Shared Living

Issue 4 of 4

Jan - Mar 2022

KNOW THE DIFFERENT TYPES OF RESOLUTIONS

FALLING FOUL OF POPI IS NOT WORTH THE RISK

KZN OFFICE

OUR KZN BUILDING LOCATION IS AT:

7th Floor, Aquasky Towers
275 Anton Lembede Street
Durban

ARE YOU FAMILIAR WITH YOUR **SECTIONAL TITLE SCHEMES RULES?**

Accountability, Excellence, Independence, Integrity

www.csos.org.za

CSOS Community Schemes Ombud Service

Affordable Reliable Justice

Gedeelde Lewe
Ukuhlalisana
Tsamisana
Ho Dulisana Mmoho

VISION: A credible, world class OMBUD SERVICE for community schemes in South Africa.

MISSION: To promote harmonious community schemes by providing regulation, education and accessible dispute resolution services to all relevant stakeholders

VALUES: Accountability, Excellence, Independence, Integrity

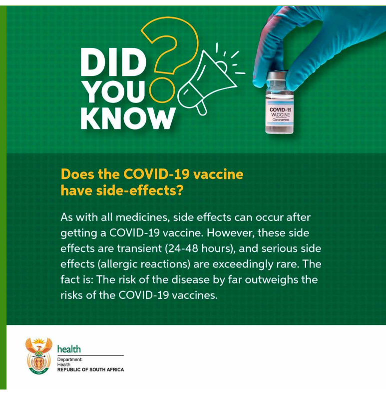
www.csos.org.za

CSOS
Community Schemes Ombud Service

Affordable Reliable Justice

CSOS
Community Schemes
Ombud Service

Contents



CHIEF OMBUD FOREWORD

It has been nine months since assuming the role of the CSOS Chief Ombud and I must say it has been challenging and rewarding at the same time, but I am up for the challenge to ensure harmonious communal living in the Community Schemes.

To start the new year, let me take this opportunity to thank the industry bodies, the National Association of Managing Agents (NAMA), Association for Residential Communities (ARC), CAISA (Community Associations Institute of South Africa), and the RCC (Residential Communities Council) for the continued stellar collaborative work we have conducted together to solve industry issues. Our engagements have been invaluable to mine pain points out there with a view to optimising CSOS efficiencies, and the engagements have served as strategic platforms to create an understanding of how the CSOS is advancing the notion of communal living as the preferred tenure option through legislation, training, and awareness.

March 2022 marks the end of our financial year, despite the challenges encountered due to the novel coronavirus during the period under review the CSOS implemented its strategic priorities that were aimed at contributing to the realisation of government's outcomes. Through the various programmes, the Entity continued its commitment to effectively manage the regulation of community schemes and to ensure the promotion of good governance of community schemes.

CSOS continued to register community schemes and put efforts in place to ensure a complete and accurate database. The organisation has made significant progress in creating a database of schemes that have given an indication of the number of Sectional Title Schemes in the country and allowed for a more accurate projection of levies collection and outstanding schemes not registered. The appointment of the part-time adjudicators has reduced the backlog significantly and we are hoping that by the end of the financial year there will be no backlog.

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.

In this edition we have decided to focus on exploring different kinds of resolutions, urgent disputes which can be lodged with the CSOS, we bid farewell to the previous CSOS Board Members as their term ends. With POPI Act now in full swing ensure that you are compliant, and we look at its impact on Community Schemes. A lot is packed inside for you.

It also gives me great pleasure to announce the appointment of new Board Members by the Minister of Human Settlements, Ms Mmamoloko "Nkhensani" Kubayi (MP) effective 1 January 2022 under the leadership of Ms Phindile Mthethwa.

New Members to the CSOS Board are:

- Ms Marvellous Phindile Mthethwa (Chairperson) Mr Sediko Rakolote
- Ms Julia Ramataboe
- Ms Deshni Subbiah
- Mr Mthokozisi Daluxolo Xulu

