SharedLiving

Issue 4 of 4

January - March 2021

LEVY FINANCING COMPANIES
SAVIOUR OR SCOURGE?

+

WE ARE
MOVING

OUR NEW BUILDING LOCATION IS AT:

Berkley Office Park,
8 Bauhinia Street, Highveld
Technopark, Centurion

THE PROTECTION OF PERSONAL INFORMATION
ACT 4 OF 2013 ("POPI")

PERFORMANCE INFORMATION
KEY HIGHLIGHTS 2019/2020

CASE **CLOSED**

Lodging a dispute resolution explained

Service Excellence, Independence, Integrity and Accountability

www.csos.org.za

CSOS
Community Schemes Ombud Service
Affordable Reliable Justice

Gedeelde Lewe
Ukuhlalisana
Tsamisana
Ho Dulisana Mmoho

VISION: To be a reliable and transparent regulatory authority for community schemes in South Africa

MISSION: To regulate community schemes to ensure good governance by providing education and training to all stakeholders and an accessible dispute resolution service

VALUES: Service Excellence, Independence, Integrity and Accountability.

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CSOS Community Schemes Ombud Service

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CHIEF OMBUD FOREWORD

Dear Stakeholders,

In our quarterly engagement with the leading industry bodies, we shared our operational developments notably that under Level 1 the CSOS is continuing with Conciliations and Adjudications largely using electronic means. However, where applicants have expressed a need for a face-to-face dispute resolution service, they are being accommodated keeping in mind the health and safety precautions required during this time.

2020 has been one of the strangest, most unsettling, and challenging year that many of us have ever had to experience. During the height of the country wide lockdown, we encountered harrowing stories of evictions, defaults on levy payments, loss and anxiety due to separation from others. One of the positive outcomes of the pandemic is that it has shown us how resilient we are as a country, residential industry, and members in community schemes who during this time have found innovative ways to share information and resolve common problems.

In this edition we have decided to focus on the common financial and governance related questions we commonly receive – how to conduct an AGM; the question of levy financiers; the impact of the POPI Act on community schemes; and how to enforce an adjudication order. I trust that as some community schemes prepare for their financial year-end, the articles provided will clarify some of the questions raised with us and in other forums. Further enquiries can be forwarded directly to our Manager for Governance, Enforcement and Compliance, Ms Johlene Wasserman on **Johlene.wasserman@csos.org.za**

It gives me great pleasure to announce that in February 2021, the CSOS Head Office and Gauteng Customer Service Centre will be moving into more suitable office space in Centurion. The current office in Sandton can no longer accommodate our growing organisation and applicant needs in respect of conciliations and adjudication. We are optimistic and trust that the transition to new premises will be of minimal inconvenience to all our stakeholders. Furthermore, the CSOS has opened satellite offices in George and Bloemfontein.

In the months leading up to the end of March 2021, we will be embarking on a massive nationwide consumer awareness campaign designed to create brand awareness and visibility. Community Schemes who, up to now have cited lack of knowledge will no longer be able to cite this as a reason for not registering their community scheme. A key priority for the Board and CSOS executive has been to ensure we have a comprehensive view of the entire community scheme universe so that a fit-for-purpose enforcement plan can be implemented on the ground led by our enforcement officers, investigators, in collaboration with other agencies of government like the Deeds office, CIPC, etc. Our message to community schemes who have not registered at this time is to register, there is no cost to registration, and it is the right thing to do.

I would like to thank the industry bodies, the National Association of Managing Agents (NAMA) and the Association for Residential Communities (ARC), for the stellar collaborative work we have conducted to solve industry issues. Our engagements have been invaluable to 'garner' with a view to optimising CSOS efficiencies, and the engagements have served as strategic platforms to create understanding of how the CSOS is advancing the notion of communal living as the preferred tenure option through legislation, training, and awareness.

The threat of the Covid-19 is still with us. 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. They 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 to ensure the safety of all the residents.

Have a wonderful, peaceful, and well deserve festive break!

Ndivhuo Rabuli
Acting Chief Ombud

PUBLIC NOTICE
WE ARE MOVING

Exciting things are happening as the Community Schemes Ombud Service continues to grow. We are delighted to let you know that as of 01 February 2021, we are relocating to a new building. Our telephone numbers will remain the same.

