SharedLiving

Issue 11

January - March 2020

CSOS SUPPORT DURING **COVID-19**

CSOS NOTICE
TO ALL BODIES CORPORATE

THE RESERVE FUND
AND THE '10-YEAR' MAINTENANCE PLAN

THE CSOS LANGUAGE
POLICY

The Use of Official Languages Act, (Act 12 of 2012) provides the framework when determining language use in public entities. This policy outlines how the CSOS applies official languages in its communication with the public.

Service Excellence, Independence, Integrity and Accountability

www.csos.org.za

CSOS
Community Schemes Ombud Service

Affordable Reliable Justice

VISION: To establish a world-class dispute resolution service within community schemes.

MISSION: To facilitate and maintain a world-class dispute resolution service to promote good governance of community schemes by providing education and training to all relevant stakeholders.

VALUES: Service Excellence, Independence, Integrity and Accountability.

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CSOS Community Schemes Ombud Service

Affordable Reliable Justice

Contents

CHIEF OMBUD FOREWORD

Dear Stakeholders,

When the President declared a national state of disaster on 15 March 2020, our new reality was that of sailing in uncharted waters as a country. Little was known of the COVID-19 virus, other than the experience garnered from other countries and that it was declared a pandemic by the World Health Organisation.

For the CSOS it hit home quickly. The CSOS acted proactively by closing its Gauteng Service Centre as a direct response to a sister organisation's (with whom we share a building) employee who was exposed to a person who had tested positive for the virus.

Since then, we have consulted extensively with our shareholders, industry role players and various command centre representatives to understand what is expected of us and how best to safeguard the security of our employees and users of the CSOS Service.

Whilst most welcomed our Directives on COVID-19, some felt it was not within the jurisdiction of the CSOS to guide schemes on the movement of individuals within schemes. Drastic measures had to be taken to drive the message of social distancing, and to support scheme executives who were challenged by persons playing golf, taking walks and gathering in large, alarming numbers.

Scheme executives are tasked with ensuring strict compliance with the Regulations insofar as the wearing of masks and gloves, sanitising surface areas and keeping a one metre distance between individuals as required. Scheme executives must also ensure that only a limited number of individuals gather or utilise the shared essential common facilities at one time and may implement any other measures within the community scheme in order to ensure the safety of all the residents. These implementation measures developed by schemes do not require prior CSOS approval insofar as they enhance compliance with the Regulations, are fair and applicable to all residents (which include owners and occupiers) and are not prejudicial to any person residing within the community scheme.

Once a move to Level 3 is announced, the CSOS will open its full service to the public. We are preparing for scenarios where the delivery of the Service will be done electronically or by other means. Face-to-face conciliations and adjudications will not take place for some time. Other services, such as amendment of rules and the registration of schemes will continue as normal.

The lockdown has resulted in an unfortunate disruption to the CSOS Service and its ability to report on its performance. Therefore, for this issue, we will not be presenting the quarterly performance information. I trust that these will be included in the next issue.

Sincerely,
Ndivhuo Rabuli
Acting Chief Ombud

LANGUAGE AND TERMS

If you live in a community scheme, it is useful to understand some of the language used in official documents.

1. **common area** means any part of the land or building in a community scheme which is earmarked for common use by occupiers.
2. **community scheme** means 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 sectional title development schemes, a share block company, a home or property owner's association. A community scheme, however constituted, is established to administer a property development, a housing scheme for retired persons, and a housing cooperative as contemplated in the South African Co-operatives Act, 2005.
3. **executive committee** 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 and the management association of any housing scheme for retired persons.
4. **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.
5. **private area** means any area in a community scheme set aside for private occupation or ownership, excluding any common area.

CSOS – Embracing COVID-19 Protocols by Working Remotely

DID YOU KNOW?

You can still submit your governance and other applications during the national lockdown to:

- All scheme registrations should be sent to **registration2@csos.org.za**
- All annual returns should be sent to **annualreturn@csos.org.za**
- All waiver applications should be sent to **waiver@csos.org.za**
- All amendments of rules should be sent to **sectionaltitle@csos.org.za**
- All future training requirements should be sent to **training@csos.org.za**

WORKING REMOTELY

CSOS SUPPORT DURING *COVID-19*

The President has announced a national lockdown on 23 March 2020. Thereafter, five levels were created and the national lockdown was relegated to level 4. With the number of people tested positive for the coronavirus (COVID-19) both globally and in South Africa, this is the best strategy for avoid the spread of the infection.