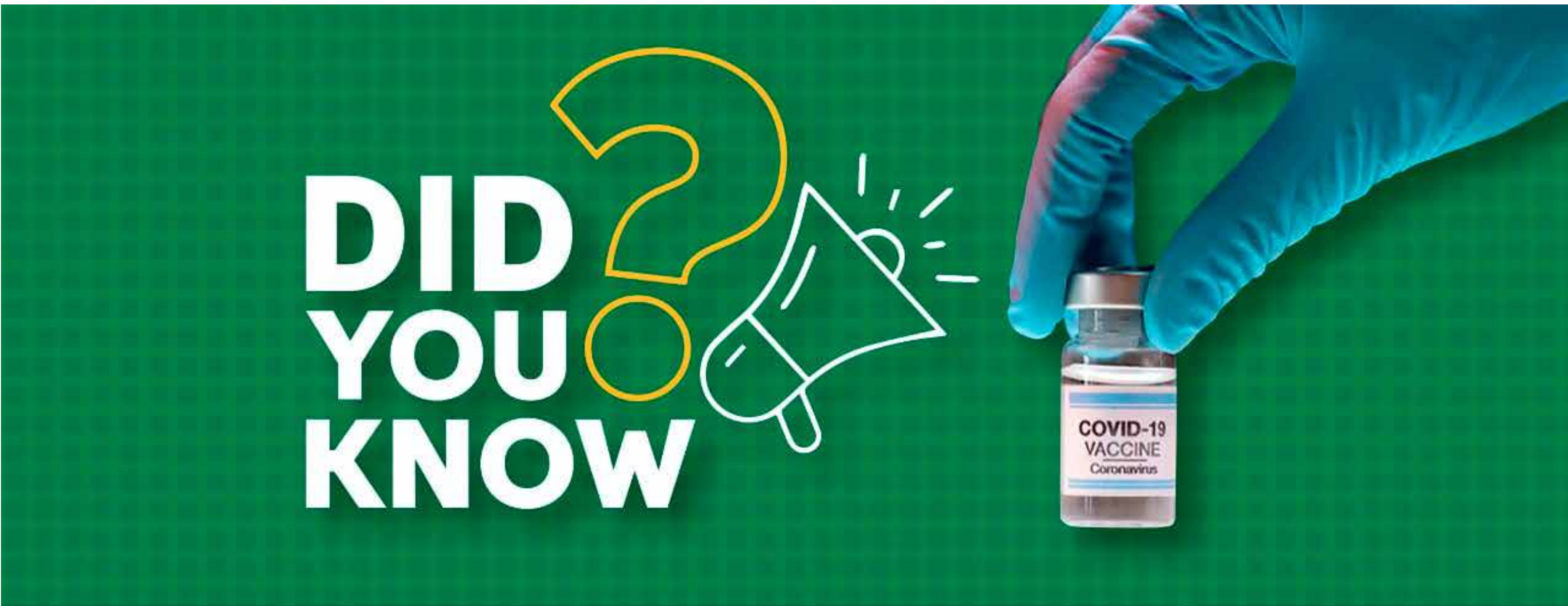
- Mr Donovan Vincent Goliath and
- Ms Ntombikayise Sithole

Furthermore, the CSOS is growing, in the new year, we will be opening a satellite office in Gqeberha.

The threat of the novel coronavirus 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.

Happy Reading!

Enjoy the read!
Kind regards
Adv. Boyce Mkhize



Does the COVID-19 vaccine have side-effects?

As with all medicines, side effects can occur after getting a COVID-19 vaccine. However, these side effects are transient (24-48 hours), and serious side effects (allergic reactions) are exceedingly rare. The fact is: The risk of the disease by far outweighs the risks of the COVID-19 vaccines.

health
Department:
Health
REPUBLIC OF SOUTH AFRICA

OUT WITH THE OLD, IN WITH THE NEW

As the year 2022 set off, we are very pleased to welcome the new Board members of the Community Schemes Ombud Service. We anticipate that their skills and experience will be assets to the organisation, and do look forward to working with them.

The Community Schemes Ombud Service is delighted to announce the appointment of new Board Members by the Minister of Human Settlements, Ms M. Kubayi (MP), effective 01 January 2022 to 31 December 2024.

New members of the CSOS Board are:

Ms Marvellous Phindile Mthethwa (Chairperson)

Mr Donovan Vincent Goliath (Deputy Chair)

Mr Sediko Rakolote

Ms Julia Ramataboe

Ms Deshni Subbiah

Mr Mthokozisi Daluxolo Xulu

Ms Ntombikayise Sithole

In the interest of continuity, the CSOS welcomes the reappointment of Ms Julia Ramataboe (former Deputy Chair) to the list of current board members.

We are grateful and excited to have this group of individuals join the board and bring their unique talents, expertise, and perspectives to the work of the organisation to further our vision of promoting affordable, reliable justice to all community schemes in the country.

We also bid farewell to the outgoing board members who provided consistent and thoughtful guidance over the past three years.

- Mr M Tyamzashe (Chairperson);
- Mr M Ramataboe (Deputy Chairperson);
- Ms A Olifant;
- Ms L Noge-Tungamirai; and
- Mr T Holmes

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.

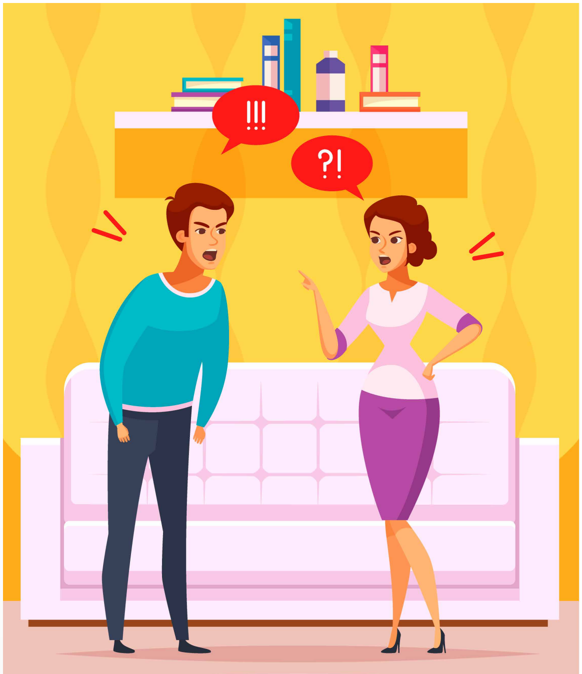
CSOS levy queries should be sent to **levyqueries@csos.org.za**