Our new building location is at:

Berkley Office Park
8 Bauhinia Street, Highveld Technopark, Centurion
Tel no: **0800 000 653**

Should you have any queries related to the relocation, please feel free to contact our Acting Facilities Manager at **ivy.masete@csos.org.za**

WE LOOK FORWARD TO MEET YOU AT OUR IMPROVED OFFICE SPACE!

LEVY FINANCING COMPANIES
SAVIOUR OR SCOURGE?

YOU'VE READ IT A HUNDRED TIMES AND NO DOUBT HEARD IT AS MANY TIMES: A COMMUNITY SCHEME MUST BE RUN LIKE A BUSINESS – *AFTER ALL, THE TRUSTEES OR DIRECTORS ARE MANAGING THEIR FELLOW-MEMBERS' MONEY AND THEY HAVE A FIDUCIARY OBLIGATION TO DO SO DILIGENTLY, PRUDENTLY AND WITH AN ENHANCED LEVEL OF SKILL AND CARE.*

Thankfully, the brutishly-nasty 'early' levy financing solutions offered by a few companies 10+ years ago, which were responsible for the financial ruins of numerous sectional schemes, have been done away with. These have been replaced with companies that offer a veritable smorgasbord of innovative and solutions-based finance options for community schemes.

Are body corporates allowed to take loans from finance companies?

Yes, they are.

The members of the body corporate must pass a special resolution in terms of section 4(e) of the Sectional Titles Schemes Management Act to authorise the body corporate to borrow monies required by it in the performance of its functions or the exercise of its powers.

Is taking a loan preferable to raising special levy?

Unequivocally no.

Whether any other community scheme is authorised to take a loan, or what type of resolution would be required to be passed, is set out in the founding documentation. Since the founding documentation of these schemes differ, we urge you to carefully study the documents before contemplating taking a loan.

However, as any businessman will tell you, loans have their place, and serve a particular purpose in the commercial world. However, there is always a price to pay (*and usually a very expensive price at that*) in the form of interest, finance fees, etc. which are not payable when special levies are raised and paid by members.

This article is written from the Consumers Perspective and should your community scheme require assistance in the form of a loan, we would strongly advise you to shop around, since there are numerous institutions in the market, offering different types of financial packages, each with distinct advantages and disadvantages attached. Many managing agents also offer loan facilities to their clients.

The most common types of loan facilities on the market are the following:

1. **The levy finance company guarantees payment of the scheme's monthly levy income, or a part of the monthly levy income, so that the budgeted monthly expenses of the scheme can be paid promptly and on time;**
   The scheme then cedes its

debtors' book to the finance company as security.

The finance company is responsible for collecting any outstanding levies from defaulting unit-owners.

2. **Specific Project Funding**
   This is where a scheme requires the funding for a large project, such as the waterproofing of the roof of the scheme, for example. Attending to the work now, would be far cheaper and more effective than budgeting and saving for the project over the next 3 years, where the condition of the roof would deteriorate and the cost of materials and labour, would concomitantly increase.

   In this scenario, after carrying out a careful risk analysis, the levy finance company would loan the money for the full project price (or part thereof) to the scheme on mutually acceptable terms. These loans are usually granted as unsecured revolving loan facilities.

   Obviously, the criteria for approval are quite strict, but ultimately this is the most expeditious way to have work completed.

It goes without saying, that ultimately the finance company does not have the best interests of the scheme at heart – business is business after all – so it lies with the members and the scheme executives to ensure that if financing is taken out on behalf of the scheme, that the interests of all the members is protected as best as possible.

Community Schemes Ombud Service

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PROCESS FOR URGENT DISPUTE APPLICATIONS

Dispute Application Email addresses:

Wc-complaints@csos.org.za
Western Cape, Eastern Cape and Northern Cape

GP-complaints@csos.org.za
Gauteng, North West and Limpopo

KZN-complaints@csos.org.za
KwaZulu-Natal, Free State and Mpumalanga

63 Wierda Road East , Wierda Valley, Sandton
(+27 10) 593 0533 l mervin.dorasamy@csos.org.za

www.csos.org.za

The electricity supply to my sectional title unit has been terminated . . . The directors have denied me access to the HOA . . .

Can I approach the csos for urgent assistance?