Only essential personnel will be allowed to go to work. These include health workers, emergency personnel, security services (police, traffic officers, military personnel, soldiers). You will only be allowed to leave your homes under strict conditions. The SANDF and SAPS will work together in implementing these measures.

This necessitates that employees work remotely in order to maintain business continuity. It is virtually mandatory that all entities have a business continuity plan in place. Whilst remote working has its advantages, it can also have serious drawbacks. CSOS has also taken the lead by ensuring that business support continues.

You can still submit your governance and other applications during the national lockdown to:

- All scheme registrations should be sent to **registration2@csos.org.za**
- All annual returns should be sent to **annualreturn@csos.org.za**
- All waiver applications should be sent to **waiver@csos.org.za**
- All amendments of rules should be sent to **sectionaltitle@csos.org.za**
- All future training requirements should be sent to **training@csos.org.za**

However, working remotely, whilst having distinct advantages, can also prove to have its share of challenges. One such a drawback is data breaches.
Data breaches can strike any business at any given time. However, remote working increases the risk. Therefore, we need to be vigilant and ensure that our information is safeguarded. CSOS has put measures in place to ensure that its ICT systems are safeguarded as far as possible and that all data received will be protected at all costs. However, there is the danger that smart hackers can infiltrate most systems. However, CSOS has put all possible measures in place to protect your data.

It is easy for information to be compromised when using free applications or transferring tools when exchanging documents with service providers or the relevant industry. Be wary of using such applications as it may compromise your system as well as that of CSOS. The increase in web apps used by individuals for online work and virtual meetings will inflate hackers' potential targets. Remote work means a rise in the number of devices that individuals are using for their jobs, and an increase in the use of online conferencing tools like Zoom, Google Hangouts, Microsoft Teams, and Slack. That shift also give hackers a larger number of potential targets.

Meanwhile one cannot guarantee the safekeeping or security of file transfer. It is therefore prudent to make use of encrypted e-mails and messaging so that data is not compromised in any way. Cybersecurity research firms are predicting a spike in hacks and breaches targeting businesses as the COVID-19 outbreak continues.

Here are some of the tips and tools of how you can still be innovative during the Covid -19 crisis.

- Encrypt your data at all times
- Protect your computer against infections that can compromise your computer and its files. Ensure that you have a firewall installed, antivirus and/or antispyware software. *NB: A "lock" icon on the status bar of your internet browser means your information will be safe when it is transmitted. Look for the lock before you send any information online.*
- Keep your login credentials private.
- Avoid phishing emails- Do not open a link or files from unknown sources.
- Be wise about WIFI- Avoid sending any information over your laptop or smartphone on a public wireless network.
- Read Privacy Policies – They can be long and complex; however, they tell how the site maintains accuracy, access, security and control of information it collects and whether it provides it to a third party.
- Use strong passwords and multifactor authentication.
- Avoid sharing personal and financial information via e-mail or messaging.
- Do not contribute to fake news in any way. Verify the facts, especially if it pertains to COVID-19.

Remote working has certain basic requirements:

- A computer
- A good internet connection
- Chat and conferencing applications
- A dedicated workspace
- Optionally, a smartphone or a tablet
- Self-motivation and discipline
- A strict routine

Use e-mail when communicating with CSOS as far as possible. However, if and when you need to speak to a consultant, reach out to CSOS and arrange to have a conference call using tools such as Zoom or Teams. During COVID-19 that personal touch may be important. CSOS is there to support you in these trying times.

When dealing with the Body Corporate or other community members, take the bold step of setting up group chats on platforms such as Facebook or WhatsApp. It is during times where social distancing is important that such tools come in handy. This is also an opportune time to held a helping hand to those in your complex, especially the elderly and frail people. It is a time to band together, to take the necessary precautions and to stay safe. It is the responsibility of every citizen to do their respective bit in combating this pandemic. And CSOS is there to support your efforts. Stay safe, stay informed and, more importantly, remember all the hygiene protocols.

CSOS NOTICE TO ALL BODIES CORPORATE

Disconnection by the trustees of electricity or water to sections in a scheme

It has come to the attention of the CSOS that there are instances where Trustees are disconnecting and/or reducing services in cases where unit owners default on the payment of their levies during the national lockdown.