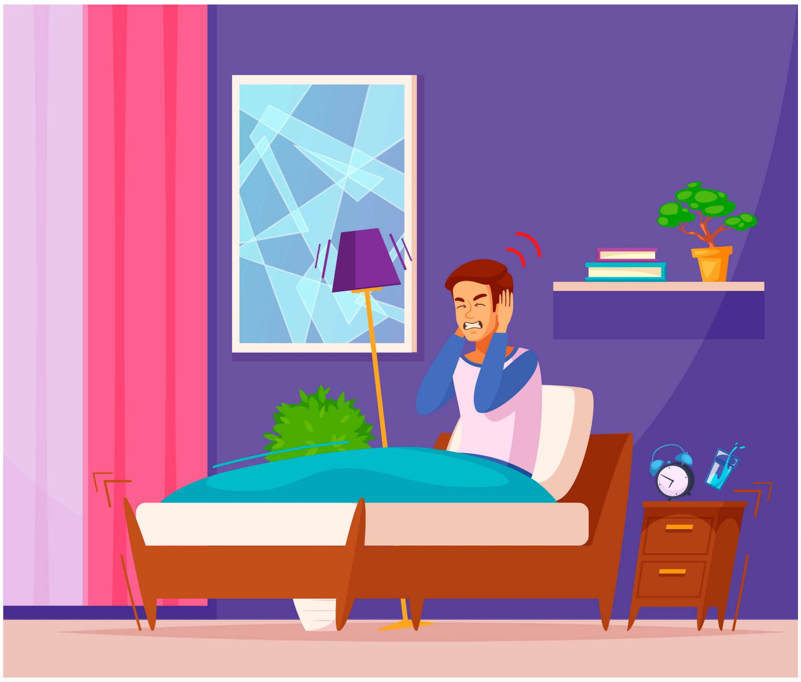
Proofs of Payment should be sent to **levypayment@csos.org.za**

All requests are processed within 48 hours.

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

NUISANCE IN COMMUNITY SCHEMES





During the past 2-years the CSOS disputes department has been inundated with complaints relating to 'nuisance' – everything from neighbours engaging in strenuous and allegedly far too noisy adult activities (not the term the Applicant used!), to unnecessarily loud furniture-making, suspected spying using CCTV cameras by a neighbour, copious dagga smoking on common property that entered the Applicant's unit and allegedly damaged her lungs . . . and my personal favourite, unsuspecting 'egging' attacks by a neighbour's children!

Believe it or not, the Law of Nuisance was received into South African Law from Roman Law, so the challenges of community living are not new. But I can't help thinking that the restrictions that Covid has placed on all of us have exacerbated these challenges. The concept of nuisance is very wide, and the CSOS Act provides an equally wide remedy. Section 39(2)(a) of the CSOS Act allows a disenchanted owner or resident, or for that matter a scheme's executives, to obtain an order in terms of which: "the particular behaviour or default constitutes a nuisance and requires the relevant person to act, or refrain from acting, in a specified way".

This naturally begs the question: what constitutes "nuisance" from a legal perspective? It has to be something more than just being irritated by someone's actions! Fortunately, we can look to our Courts to answer this question. In the 2003 case of **Vogel v Crewe and Another**, the Judge described 'nuisance' as conduct that "infringes upon a neighbour's health, well-being or comfort in the occupation of his land, with or without actual damage being caused to the neighbour". The Judge went on to state that in determining if the nuisance complained of by the Applicant is actionable in Law, the test to be used is an "objective reasonableness test, which seeks to strike a balance between the competing interests of the parties".

So, it doesn't really matter what type of nuisance one is referring to, whether it is noise of any type (children screaming, loud partying, couples fighting, dogs barking, motorbikes revving -which are common in community schemes), excessive smoke, invasive plants, overcrowding, noxious odours, and so on. What is critical though, is whether the behaviour complained of is prohibited in terms of the Conduct Rules of the community scheme, is objectively unreasonable in the circumstances, and infringes on the health, well-being or comfort of the complainant/s.

In the 2008 case of **PGB Boerdery v Somerville**, the presiding Judge stated that an interference with the property rights of another is not actionable as nuisance unless it is unreasonable. "A determination of when an interference so exceeds the limits of expected toleration is what, in the given circumstance, is reasonable."