The good news is **YES YOU CAN!**

As with a Court application, the CSOS does accept urgent dispute resolution applications, and will hear these matters within 24 hours (circumstances permitting); provided that all other prerequisites are complied with, such as full details of the dispute being received, the opposing party or parties being notified and given the opportunity to state their case, and the dispute resolution fee being paid to the CSOS. It is also imperative that the matter is actually urgent, and that the urgency is not self-created or simply perceived by the party bringing the application as being urgent, whereas it really is not urgent.

The application can be brought in terms of any sub-section under "Prayers for Relief" in terms of section 39 of the CSOS Act No.9 of 2011. The Applicant proves that the granting of the relief is in fact urgent.

Alternatively, where, for example, the electricity or water supply to a unit has been terminated simply because money is owed to the body corporate, or access to a scheme or unit is denied for the some reason, then the application must be brought in terms of section 39(7)(b) of the Act under "any other order proposed by the chief ombud".

A dispute application is lodged with CSOS in terms of Section 38 of the CSOS Act which provides:

38. Applications

(1) Any person may **make an application** if such person is a party to or affected materially by a dispute.

(2) An application must be-
- (a) made in the prescribed manner and as may be required by practice directives;
- (b) lodged with an ombud; and
- (c) accompanied by the prescribed application fee.

(3) The application must include statements setting out-
- (a) the relief sought by the applicant, which relief must be within the scope of one or more of the prayers for the relief contemplated in section 39;
- (b) the name and address of each person the applicant considers to be affected materially by the application; and
- (c) the grounds on which the relief is sought.

(4) If the applicant considers that the application qualifies for a discount or a waiver of adjudication fees, the application must include a request for such discount or waiver.

In addition, Section 36 provides:

36. Practice directives

(1) The chief ombud must issue practice directives with regard to any matter pertaining to the operation of the Service.

(2) Practice directives must, subject to this Act and the regulations, direct the performance of any act in the operation of the Service.

Most importantly, Clause 33 of the Practice Directive on Dispute Resolution, 2019, in respect of URGENT APPLICATIONS FOR DISPUTE RESOLUTION, provides:-

33 URGENT MATTERS

33.1 The Applicant can submit an application for the matter to be heard on an urgent basis.

33.2 The applicant must demonstrate that there is a current, genuine emergency requiring an urgent adjudication order. The urgency cannot be used to circumvent the ordinary conciliation and adjudication processes.

33.3 The grounds of the application should include details of whether

33.1.1 there is an immediate and serious health and safety issue;

33.1.2 deprivation of essential services, not limited to disconnection of water and electricity;

33.1.3 access to the scheme by unit owners and occupiers.

33.4 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.

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

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

33.7 The Ombud may limit or refuse an extension to the submission or reply period where such a request.

33.8 If it is later found that the matter was not urgent, the Adjudicator may issue a cost order against the applicant.

The CSOS dispute resolution form can be downloaded from our website, at www.csos.org.za, filled in and then emailed (with all the supporting documents) to the office closest to where your community scheme is situated – Johannesburg (which covers the entire Gauteng region, Limpopo and North-West), Cape Town (which covers the Western Cape, Eastern Cape and the Northern Cape) or Durban (which includes Kwazulu Natal, the Free State and Mpumalanga). The website will provide you with the email addresses of the respective offices.

A new dispute application or a previously submitted application may be viewed as urgent. In the new dispute, the applicant may make an application for urgency in the application itself. For previously submitted disputes, the applicant need only make an application for the Ombud to consider that dispute application as urgent.

Regardless of the urgency, the prescribed fees must be paid within the required time, unless the applicant qualifies for a waiver or the waiver application is approved.
The application for urgency must be in respect of a dispute which applies to relief set out in section 39 of the CSOS Act.

Attach your application to a covering email that clearly states that the matter is urgent and requires immediate attention. State the grounds for urgency in your email and in the application itself. It will also be of benefit to telephone our office and speak to one of our case officers and who will afford your application the urgency that it requires.