The termination or reduction of any service (i.e. water, electricity or gas) to a section has always been unlawful -remains unlawful during the national lockdown – and will continue to be unlawful after the termination of the national lockdown by Government, irrespective of what is contained in a Body Corporate's Rules.

Please note that any contravention of the Regulations to the Disaster Management Act of 2002 is a criminal offence and can be reported directly to the South African Police Service (SAPS).

Alternatively, the CSOS will, on application, issue an adjudication order on an ex parte basis which will include a direction to the SAPS to ensure that the order is given effect to.

For your reference you may view the Court order that affirms this notice: Niehaus v High Meadow Grove Body Corporate (40667/2018) [2018] ZAGPJHC 712 (13 November 2018) / **http://www.saflii.org/za/cases/ZAGPJHC/2018/712.html**

Regards,
Ndivhuo Rabuli
Acting Chief Ombud

CSOS LEVY PAYMENT PROCESS

- In terms of the Act, all community schemes must register with the CSOS
- Registration is done by completing the CS1 Form and can be submitted online www.csos.org.za, hand delivered or emailed to registration@csos.org.za
- All complete registrations are provided a unique registration number, e.g. CSOS/REG/16/KZN/123456
- Payments must be made quarterly in arrears; however schemes can make annual payments in advance
- The CSOS banking details are as follows:
  - FNB
  - Account Name: Community Schemes Ombud
  - Account no. 62682595205
  - Account type: Public Sector Cheque Account
  - Branch Code: 200607
  - Swift Code: FIRNZ AJJ
  - Reference: CSOS registration number, eg. CSOS/REG/**16/KZN/123456**

Please note: The orange bolded part is the most important, should the bank reference field not provide for all the characters

The proof of payment must be sent to: **levypayment@csos.org.za**

THE PROOF OF PAYMENT MUST BE ACCOMPANIED BY A LEVY SCHEDULE, WHICH DETAILS THE LEVY CALCULATION. PLEASE SEE THE EXAMPLE BELOW:

CSOS Levies Calculator:

Unit number	Scheme levy	Unit CSOS levy
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
Scheme CSOS Levy		**R 180.00**

The Levy calculator can be downloaded from the website, on the following link **https://www.csos.org.za/one-register-scheme/**

Once the payment has been allocated to the community scheme by the CSOS, a receipt statement will be issued. Kindly note that the CSOS does not issue invoices as yet.

CONTACT DETAILS:

Registration related queries: **Registration@csos.org.za** | Levy payment related queries: **levypayment@csos.org.za**
Contact the CSOS Finance Team **010 593 0533**

THE RESERVE FUND AND THE '10-YEAR' MAINTENANCE PLAN

Follow the rule and your body corporate may never need a special levy ever again!

ALL Bodies Corporate in South Africa must have two (2) separate and compulsory funds that they must establish and administer:

- An administrative fund to cover the day-to-day maintenance and operating costs of the scheme; **and**
- A reserve fund to cover the anticipated cost of future maintenance and repairs to the common property at the scheme and,more particularly, to cover the cost of the compulsory **'10-year maintenance and repair plan'** (MRRP), which every body corporate must now have.

A frequently asked question is: "How is the reserve fund calculated?"

Fortunately, the Legislator has taken the guesswork out of the equation. *Regulation 3 to the Sectional Titles Schemes Management Act (the "STSMA") tells you exactly how to calculate your body corporate's reserve fund for a financial year, (except if it's the first financial year):*

Start by looking at the amount of money that was in the body corporate's reserve fund at the end of the previous financial year

THERE ARE 3 POSSIBLE SCENARIOS:

SCENARIO A

- If the amount the reserve fund at the end of the last financial year is less than 25% of the total levies collected by the body corporate in the last financial year, then:
- **The budgeted contribution to the reserve fund for the current year must be at least 15% of the total budgeted contribution to the administrative fund.**

SCENARIO B

- If the amount in the reserve fund at the end of the previous financial year is **the same as or greater than 100% of the total contributions to the levy fund for the previous year then:**
- **There is no minimum contribution to the reserve fund.**

SCENARIO C

- If the amount of money in the body corporate's reserve fund at the end of the previous financial year is more **than 25% but less than 100% of the total levies paid by the members for the previous financial year;** then
- The budgeted contributions to the reserve fund must be **at least** the same amount that the body corporate has budgeted to be spent on normal repairs and maintenance during the year! **(i.e. take the budget for repairs and maintenance and DOUBLE IT!!!!)**

Management Rule 22 to the STSMA states that it is compulsory for the Body Corporate or Trustees to prepare a **written** maintenance, repair and replacement plan for the common property. It also sets out what must be incorporated in the plan. Owing to the requirements requiring specialised knowledge that the Trustees probably don't have, it is not unusual for Trustees to obtain the assistance of professionals in their respective fields, such as engineers, plumbers and electricians. it is well-worth it in the interests of sustainability.