As so often happens in law, a determination of what is unreasonable requires an evaluation by the Adjudicator of whether it is fair and appropriate to require the Applicant to tolerate the alleged nuisance, or whether the perpetrator ought to be compelled to terminate the behaviour complained of.

In **Steenkamp and Another v Knysna Local Municipality and Another**, which was finalised in 2010, to my mind, the Judge came to a very important conclusion: ". . . it can be accepted, I would suggest, that any noise that disturbs the sleep of a neighbour in the sense of waking him or her at an inappropriate time is prima facie unreasonable."

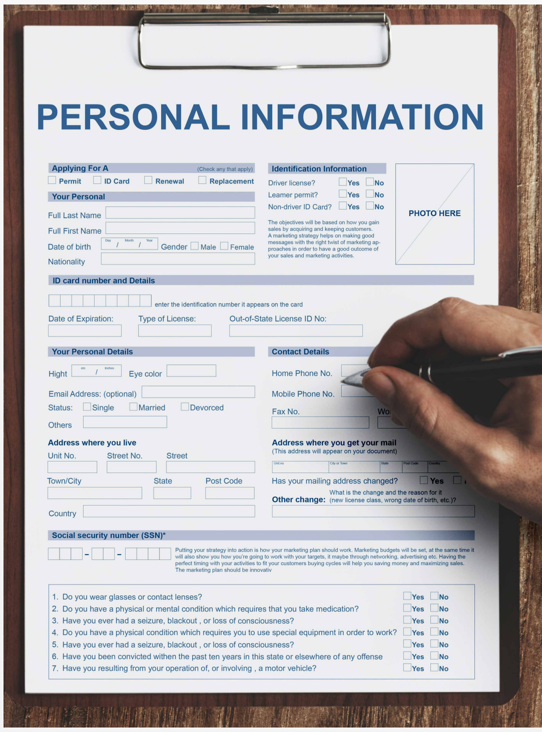
As with any case brought to the CSOS, the Applicant must prove his or her case on a balance of probabilities. Evidence must be presented - it is not sufficient merely to allege that the Respondent is causing a nuisance, the allegation must be proved.

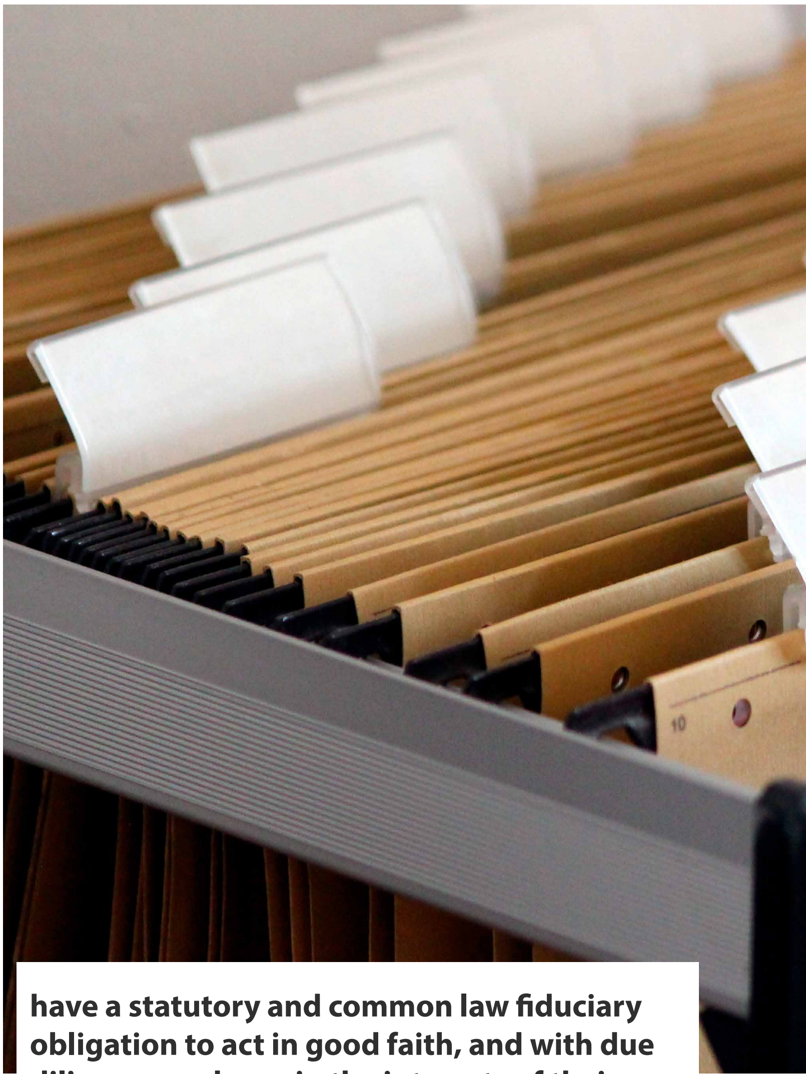
FALLING FOUL OF POPI IS NOT WORTH THE RISK

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, colour, sexual orientation, age, physical or mental health, well-being, disability, 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 always. 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 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.