SCHEME GOVERNANCE DOCUMENTATION

All about Rules

Community Schemes Ombud Service

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Scheme Governance Documentation Rules submitted before the 7 October 2016:

1. Amended Management and Conduct Rules of sectional title schemes submitted before the Sectional Titles Schemes Management Act was signed into law on the 7th of October 2016, remains at the Registrar of Deeds, and will be transferred to the CSOS in due course;
2. These amended Rules are enforceable upon members and occupiers of the community scheme if they do not contravene any part of the Constitution or the CSOS and STSM Act & Regulations;

Scheme Governance Documentation Rules submitted after 7 October 2016:

3. Sectional title schemes will no longer send their amended Management & Conduct Rules to the Registrar of Deeds, but to the CSOS in terms of section 10(5)(b) and (c) of the STSM Act, for quality assurance, registration and preservation;
4. Once a compliance certificate has been issued by the Chief Ombud, the Rules will be enforceable against members and occupiers within that community scheme;
5. Form B will be completed by the scheme executives;
6. This does not extend to home or property owners associations, or share block schemes, however, the CSOS will quality assure the scheme governance documents of these types of community schemes if asked to do so by the scheme executives.
7. The same Form B will be completed by the scheme executives of these community schemes;
8. Please peruse the CSOS website for the Practice Directive on Rules regarding desirable and undesirable rules.

REGISTRATION OF ALL COMMUNITY SCHEMES

1. All Community Schemes must be registered with the CSOS as per section 59, read with Regulation 18(3), of the CSOS Act;
2. Form CS1 must be completed by the scheme executives;
3. If a community scheme registers with the CSOS and attaches the scheme governance documents as one of the required sets of documents, the documents will be sent to the scheme governance department, however, form B must be completed before the quality assurance of Rules will commence, and *vice versa*.

CSOS REGISTRATION & PAYMENT PROCESS

1. Registration Of A Community Scheme

- Each scheme is required to register with the CSOS in terms of Sec 59(a)(iii) & Reg 18(8) of the CSOS Act & Regulations;
- A registration form (CS1) should be completed and submitted to: **registration@csos.or.za**;
- There is NO charge for registering with the CSOS;
- The form is accessible on the CSOS website, under the heading registration of schemes;
- Click on the following link to download the form from the website: **http://www.csos.org.za/registrationOfSchemes.html**

2. Calculation Of CSOS Levies

- The CSOS levy amount is calculated as follows: (LEVIES PAID PER UNIT-500) *2%;
- For schemes within schemes if the Body Corporate is billed on scheme level – pay only one R 40 = R 40;
- If the Body Corporate is billed on per unit level – pay R 40 BC PLUS + R 40 HOA Levy = R 80;
- It is therefore imperative that this is established when a BC is billed, if within an HOA.
- The CSOS Levy Calculator is available on the website: **http://www.csos.org.za/regulations.html**

3. How Often Are Levies Payable?

- Levies are payable every quarter as per Regulation 11 of the CSOS Regulations;
- The quarters are as follows:
  a. 31 March – Quarter 1 (January, February, March);
  b. 30 June – Quarter 2 (April, May, June);
  c. 30 September – Quarter 3 (July, August, September);
  d. 31 December – Quarter 4 (October, November, December);
- Schemes that opt to pay annually are required to pay in advance on the 31 March.

5. REFERENCING WHEN MAKING PAYMENTS

- Schemes are required to make payment using their CSOS registration number; this ensures that the amount is allocated to the correct scheme;
- Example of a CSOS registration: CSOS/REG/16/GP/000000;
- Each scheme is allocated a unique number;
- The practice directive allows for schemes to make payment using SS Numbers; however, the CSOS encourage schemes to apply for a registration number with the CSOS

6. PROOF OF PAYMENTS AND LEVY SCHEDULES

- Schemes are requested to forward proof of payments and levy schedules to: **levypament@csos.org.za**;
- A levy schedule comprises of number of units, levy amount collected and the amount to be surrender to CSOS

7. INVOICING AND STATEMENTS

- The CSOS does not issue invoices as most schemes have not been registered and some are still yet surrendered amounts payable to CSOS;
- It is the responsibility of the schemes to compute levies and make payments. (Using the CSOS Levy Calculator);
- The CSOS issues a statement of account at the end of each quarter, reflecting all the payments made to date;

- Statements are available upon request throughout the quarter;
- Please ensure to use your CSOS registration number as reference this enables our system to allocate payment directly to schemes relevant account;
- For any levies payment queries please forward your email to this email address **levypayment@csos.org.za** for a prompt response

- All schemes are required to register with the CSOS
- Registration Documents can be hand delivered, couriered or emailed to Registration@csos.org.za
- A unique CSOS registration number will be allocated, eg 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**

Add as many rows as necessary. *Copy this formula into ALL rows.*

The Levy calculator can be downloaded from the website, on the following link **http://www.csos.org.za/regulations.html**

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**

CSOS telephone number: **010 593 0533**

ANNUAL GENERAL MEETING

HOW TO CONVENE AND HOLD AN ANNUAL GENERAL MEETING "*STRICTLY*" IN TERMS OF THE SECTIONAL TITLES SCHEMES MANAGEMENT ACT, NO. 8 OF 2011.