If the Body Corporate can afford the expense of contracting with professional persons to assist in providing a MRRP, it may be prove to be a fruitful investment because it will form a long-term base on which to work from. These items **must** be included in the in the common property repair and replacement plan in terms of Rule 22:

a) All major capital items that are expected to need maintenance, repair and replacement in the next 10 years – a 'capital item' is the building and/or equipment that services the building or buildings, such as an elevator or a gate motor, to name but a few;

b) The current condition of these capital items;

c) The expected time when these items (or the components of these items) will need to be maintained, repaired or replaced;

d) The estimated cost of the maintenance, repair and replacement of those items or components;

(e) The expected life span of those items (or components) once maintained, repaired or replaced; and

(f) Any other information that the body corporate considers to be relevant.

The 10-year MRRP takes effect on approval by members of the Body Corporate in a general meeting. The beauty of the plan is that because the Trustees must report back to the members on its implementation at every AGM, members can monitor the state of their building vis-á-vis the state of the reserve fund as the years progress.

If properly implemented and monitored, the compulsory reserve fund required in terms of section 3(1)(b) of the STSMA, with the minimum amount as set out in Regulation 3, and implemented by the Trustees and members in terms of Management Rule 22, the Body Corporate should (barring emergencies!) **NEVER NEED A SPECIAL LEVY EVER AGAIN.**

OUT AND ABOUT

THE CSOS EXHIBITS AT HOMEMAKERS EXPO 2020

The CSOS exhibited at one of the leading Expos countrywide: HOMEMAKERS Expo from 27 February to 01 March 2020 at Ticketpro Dome, Randburg. Themed InHabit, the Expo proved to be the place to be during that memorable weekend – with a special leap day to boot!

"I am so glad to find you here; I always see a levy on my billing statement, but I was not sure who or what CSOS is," said a cheerful Lorraine Mahlalela who visited the CSOS exhibition stand during that weekend. With the partnership of marketing and dispute resolution case managers, the expo allowed the CSOS to raise awareness of its existence and credibility and offer guidance to its stakeholders where needed.

Visitors could mingle with experts to get the best out of their Expo experience. It connected visitors with the products and services that help them own the spaces they occupy.

RETIREMENT LIVING-THE FACTS

Whilst retirement may seem far away, planning towards this eventuality is critical. It is important to note that all may seem well when one is fit and healthy, but the situation becomes critical when one requires frail care support.

In today's fast-paced world, your children have busy lives and cannot provide dedicated support to ailing parents in most instances. Whilst some individuals prefer their independence, it becomes problematic when they have to negotiate stairs and encounter mobility problems. In the case of a single individual (widowed, divorced, etc) this can prove to be a challenge especially when the individual falls ill or gets injured. There may be nobody to call or nobody who is available to assist.

The practical and safe option would be to move to retirement village living; sometimes referred to as Assisted Living. This option provides safe access and care that is available at all times. What do we know about this type of living arrangement? For those who live in cluster homes, apartments or flats, the transition is virtually seamless. The problem cases may prove to be in instances where individuals live in a free standing home.

The first drawback is the cost. If one chooses the top end of retirement villages it may set one back by up-to R 5m or even more. A cheaper option may range between R2-R3m. Some pensioners may not be able to afford such costs. While there are no encumbrances of gardening, maintenance, refuse removal or security, in most instances, there is a levy charged which cover such costs. These levies may be unaffordable in some instances, considering that the Managing Agents also need to be factored in. Some Managing Agents have been known to abuse funds and this also needs to verified carefully before making a decision.

However, investing in a retirement village unit may well prove to be an investment. Every retirement village established under the Housing Development Scheme for Retired Persons Act is required to state prior to signing the initial contract, the percentage of the purchase price to be paid to your estate. The terms vary greatly. Examples include the refund of your initial investment; refund plus a percentage of the profits on the re-sale of your unit; or, in a few complexes, the price paid by the resident less a certain percentage.