For enquiries, email the Governance Manager:
Johlene Wasserman, Johlene.wasserman@csos.org.za

KNOW THE DIFFERENT TYPES OF RESOLUTIONS

STMSA – Sectional Titles Schemes Management Act
PMR – Prescribed Management Rules
PCR – Prescribed Conduct Rules
STA – Sectional Titles Act

ORDINARY RESOLUTIONS

These types of resolutions are approved by the majority of members within a body corporate at a general meeting in value.

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
PMR 17(6)(j)(iv)	Approval of the administrative and reserve budgets	Ordinary (51%)
PMR 17(6)(j)(ii) and (iii)	Approval of insurance	Ordinary (51%)
PMR 17(6)(j)(vi)	Appointment of the auditor	Ordinary (51%)
PMR 5(3) and PMR 17(6)(j)(vii)	Determination of the number of trustees	Ordinary (51%)
PMR 17(6)(j)(viii)	Election of trustees	Ordinary (51%)
PMR 6(4)(g)	Removal of trustees	Ordinary (51%)
PMR 12(5)	Removal of the chairperson	Ordinary (51%)
PMR 18(2)	Appointment of an alternative chairperson to chair a general meeting when the chairperson is not present	Ordinary (51%)
PMR 7(5)	Appointing a replacement trustee to take the place of a removed trustee	Ordinary (51%)
Section 7(1) PMR 17(6)(m)	The imposing of directions or restrictions to the trustees	Ordinary (51%)
PMR 21(1)	Determination of the financial year	Ordinary (51%)
Section 2(8) and PMR 16(2) (c) and (e)	Confirming the developer has fulfilled accounting and reporting obligations at the first meeting	Ordinary (51%)
PMR 16(2)(d)	Ratify or not ratify contracts entered into by the developer for the body corporate	Ordinary (51%)
PMR 28(5)(b)	Instruction to trustees to appoint a managing agent	Ordinary (51%)
PMR 28(8)	Cancel the management agreement in accordance with its terms or refuse to renew it	Ordinary (51%)
PMR 30(g)	Approve the erection of a structure or building improvement on an EUA	Ordinary (51%)
PMR 22(3)	Approve the 10-year maintenance, repair and replacement plan	Ordinary (51%)
PMR 29(3)	Install and maintain separate electricity and water meters	Ordinary (51%)

SPECIAL RESOLUTIONS

These types of resolutions are approved at a general meeting and requires at least 75% in number and value of the members present or represented must vote in favour.

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
Section 10(2)(b)	Adding to, amending or repealing of the conduct rules	Special (75%)
Section 5(1)(h)	Authorising the extension of a section	Special (75%)
Section 10(7) and (8)	Create and confer rights of exclusive use in the conduct rules	Special (75%)
Section 27(5) Section 5(1)(f)	Cancelling registered exclusive use rights	Special (75%)
Section 5(1)(g)	Execute or accept servitudes or restrictive agreements that burden or benefit the land in terms of section 29 of the STA	Special (75%)
Section 11(2)	Making rules that provide for different voting values (nominated) or contribution liability (also need written consent of adversely affected owners)	Special (75%)
Section 2(7)(e)	Suing the developer in respect of the scheme	Special (75%)
PMR 23(8)	Deciding that the body corporate must insure against other insurable interest other than the prescribed risks (i.e., DSTV, CCTV)	Special (75%)
PMR 8(2)	Authorising remuneration for an owner-trustee	Special (75%)
PMR 29(2)	Authorising an improvement or alteration to the common property that is reasonably necessary (if any owner requests a meeting to discuss and vote on the issue after trustees have notified owners of their intention to proceed with improvement)	Special (75%)
PMR 28(1)	Appoint an executive managing agent	Special (75%)
PMR 28(7)(a)	Cancel the managing agent's appointment on two months' notice	Special (75%)
PMR 15(4)	Deciding to hold a general meeting outside of the municipal area	Special (75%)
Section 4(e)	Approve body corporate borrowing money	Special (75%)
Section 4(b)	Approve the purchase or sale of a unit by the body corporate	Special (75%)
Section 4(h)	Approve the short-term lease of common property for less than 10 years	Special (75%)
PMR 29(4)	Approve the installation of pre-paid meters	Special (75%)

UNANIMOUS RESOLUTIONS

These types of resolutions taken at a meeting requires 80% quorum counted in number as well as in vote value. All members or their representatives who vote, must vote in favour.