Half-measures do not count when it comes to compliance with the law. *You either comply or you do not.*

The Annual General Meeting (AGM) of a Body Corporate must take place within 4 months of the financial year-end of the Body Corporate, unless all members waive the right to the meeting and consent in writing to the motions that that must be discussed at the meeting.

1. What is the notice period that must be given for an AGM?

14 working days' notice must be given for an AGM in terms of Prescribed Management Rule 15 ("PMR" 15), unless a special or unanimous resolution is proposed to be passed at the AGM; in which case 30 days' notice is required.

2. Is there a statutory Agenda for an AGM?

Yes, there is. The prescribed agenda for an AGM is set out in PMR 17(6)(j) to (n), and includes items such as the:

- Consideration of the reports of the activities and decisions of trustees since the previous general meeting, including reports of committees;
- Approval of the schedules of insurance replacement values;
- Determining the extent of the insurance cover by the body corporate for the financial year.

3. The Agenda and Ancillary Documents, such as the Audited Financial Statements, must be sent out with the AGM notice

- Proxy forms and Trustee Nomination Forms must also be enclosed.

4. What are the quorum requirements for an AGM? (PMR 19)

For an AGM to commence, it is a prerequisite that a quorum must be present.

A quorum is:

a) Members entitled to vote and holding at least $^{1}/_{3}$rd. of the total votes of all members *in value (i.e. calculated by participation quota)*, provided that at least 2 persons must be present - unless all the sections are registered in the name of 1 person.

Except if:

b) A scheme has less than 4 primary sections, or a body corporate has less than 4 members, then the quorum requirement is different:

In this case, the quorum will be: members entitled to vote and holding $^{2}/_{3}$rd. of the total votes of members in value.

But always remember when calculating a quorum at an AGM:

- That the value of the votes of the developer must not be taken into account; and
- The value of the votes of any section registered in the name of the Body corporate must not be taken into account for purposes of voting.

5. What happens if there are not sufficient members present to form a quorum for the meeting to proceed?

According to PMR 19(4) of the Sectional Titles Schemes Management Act, if within 30 minutes of the time appointed for the AGM to commence, a quorum is not present, then the meeting stands adjourned to the same day in the next week at the same time and place.

And if the following week at the same place, date and time, a quorum is not present, within a half an hour of the proposed time for commencement, **then the meeting may proceed even though there is no quorum. The proposed business may be conducted (BUT, special or unanimous resolutions cannot be passed at such a meeting since a quorum MUST be present).**

Community Schemes Ombud Service

LEVY STATEMENTS

HOW TO GET YOURS

You're a community scheme and you paid the CSOS Levy, now what?

THE CSOS DOES ISSUE STATEMENTS.

CSOS levy queries should be sent to **levyqueries@csos.org.za**

Proofs of Payment should be sent to **levypayment@csos.org.za**

All requests are processed within 48 hours.

For enquiries please email **levyqueries@csos.org.za**

THE PROTECTION OF PERSONAL INFORMATION ACT 4 OF 2013 ("POPI")

How it affects community schemes

Most of the sections of the POPI Act finally came into operation from 1 July 2020 (*only some of its provisions having been operational since April 2014*). This gives effect to section 14 of our Constitution, which states that "**Everyone has the right to privacy**".

The purpose of the POPI Act in relation to community schemes is to ensure that the personal information of the owners and/or residents of units or homes in the scheme is collected, stored and managed responsibly by not only the scheme executives and managing agents, but also by unit owners, and to protect the rights of the owners or residents not to have their personal information abused or compromised by having the information shared arbitrarily and irresponsibly with anyone.

If a community scheme or a managing agent does not comply with the POPI Act (*and they have 12 months from the date of commencement to conform to the Act*), there are jail sentences of up to 10 years and fines up to R 10 million, obviously depending on the seriousness of the breach.