Of course, not all individuals will favour communal living. Some people prefer their privacy and their own "space" and this may not be possible with retirement villages. An unhappy senior citizen can lead to a senior citizen who encounters health problems or even initiate aggressive and/or anti-social conduct. One is close to one's neighbour but, as one grows older, this proximity may well turn out to be a comfort rather than an inconvenience. Sometimes the regulations may prove to be stifling. However, one can live in a retirement village and decide to participate to a greater or lesser degree in village activities.

Retirement complexes are marketed either as Full or Sectional Title, Share Block or as a Life Right. Full Title and Sectional Title involve a purchase that requires registration at the Deeds Office, with transfer duty payable on the sale. Share Block involves the purchase of shares in a property-holding company. Prior to buying into a Share Block complex it is important to have studied the company's memorandum and articles of association.

The Life Right option involves the outright purchase, enabling one to live in a specific unit. It provides security in the sense that for the remainder of one's life one has access to the unit – in the case of a married couple, until the second-surviving spouse dies. No Transfer duties, Registration fees or VAT are payable and this is a great saving. This option translates to rental paid in advance.

The disadvantage is that one may move from a spacious home to a one- or two-bedroomed unit which is not as spacious. There may be instances where some valuable furniture and paintings may not be able to be accommodated at the retirement village.

Although cooked meals are provided, offering convenience, this aspect may be limiting. Sometimes individuals may not like the selection or the manner in which it is prepared. This is especially so in cases where religion is concerned, such as Halaal and Kosher.

In some retirement villages there have been cases of nursing staff abusing the frail and elderly inhabitants. This must be investigated before embarking on the signing of any contract or deed of sale.

While some retirement villages may allow small pets, some are strict about this. The keeping of a pet may offer individuals some sort of comfort and companionship. However, the retirement village set up may prove to be restrictive somewhat. Furthermore, if individuals are thinking of moving to a retirement village, they will not be able to take a large animal with them, such as an adult Labrador, for instance.

The benefits involve security, safety and convenience with an added bonus of entertainment and activities.

Safety is a prime concern, especially in cases where individuals have conditions such as dementia. Usually these complexes have strict access controls, security personnel on duty and CCTV cameras to monitor activity and possible breaches. There is the added feature of high security walls, electric fences and protective barbed wire to protect the frail and vulnerable.

A good retirement village should have a frail care centre complemented by 24-hour nursing services and 24-hour emergency care. This is a distinct advantage and in cases of frail care, critical illness, injuries, this type of professional nursing service not only provides support - it can save lives!

As one ages, it is important to keep the mind occupied and to also engage in physical activity to ensure mobility. Retirement villages offer such activities in most cases. Apart from communal activities such as walks, some complexes offer residents items such as a swimming pool, tennis, table tennis and gymnasiums.

In order to stimulate the mind, retirement villages offer communal centres where residents can engage in various activities such as chess, bingo, card games, crossword puzzles and a library to encourage reading and discussion.

The need for entertainment is also something that should be prioritised in retirement villages. Apart from a television set in the room, there should be a communal large screen television set where residents can enjoy sports events, game show, soapies, movies and documentaries together. Adding a pool table, a bar (managed carefully, of course), braais, special lunches and board games will go a long way to making the residents feel less "boxed-in".

The retirement village option is certainly a growing trend in South Africa. Like all other amenities and facilities, one needs to be judicious and hawk-eyed before arriving at a decision - after all it is a decision that will determine your happiness in your autumn years!

PROS:

- Access to nursing care
- Access to emergency services
- Secure living
- Peace of mind
- Communal engagement and stimulation
- Mind stimulation- reading, chess, puzzles, board games
- Exercise and physical activities
- Amenities such as swimming pools
- Accommodation of small pets
- Restricted area and rules for pets
- Potential investment opportunity
- Entertainment and social interaction

CONS:

- Cost can be high
- Lack of privacy
- Lack of wide food choices catering for varying tastes
- Large pets cannot be accommodated
- Some furniture and paintings cannot be accommodated
- Space constraints

CSOS can assist.