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
Section 10(2)(a)	Adding to, amending, or repealing of the management rules	Unanimous (80%)
PMR 29(1)	Authorising an improvement or alteration to the common property that is not reasonably necessary	Unanimous (80%)
Section 5(1)(a)	Authorising the body corporate to alienate or let all or part of the common property in terms of section 17(1) of the STA	Unanimous (80%)
Section 5(1)(e)	Request the delineation and cession of exclusive use rights to particular owners in terms of section 27 of the Sectional Titles Act	Unanimous (80%)
Section 10(7) and (8)	Create and confer rights of exclusive use in the management rules (i.e., parking spaces)	Unanimous (80%)
Section 5(1)(c)	Extend the period of the developer's future development right in terms of section 25 of the STA	Unanimous (80%)
Section 12(2)(a)	Decide on the distribution of compensation for expropriation of common property	Unanimous (80%)
Section 17(1)(b)	Deciding that the buildings are deemed to be destroyed	Unanimous (80%)
Section 17(3)(a)	Deciding to rebuild/reinstate buildings if buildings have been damaged or destroyed, or not to do so	Unanimous (80%)
PMR 21(2)(a)	Authorise the body corporate to make loans from body corporate money	Unanimous (80%)

REMEMBER If a unanimous resolution adversely affects one party, that resolution is not effective before the consent in writing is not received from that person, within 7 days from date of resolution, therefore the owner needs to raise his objection within 7 days, if not, there will be another meeting however if he objects within 7 days, the resolution will still be passed.

WRITTEN CONSENT OF ALL OWNERS WITHIN THE BODY CORPORATE

Every single owner in the body corporate must approve these types of actions

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
Section 5(1)(b)	To exercise or cede a future development right in terms of section 25 of the STA	All owners must consent
Section 26	To purchase land to extend the common property	All owners must consent
PMR 30(f) Section 13(1)(g)	To authorise a section or exclusive use area to be used for a purpose other than shown on the sectional plan or as contemplated	All owners must consent

TRUSTEES DECISIONS

Trustee resolutions is made by simple majority in number at a trustee meeting or in writing.

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
PMR 4(1)	Change the service address of the body corporate	Trustees (majority)
PMR 24(3)(d)	Determine amounts other than prescribed to be paid into the reserve fund	Trustees (majority)
Section 3(2)	Raising the annual contribution	Trustees (majority)
Section 3(3)	Raising a special contribution	Trustees (majority)
Section 7(2)	Consent for subdivision or consolidation of sections	Trustees (majority)
Section 7(3)	Enter into agreements about boundaries of the common property in terms of the Land Survey Act	Trustees (majority)
PMR 7(7)	Appoint a replacement trustee to serve while trustee is unavailable	Trustees (majority)
PMR 10(1)	Sign a document binding on the body corporate	Trustees (majority)
PMR 11 (2)	Set the dates for future trustee meetings with a standard agenda	Trustees (majority)
PMR 11(3)(b)	Exclude non-trustee members and others entitled to attend trustee meetings from the meeting	Trustees (majority)
PMR 11(5)	Hold a trustee meeting using electronic communication	Trustees (majority)
PMR 12(3)	Elect the chairperson	Trustees (majority)
PMR 12(6) and (7)	Elect a replacement chairperson if the chairperson is removed from office, is not present or is unwilling to chair the trustee meeting	Trustees (majority)
PMR 15(7)(a)	Call general meetings at short notice	Trustees (majority)
PMR 17(4)	Call general meetings whenever they see fit	Trustees (majority)
PMR 17(7)	Determine the agenda of general meetings except meetings called on request of members holding at least 25% of the vote	Trustees (majority)
PMR 20(9)(a)	Decide that a special resolution passed by members holding less than 50% of the vote value must be implemented immediately	Trustees (majority)
PMR 21(3)(b)	Increase the contribution by up to 10% for the period between the end of the financial year and when the new contribution becomes payable	Trustees (majority)
PMR 21(3)(g)	Delegate trustee duties	Trustees (majority)
PMR 24(4) and (5)	Pay money from the administrative and reserve funds	Trustees (majority)
PMR 26(1)	Adopt a report for presentation at the AGM	Trustees (majority)
PCR 1	Consent to keep a pet	Trustees (majority)
PCR 2	Specify the type of refuse receptacle to be used and where it must be kept	Trustees (majority)

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
PCR 3	Consent to park a vehicle on common property	Trustees (majority)
PCR 4(1)	Consent to member making a small change to common property	Trustees (majority)
PCR 4(2)	Approve appearance and materials of locking or safety devices attached to common property	Trustees (majority)
PCR 5	Consent to change made to external appearance of section or EUA	Trustees (majority)
PCR 5(2)	Consent to erection of washing lines on common property, hanging washing in section or EUA if visible	Trustees (majority)
PCR 5(2)(c)	Consent to display of signs etc	Trustees (majority)
PCR 6	Store flammable materials	Trustees (majority)
	If you insert fibre in a scheme a contract between the service provider and the scheme can be entered into by way of a trustee's resolution that should be obtained, providing that there are no costs to the members	