In terms of POPI, personal information is defined as "**information relating to an identifiable, living, natural person, and where it is applicable, an identifiable, existing juristic person**, including, *inter alia*, race; gender; sex; pregnancy; marital status; national; ethnic or social origin; sexual orientation; age; physical or mental well-being.; well-being; religion; conscience; belief; culture; language and birth of the person; as well as the name of the person; his or her ID number; letters from or about that person that contain confidential information; and biometric information. (*Further information that is regarded as personal is set out in section 1 of the Act under "Definitions"*)

Section 19 of the POPI Act requires an organization, being the community scheme in this context, to ensure that suitable measures

are in place to maintain the integrity and confidentiality of information pertaining to owners and residents by preventing loss, damage, and unauthorized access to this data. In the normal course of their duties, scheme executives are required to collect the personal information of the owners and occupiers of the scheme, and the owners and residents have a concomitant obligation to furnish this information to them. For example, section 13(1)(f) of the STSMA obliges the owner of a unit *"to notify the body corporate of any change in ownership or occupancy of his or her section and of any mortgage without delay"*.

Prescribed Management Rule 27(2)(b) states that the body corporate must obtain the following information, which must be kept updated:

- lists of trustees, members and tenants with their full names, identity numbers or, in the case of non-South African citizens, their passport numbers; and

- section addresses and mailing addresses, if different;
- telephone numbers; and
- email or other electronic addresses.

All scheme executives, in this case Trustees, have a statutory and common law fiduciary obligation to act in good faith, and with due diligence and care in the interests of their community scheme at all times. It is their duty to ensure that the information obtained from members is only used for the purpose for which it was given.

What is that purpose?

The management and administration of the community scheme – *nothing else*.

The STSMA in the case of a sectional title scheme, and most Memoranda of Incorporation or Constitutions of HOA's, provide for a member to have access to the documents and records of the scheme upon request. Here specific reference is made to Prescribed Management Rule 27(4) which states that: "On receiving a written request, the body corporate must make the records and documents referred to in this rule available for inspection by a member, a registered bondholder or a person authorised by a member, and provide copies to them".

Does this mean that trustees or the managing agent can or must give out information willy-nilly?

No, definitely not!

It is important to remember that a balancing of competing rights or interests comes into play in an instance such as this:

Who has the "larger" right or interest: the person asking for access to the documents, which information may include personal information of a member, such as his or her arrear levy status (*which can be an indication of financial problems he may be experiencing at the time*), as opposed to the member in question who is in arrears with his or her levy.

In a case such as this, the scheme executives or managing agent would have to make a judgement call in order to determine whether the request for information is in pursuit of a legitimate purpose in furtherance of the proper management and administration of the scheme, or not.

An example of a case where such a request for information would not be in pursuit of a legitimate purpose, would be where a member asks for another member's arrear levy account simply to "name and shame" him at a forthcoming meeting for the purpose of causing mischief.

If the information is not required in furtherance of the proper management and administration of the scheme, or there is a reasonable possibility that it may not be, then the scheme executives or managing agent may not distribute the information without obtaining the prior written approval of the member concerned. If the approval is not obtained, the personal information must not be shared.

In a situation such as this, it is best to err on the side of caution.

In conclusion, here are 4 initial steps that scheme executives can take to comply with the POPI Act:

1. Appoint an Information Officer to oversee compliance with the Act by the scheme;
2. Go through all contracts entered into by the scheme with 3rd parties to ensure that each contract contains a clause in terms of which the parties undertake to comply with the provisions of the POPI Act - if the contracts do not have this provision, amend the contracts;
3. The scheme executives must develop a compliance policy or framework, which must Include procedures to be followed on how POPI will be implemented. This must be sent out to all unit owners and residents;
4. Implement the policy.

Falling foul of the POPI Act is simply not worth the risk!

PERFORMANCE INFORMATION 2019/2020

AMONGST THE YEAR'S KEY HIGHLIGHTS, THE CSOS MANAGED THE FOLLOWING:

01 Levy collections of R217.million attained during the reporting period, versus R196million collected in the previous financial year.

02 An improvement on the "adverse" audit finding ,of the previous year to one of "qualified" finding during the current period, which hopefully will change to "unqualified" in the next report.

03 finalised 70% of the 6967 disputes received, through the appointment of an additional 24 part-time adjudicators.