The Community Schemes Ombud Service (CSOS) is the Regulator and Ombud for all sectional title development schemes, home or property owners' associations, housing schemes for retired persons, share block companies, and housing cooperatives.

Established in terms of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011) to regulate the conduct of parties within community schemes and to ensure their good governance, the CSOS is also mandated to manage the prescripts of the Sectional Titles Schemes Management Act, 2011 (Act 8 of 2011).

The CSOS calls on all executive committees and those in the management of community schemes (as defined by the Act,) to register with the CSOS.

Community scheme registration is free and forms can be found on www.csos.org.za

For more information contact

Gauteng: 63 Wierda Road East, Sandton | Tel: 010 593 0533
KwaZulu-Natal: 7th Floor Aquasky Towers, 275 Anton Lambede Street, Durban | Tel: 031 001 4215
Western Cape: 8th Floor Constitution House, 124 Adderly Street, Cape Town | Tel: 021 001 2569

www.csos.org.za

CSOS Community Schemes Ombud Service

Affordable Reliable Justice

BUDGETING CAN PROVE TO BE THE LIFEBLOOD OF SECTIONAL TITLE SCHEMES

THE MARKET VALUES OF SECTIONAL TITLE UNITS ARE DETERMINED NOT ONLY BY THE CONDITION OF BRICKS AND MORTAR OR THE ATTRACTIVENESS OF THE ACCOMMODATION, BUT ALSO BY THE QUALITY OF MANAGEMENT, ESPECIALLY JUDICIOUS FINANCIAL MANAGEMENT.

Budgeting is a critical activity for a body corporate. It will determine the eventual success of the scheme. Judicious financial planning and revision of levies at the start of the financial year is a very important financial management discipline for bodies corporates. This ensures that income and expenses are correctly matched for the next financial year. It has long been a recognised need in sectional scheme financial practice to have the levies set at the level necessary to meet the operating and financial needs of the body corporate, for the budget year and financial year to be the same, and the new levies to be in place from day one.

What will help in determining the budget? It must include fixed costs (including inflationary adjustments), projected maintenance costs for the year, as well as a reserve fund to deal with unforeseen circumstances, which should ideally be the equivalent of three months of levy income. The reserve budget is the second, additional budget that is now required to make provision for a 10-year maintenance plan. In establishing a budget for the year, the trustees should go through the financials of the previous three to five years as well as the maintenance carried out on the building. This will help a great deal in determining a realistic budget.

Expenses can mount up quickly in community schemes and the better prepared the scheme executives are in breaking down the financial planning, the better they will be at managing the financial health of the scheme.

How is the calculation done to determine the second budget – the statutory 'reserve budget' referred to above? The calculation is determined as follows in terms of the Prescribed Management Rules:

- If the body corporate reserve fund at the end of the previous financial year was **less than 25%**of the levy income generated during that year, the body corporate must provide for a **reserve amount equal to 15%** of the levy income for the new financial year.
- If the body corporate reserve fund at the end of the previous financial year was **equal to or more** than the levy income generated during that year, the body corporate is not obliged to make provision for a reserve amount in the new budget.
- If the body corporate reserve fund at the end of the previous financial year was **more than 25% but less than 100%** of the levy income in that year, the body corporate must make provision for a reserve amount equal to the repairs and maintenance items provided for in the new budget.

It is important that longer term maintenance projects such as repainting, lift replacement, waterproofing and structural repairs are provided for well in advance, in order to avoid the disruption of special levies and significant levy increases as far as possible.

Trustees should be given ample time to consider the budget, bearing in mind that they have the discretion to revise levies by up to 10% at the beginning of the financial year. The trustees stand in a fiduciary relationship to the body corporate and so their actions must be in the best interest of the scheme. Where this is proved not to be the case, they can be held to account, so the risk to section owners is minimal and the benefit to the scheme great, as the trustees have one of the most important tools to run the scheme effectively.

Owners should also be notified of a levy adjustment well in advance and in writing, so that they are aware of this and can budget for it accordingly.

The surplus and contingency fund, now known as the statutory 'reserve fund' referred to above, must be allocated to an interest-bearing account and this fund is then earmarked for longer term projects in terms of the 10-year maintenance plan. Judicious budgeting is the hallmark of sound financial management for a body corporate. It helps with promoting a healthy cash flow, reserves and service delivery including maintenance. Such financial management will improve the value of the property, ensuring that owners get a good return on their investment. This will also act as an incentive for owners to pay their levies on time.