WRITTEN RESOLUTIONS BY THE BOARD OF TRUSTEES

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
PMR 21(3)(a)	Raising a special contribution	Trustees (majority)
PMR 21(3)(b)	Increase the contribution by up to 10% for the period between the end of the financial year and when the new contribution becomes payable	Trustees (majority)
PMR 21(3)(c)	Charging interest on overdue amounts	Trustees (majority)
PMR 21(3)(d)	Investing reserve fund money	Trustees (majority)
PMR 21(3)(e)	Entering into contracts	Trustees (majority)
PMR 21(3)(f)	Joining organisations and subscribing to services	Trustees (majority)
PMR 21(3)(g)	Delegating trustee duties	Trustees (majority)
PMR 21(3)(h)	Approaching the Ombud for relief	Trustees (majority)
PMR 11(2)	Set the dates for future trustee meetings with a standard agenda	Trustees (majority)

DECISIONS WHICH CAN BE TAKEN BY EITHER THE BOARD OF TRUSTEES OR BY ORDINARY RESOLUTION OF MEMBERS

LEGISLATION	DESCRIPTION	RESOLUTION REQUIRED
PMR 28(5)	Appoint a managing agent	Trustees / Ordinary
PMR 7(5)	Appoint a replacement trustee if a trustee ceases to hold office	Trustees / Ordinary
PMR 28(8)	Cancel the managing agent contract on its terms	Trustees / Ordinary
PMR 12(5)	Remove the chairperson from office	Trustees / Ordinary

ARE YOU FAMILIAR WITH YOUR SECTIOTIONAL TITLE SCHEMES RULES?

Picture: www.picabay.com

It is critical for owners and tenants to familiarise themselves with the Rules of the sectional title scheme where they live. These are the Managements Rules and the Conduct Rules. The Sectional Titles Schemes Management Act 8 of 2011 (the "SMTSA", for short) introduced new Management and Conduct Rules, and all rules previously registered with the Deeds Office are invalid insofar as they conflict with the STSMA, or the Management and Conduct rules introduced by the Act!

All sectional title schemes are governed by the Act, its Regulations, as well as the Management an Conduct Rules of the scheme as registered. But, as you know, the Act allows a Body Corporate or a Developer to change the Rules, as long as the correct procedure is followed, and the amended Rules are registered with the Community Schemes Ombud Service.

Regulation 6(1) to the STSMA actually states that Rules, as prescribed and as amended by a body corporate in accordance with section 10 of the Act, must be considered to be and interpreted as laws made by and for the body corporate of that scheme.

Getting a copy of the rules and studying them is essential. The onus is on owners to ensure that their tenants know the rules. In fact, the STSMA stipulates that the body corporate must keep a record of the Management and Conduct Rules, and in addition, have these rules available for inspection at trustee and owner meetings, as well as delivering a copy of the rules to every new owner and tenant.

The Management Rules govern the way sectional title schemes are run, and include the appointment of trustees, the way meetings must be held, including voting at meetings, elections, and the duties of the trustees and the managing agents. Being aware of the Management Rules under the STSMA will help owners and tenants to avoid unnecessary conflict.

The Management Rules embrace the new concept of an Executive Managing Agent.

An Executive Managing Agent (EMA) can be appointed by special resolution of a body corporate, or alternatively, members holding 25 percent of the quotas of all sections in a scheme can apply to the CSOS to appoint an EMA. If appointed, the EMA assumes the role of trustees and is liable for any loss suffered by the body corporate as a result of negligent management. It is an onerous job.

An EMA is not the same as a Managing Agent, which is appointed to perform specified financial, secretarial, administrative or other management services under the supervision of the trustees. Managing Agents are professional sectional title scheme managers, whereas trustees are, more often than not, members of the scheme,

who sacrifice their own time and effort (always unpaid in terms of the Act) to manage the scheme with the help of the appointed professional Managing Agents.

Any change of ownership or occupancy in a unit must be reported to the body corporate in writing. Under the old Sectional Titles Act, owners could only attend trustee meetings on invitation of the trustees and were not allowed to actively contribute at these meetings.

The STSMA allows owners to attend trustee meetings whenever they wish to and to participate, but not vote, at these meetings. The trustees can also ask the attending owner or owners to leave the meeting if confidential matters are being discussed.

Bodies corporate are required to establish a reserve fund, in addition to the normal administrative fund. This fund is intended to cover the cost of future maintenance and repair of common property.

The STSMA stipulates that every scheme must prepare a written maintenance, repair, and replacement plan, setting out the anticipated capital expenses for the next 10- years.

Since the reserve fund aims to ensure that buildings do not fall into disrepair, this is an extremely positive legal development. Another benefit is that the legislation aims to do away with special levies through the establishment of the reserve fund. In the past (before the STSMA was promulgated), special levies could be demanded for 'out of the ordinary' or unexpected expenses, such as major repairs that were not budget for. Special levies can be a major bone of contention. However, the STSMA does not rule out the right of trustees to raise special levies, if needed. It is important to know that the trustees have the power to raise special levies, but these can be prevented as long as members are prudent and diligent in keeping the reserve fund of the scheme up to date.

