution mechanisms (in terms of the CSOS) are available to all owners, managers and occupiers in all community schemes. The provisions of the STSMA apply, in addition, to all property in a sectional title scheme, but does not find application in community schemes that have not been established as sectional title schemes.

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WHAT RIGHTS AND OBLIGATIONS CAME WITH THE ENACTMENT OF CSOS ACT?

RIGHTS GRANTED TO OWNERS, OCCUPIERS, SCHEME EXECUTIVES IN TERMS OF CSOS ACT

- ✓ Can apply to the Ombud for resolution of a dispute regarding the administration of the scheme. The Ombud's orders have the status of an order of a court. A nominal fee is payable.
- ✓ If you are involved in a dispute being attended to by the Ombud, you are entitled to be notified of the proceedings and receive the relevant information submitted to the Ombud in support of the referral.
- ✓ Owners and prospective owners may apply to the Ombud for a copy of an order made by the Ombud in respect of a particular scheme.

OBLIGATIONS IMPOSED ON SCHEME EXECUTIVES OR OWNERS OR OCCUPIERS IN TERMS OF CSOS ACT.

The scheme must pay a quarterly levy to the CSOS and interest is payable on any overdue amount. Annual returns and financial statements of the scheme must be filed with the Ombud yearly within 4 months after the end of the scheme's financial year. Scheme registration forms must be filed with the Ombud.

It is an offence and a person can be held liable for failure to:

- (i) Provide access to any books, accounts, documents or assets when required to do so;
- (ii) Comply with an Ombud directive;
- (iii) Provide data or information or to give false or misleading data or information when requested therefore; or
- (iv) Perform a duty or obstruct another from performing his or her duties in terms of this Act.

Interested parties must comply with orders of the Ombud issued after adjudication. The orders have the status of an order of a court.

Scheme executives (i.e. management team – trustees, directors, etc.) must:

- ✓ Take reasonable steps to inform and educate themselves about the scheme, its affairs, governance documentation, activities and legislation;
- ✓ Before making decisions, obtain adequate information to be able to exercise their individual votes responsibly and must therein exercise an independent opinion;
- ✓ Ensure that the scheme takes out fidelity insurance to the minimum amounts prescribed by the CSOS Act; and
- ✓ Unless excused on reasonable grounds, attend all meetings of the executives as well as the AGM.

Executives owe fiduciary duties to the scheme in the exercising their responsibilities.

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