04 hosted 23 educational seminars, that were attended by 1022 participants.

05 Established a Social and Ethics Board committee

It is also the CSOS' intention to meaningfully contribute to the Department's 2030 vision through the enhancement of vibrant community schemes as an alternative tenure option for the majority of the country's citizens.

Community Schemes Ombud Service

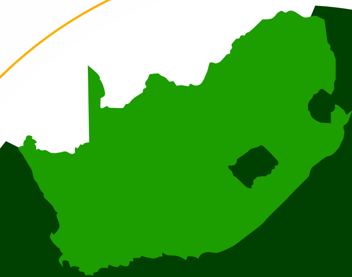
VIEW THE FULL ANNUAL REPORT

2019/2020

CLICK HERE

PERFORMANCE INFORMATION
CONTINUED

STRATEGIC OBJECTIVES
Ensure that the CSOS is an effective and sustainable organisation



NUMBER OF FUNCTIONAL FACILITIES AVAILABLE AND ACCESSIBLE TO MEMBERS OF THE PUBLIC

2018 2019 — ACTUAL ACHIEVEMENT
2 points of presence established in Bloemfontein and Port Elizabeth

2019 2020 — ANNUAL TARGET
ACHIEVED - One CSOS regional office established

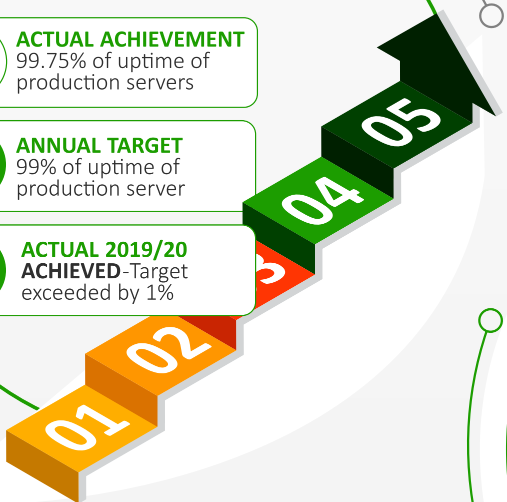
ACTUAL 2019/20
ACHIEVED - 1 point of presence was established in the Western Cape (George) and some adjudication and conciliations sessions were held there.

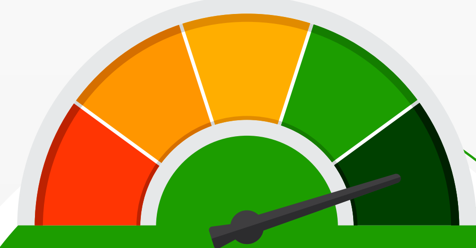
% OF UPTIME OF PRODUCTION SERVERS

2018 2019 — ACTUAL ACHIEVEMENT
99.75% of uptime of production servers

2019 2020 — ANNUAL TARGET
99% of uptime of production server

ACTUAL 2019/20
ACHIEVED-Target exceeded by 1%





% OF NETWORK HEALTH SCORE OF PRODUCTION ENVIRONMENT

2018 2019 — ACTUAL ACHIEVEMENT
New indicator

2019 2020 — ANNUAL TARGET
95% of network health score of production environment

ACTUAL 2019/20
ACHIEVED - 96.5% of network health score of production environment

IMPLEMENTATION OF CSOS CORE SYSTEMS
(Dispute resolution, levies collection and registrations)

2018 2019 ACTUAL ACHIEVEMENT
New indicator

2019 2020 ANNUAL TARGET
- Procure and scope CSOS core system
- Implement registrations system

ACTUAL 2019/20
NOT ACHIEVED

AMOUNT OF CSOS LEVY COLLECTED

2018 2019 ACTUAL ACHIEVEMENT
R195 672 310 collected as income (CSOS levy income)

2019 2020 ANNUAL TARGET
R220 000 000.00 CSOS levy collected

ACTUAL 2019/20
NOT ACHIEVED- R217 060 000 CSOS levy collected.

DEVELOPED AND APPROVED REVENUE MANAGEMENT STRATEGY

2018 2019 ACTUAL ACHIEVEMENT
The implementation protocol between SARS and the CSOS was drafted and submitted to SARS for consideration.