However, not all owners pay their levies on time. This is sometimes a mistake that trustees make in their budgets, in assuming that all the owners pay their levies in full and on time. It is recommended that adding a buffer (approximately 6% is the norm) to the annual levy will assist in preventing cash flow problems for the scheme.

If cash flow problems arise as a consequence of, for example, levy arrears or erroneous municipal billing, then action needs to be taken against errant owners in the form of court action or declaring disputes against these owners with the Community Schemes Ombud Service.

When potential residents decide to invest in a unit in a sectional scheme they should scrutinise, amongst others, the minutes of meetings, including the AGM minutes, as well as the financial statements. It is fairly easy to determine the level of management of a scheme as well as the "health" of its finances. It is crucial that sectional schemes engage in a deep exercise of budget planning and administration so as to ensure the success of the scheme.

CASE STUDY

KEEPING A PET, OR NOT KEEPING A PET

My pet python is perambulating on the common property without my permission . . . But there's no reason to panic!!! . . . Or is there!

My cousin was 'kicked out' of university for omitting to close the Albino Python's cage after he had fed it, and it escaped … the university chancellor said it was the last straw! Unfortunately, if your pet python escapes onto the common property, it is the python that will have to go since the body corporate may not evict you.

Keeping a pet, or not keeping a pet at any community scheme is a simple matter,However, it is the pet owner that complicates things.

Let's see what the Law says:

1. The first case we will briefly extract the Law on 'pets in complexes' from, is the **Body Corporate of the Laguna Ridge Scheme N.O. 152/1987 v Dorse 1999(2) SA 512(D)**, where the facts were briefly as follows:
   - The Conduct Rules stated that 'no animals or pets could be kept in the building *without the express written permission of the trustees'* – it was a high-rise building and the Respondent wanted to keep a miniature Yorkshire Terrier in her section;
   - The Trustees simply said "NO", without giving any reasons, and the matter was taken on review to the High Court.

The Court laid out the following principles, which have been followed in many subsequent cases:

a) The Conduct Rules of this body corporate vested the Trustees with a discretion to grant or deny permission to keep a pet, and the Trustees did not exercise their discretion properly – relevant considerations were ignored, and irrelevant ones motivated their decision;

b) The Trustees had to use their discretion properly;

c) However, if the Conduct Rules had stated that "NO PETS ARE ALLOWED" then the Applicant would have had no case and she would have had to abide by the Rule.

The Court consequently ruled that she could keep her Yorkie.

2. Contrary to the above case, in **Abraham and Another v Mount Edgecombe Country Club Estate Management Association Two (RF) (NPC) (7124/12) [2014] ZAKZDHC 36 (17 September 2014)**, a giant dog breed was involved: a St Bernard named Theodore. Briefly, the facts:
   - The Conduct Rules of the HOA also stated that written permission must first be obtained from the directors before a pet could be brought into the scheme, and could not be unreasonably withheld, but the rule contained a rider - it said dogs must not be of a breed that will exceed 20kg when fully grown;
   - Theodore was brought into the HOA as a puppy without any prior written consent of the directors of the HOA, and a St Bernard is most certainly a dog breed that exceeds 20kg when fully grown;
   - When the owners were asked to remove Theodore, they quickly asked for permission from the directors to keep him, and the answer was "No" based on the aforesaid fact;
   - The owners applied to the High Court to review and set aside the director's decision.

What the Judge said:

a) When the Abrahams's bought into the scheme they voluntarily bound themselves to the Rules of the scheme – a contract was entered into between the Abrahams's and the HOA;

b) The directors' discretion to grant permission for Theodore to stay was rooted in this contract, but it prohibited them from exercising their discretion insofar as he was a giant dog breed, they were duty-bound to turn the Abrahams's application down.

The Court ruled that the Abrahams's had to remove Theodore from the scheme within 3 months of the handing down of its Order.

The first thing you **MUST ALWAYS DO**, is read the registered Rules of the scheme, **AND NEVER BRING YOUR BELOVED PET INTO THE SCHEME WITHOUT ASKING FOR PERMISSION FIRST.** Remember that if the registered Rules say, "No Pets", then don't buy a unit there, because you will not be allowed to bring your pet into the scheme or keep your pet there.