How does the reserve fund requirement affect your financial obligations as an owner? It depends on whether the body corporate in your scheme started accumulating funds for the reserve fund soon after this amendment was announced in 2016, when the STSMA was signed into law. Owners in those schemes that have failed to do so, could be faced with substantial levy hikes to enable the scheme to catch up and become compliant with the legal provision for a reserve fund to be established. Financial matters feature prominently as causes of conflict and disputes in sectional title schemes. Prospective and existing owners must find out what the reserve fund situation is in their complex. Owners who do not pay their contributions in spite of a court or adjudicator's order to do so will be faced with sanctions in terms of the prescribed management rules. In such a case, the member is not entitled to vote for an ordinary resolution. However, the owner is still entitled to attend trustee and body corporate meetings. The body corporate may apply to CSOS for a payment order. If owners who are in default believe they have a good reason to withhold payment, they should declare a dispute with the body corporate and apply to CSOS for relief. A prospective sectional title owner should always look for a scheme that has an adequate reserve fund and is well managed and maintained.

If you just got vaccinated against Covid-19, thank you!

You've owned your life and helped to protect our nation.

BOTH the vaccines currently available in SA have the power to protect you: Johnson & Johnson (one injection only) and Pfizer (two injections six weeks apart).

You may have received the one-dose vaccine or a two-dose vaccine. Different types of vaccines work in different ways, but they all prepare your body to fight the coronavirus. It doesn't matter which one you get – both have the power to protect you. If you do get the two-dose vaccine, you will have been given another day to come back. You'll only be fully protected once you've had your second dose, so don't miss it!

2 weeks

You will only be fully protected two weeks after you're completely vaccinated as it takes two weeks for your body's immune system to be fully activated by the vaccine.

Now that you're vaccinated, encourage your friends and family to do the same when their turn comes.

vaccination
Own your life

health
Department: Health
REPUBLIC OF SOUTH AFRICA

#IChooseVacciNation

photo created by rawpixel.com - www.freepik.com

CASE CLOSED

ELECTRICITY URGENTLY RESTORED FOR PENSIONERS

> "The adjudication orders ordered management to restore the electricity supply to all the pensioners' units upon receipt of the order. They were further ordered that if the electricity was disconnected by a third party, they must negotiate with the third party or enter a payment arrangement."

Durban: CSOS brought cheers to pensioners at Stranrear House, ordering management of the old-age home to reconnect the electricity 48 hours after the senior citizens lodged an urgent dispute.

Some will recall the joy that CSOS adjudication order brought to Stranrear House in April 2021. The pensioners relodged disputes with the CSOS after their lights were cut off. The reason for the disconnection of the Applicant's electricity supply was because there is no money. The April adjudication order 2021 urged management at Stranrear House to keep pensioners informed. It would appear this never happened.

In ordering electricity to be restored the adjudicator found that it was not clear why there is no money, whether there's no money because the Applicant is not paying rent or contribution or there is no money because the money that is there is not enough to cover electricity bill, or it was used for something else. The pensioners contended that the rent was paid in full by all pensioners.

The adjudication orders this time ordered management to restore the electricity supply to the all the pensioners' units upon receipt of the order. They were further ordered that if the

photo credit: Facebook

electricity was disconnected by a third party, they must negotiate with the third party or enter a payment arrangement.

The Applicant alleged that all women are traumatised and susceptible to crime as break-ins will make them easy prey and endangers their lives. The Applicant submits that the management was aware that the electricity would be disconnected. Pensioners alleged that the Respondent failed and neglected their fiduciary duties and responsibilities to the aged.

The Applicant stated that the disconnection of electricity could have been averted timeously. The order was presented to the Ethekwini Municipality. A payment arrangement was put into effect. Electricity was restored.

Disputes of a similar urgent nature can be lodged at CSOS, and these will be dealt with in a fast-track manner as follows:

- The assessment of the dispute by the Case Management Officer in conjunction with the Ombud will be undertaken within 24 (Twenty-Four) hours of receipt and registration of the dispute application.
- If the matter is determined to be one of urgency, the section 43 notice will be issued requiring the Respondent to respond to the application within 24 hours.
- The section 44 notice will be issued requiring the Applicant to confirm whether to proceed with an adjudication order, within 24 hours of receipt of the section 44 notice.
- The Ombud will refer the matter for adjudication in terms of section 48 of the CSOS Act.
- The Adjudicator will issue an order within 48 hours from receipt of a response pursuant to a section 44 Notice.
- Urgency shall be determined on the basis of imminent harm, loss of life, damage or loss that may occur if the dispute is not handled on an urgent basis.

By Mervin Dorasamy, Regional Ombud KZN, FS & MP

photo created by rawpixel.com - www.freepik.com

CONTACT US!

HEAD OFFICE

Unit 4, Berkley Office Park
9 Bauhinia Street, Highveld Techno Park
Centurion

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**
Unit 2, Berkley Office Park, 9 Bauhinia Street, Highveld Techno Park, Centurion

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

CSOS
Community Schemes
Ombud Service