2019 2020 ANNUAL TARGET
Development and approval of the Revenue Management Strategy

ACTUAL 2019/20
ACHIEVED- Revenue Management Strategy was approved.

NUMBER OF POSITIONS IN APPROVED ORGANOGRAM FILLED

2018 2019 ACTUAL ACHIEVEMENT
New indicator

2019 2020 ANNUAL TARGET
50 positions filled

ACTUAL 2019/20
NOT ACHIEVED-
27 positions filled.

CASE CLOSED

LODGING A DISPUTE RESOLUTION EXPLAINED

The regulatory framework for the real estate/ property sector has been largely fragmented and there has not been a body to deal with complaints and disputes that arise in the sector as well as oversee the overall compliance and governance of community schemes.

Prior to the establishment of the CSOS, the only legal avenue that was available for consumers to address their complaints was through the courts, and consumers had to bear high litigation costs. As a result, government, through the Department of Human Settlements, identified the need to establish an independent regulator in the form of the CSOS to provide a dispute resolution service that is less formal, less costly and less time consuming than the courts.

Who can lodge a dispute with the CSOS?

Any person in a community scheme may make an application to the CSOS, if such a person is a party to or is materially affected by a dispute, for mediation and adjudication.

The Community Schemes Ombud Service Act defines a Community Scheme as '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 titles development 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-operative.'

How do I lodge a dispute?

Complete the Application for Dispute Resolution which must be completed in full and all relevant information pertaining to the application must be recorded accurately (**see step by step guide on how to complete the form**).

Method of Application for Dispute Resolution

Applications for Dispute Resolution may be lodged

1) in person (walk-ins),
2) online on the website: **https://www.csos.org.za/wp-content/uploads/2020/04/ApplicationforDisputeResolutionForm_O2.pdf**
3) by email:
   - Gauteng, Limpopo and North West: **gp-complaints@csos.org.za**
   - Kwa-Zulu Natal, Free-State and Mpumalanga: **kzn-complaints@csos.org.za**
   - Western Cape, Eastern Cape and Northern Cape: **wc-complaints@csos.org.za**
4) by post: 63 Wierda Road East, Wierda Valley, Sandton, 2196

Processes when the application is submitted

Please note that before you can make an Application for Dispute Resolution to the CSOS, applicants must first have exhausted all internal dispute resolution mechanisms of the community scheme concerned, in other words, if the Conduct Rules set out a procedure for dispute resolution, this procedure must be followed first, before approaching the CSOS.

Step 1: Submission

- The CSOS receives, registers, and acknowledges the new application.

Stage 2: Assessment

- The Application is assessed to determine validity (there are a number of things that would cause a CSOS Case Management Officer to dismiss the application, e.g. the relief requested does not fall into one of the categories set out in section 39(1) of the CSOS Act, or the matter is *lis pendens* – meaning it is already pending in Court)
- If valid, the matter is referred to Conciliation.

Stage 3: Conciliation

The Conciliation fee payable is R50.00

At the conciliation stage, applications are categorised into:

- Informal Type – quick telephone conciliation
- Formal Type – conciliation hearing

Conciliations are chaired by a CSOS Conciliator who is there to assist the parties in finding a resolution. If the matter is not resolved, the conciliator will issue a Notice of Non-Resolution and will refer the matter to Adjudication.

Stage 4: Investigation and Adjudication

The adjudication fee payable is R100.00

Matters that are referred for adjudication will be subject to a thorough investigation prior to presentation at the adjudication hearing. At the adjudication hearing, the Adjudicator will consider all the evidence presented and will hand down a determination that is binding on all parties to the dispute.

Adjudicator orders are enforceable in the Magistrate Court or High Court depending on the quantum or nature of the relief granted in the determination.

Regrettably, there is always one unsuccessful party in an adjudication.

However, if one of the parties is dissatisfied with the adjudication order, he or she is at liberty to approach to High Court of South Africa to either review or appeal the Order.

It would be best to consult with an Attorney to follow the procedure to seek to review or appeal adjudication order.

CONTACT US!

HEAD OFFICE

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SANDTON, JOHANNESBURG

T: (+27 10) 593 0533
F: (+27 10) 590 6154

Website: www.csos.org.za
Twitter: @CSOS_SA
Facebook: CSOS.SouthAfrica

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**

CSOS
Community Schemes Ombud Service

Affordable Reliable Justice