NB: Considering the Constitution and the STSMA, it is unlawful for Trustees to prevent a guide, hearing or assistance dog (or pet) from living in a community scheme with you. you must always ask for written permission first, and the Trustees can provide for any reasonable condition in terms of which the dog/pet is kept at the scheme!

CASE CLOSED

Parties encouraged to mature and rise above their personalities and egos.

"There should be processes to follow whenever parties in the scheme want to challenge any decision, needless to say that, parties need to be matured and treat each other with necessary respect and decency they deserve,"said Adjudicator Zama Matayi as she dismissed an applicant's case of seeking an order declaring that the conduct of the respondent constituted a nuisance and required him to act or refrain from acting in a specified way.

The matter was set down for hearing at Newton Park, Port Elizabeth between the Applicant, Finlandia Lifestyle Estate Home Owners Association represented by Neville Wood in his capacity as the Chairperson of the Executive Committee referred to as EXCOM, and the respondent, Norman Nuttall, owner of a house at Finlandia Lifestyle Estate and member of the Applicant.

The applicant, Mr Neville Wood, representing the Finlandia Lifestyle Estate Home Owners in his capacity as a Chairperson testified that the Respondent, Mr Norman Nuttall, an owner of a house at the Finlandia Lifestyle Estate, continuously attacked the personal and professional integrity of the Chairperson and EXCOM members by challenging every decision taken by EXCOM and making false accusations. He further alleged that the Respondent interferes with functions of the EXCOM by falsely accusing the committee of allowing members of the Association to openly contravene the rules and by also referring to the Chairperson a liar. In his response the Respondent, Mr Nuttall, denied all allegations and stated that he is exercising his rights as an owner and member of the Association.

In evaluating the evidence and information submitted, Adjudicator Zama Matayi said the behavioural transgression comprised personal attacks towards the Chairperson and the members of the EXCOM and undermining their authority. The allegations are that the Respondent challenged the decision of the EXCOM and asked a lot of questions that had already been answered. Furthermore, he called people liars, made false accusations and asked for numerous documents from the EXCOM.

"The allegations against the Respondent do not include any insults, swearing, using derogatory or racist language. I have difficulty in granting the order in the form requested. For example, the Applicant seeks an order that the Respondent refrain from unreasonable interfering with the functions of the EXCOM. The questions that follows is do I interdict the Respondent from asking questions? How do I interdict the Respondent from challenging decisions taken by the EXCOM? There could be merit in the challenge or questions asked. The Respondent needs to know exactly what conduct is prohibited and the order must describe the conduct in enough detail," said Adjudicator Zama Matayi when handing out the order.

She further said she did not know to what extent the questions the Respondent asked were unreasonable, as well as the nature of these questions. "I do not know whether the allegations made by Respondent against the Chairperson of EXCOM are in fact true or devoid of any truth. With these challenges I cannot conclude with certainty that the conduct amounts to nuisance."

Adjudicator Matayi said the order to dismiss the case should not be construed to mean that there is no merit in the case of the Applicant because of the challenges pointed out, but should rather be seen as encouraging parties to be mature and rise above their personalities and egos.

The parties' attention was also drawn to Section 57 (1) of the CSOS Act of 2011 which states "An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law."

In terms of Sections 50, 51, 53,54 and 55 of the Community Schemes Ombud Act, the Adjudicator is empowered to investigate, adjudicate and issue an adjudication order. The CSOS Act enables residents of the community schemes to take their disputes to a statutory dispute resolution service instead of a private arbitrator or the courts. The purpose of the order is to bring closure to the case brought by the applicant to the CSOS.

CONTACT US!

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COMPLAINTS

1. Gauteng, Limpopo and North West
Email applications to gp-complaints@csos.org.za
Contact **(+27 10) 593 0533**
Visit 1st Floor, 63 Wierda Road East, Sandton

2. KwaZulu-Natal, Free State and Mpumalanga
Email applications to kzn-complaints@csos.org.za
Contact **(+27 31) 001 4215**
Visit 7th Floor Aquasky Towers, 275 Anton Lembede Street, Durban

3. Western Cape, Eastern Cape and Northern Cape
Email applications to wc-complaints@csos.org.za
Contact **(+27 21) 001 2569**
Visit 8th Floor Constitution House, 124 Adderley Street, Cape Town

COMMUNITY SCHEME REGISTRATION

Register a Community Scheme online at **www.csos.org.za** or **Click Here**

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