

SharedLiving

Issue 4 of 4

Oct - Dec 2021

OUR PLEDGE TO YOU: UNVEILING THE CSOS SERVICE

KNOW YOUR RIGHTS

WHAT IS THE MAXIMUM INTEREST RATE THAT CAN BE CHARGED FOR ARREARS IN SECTIONAL TITLES SCHEMES?



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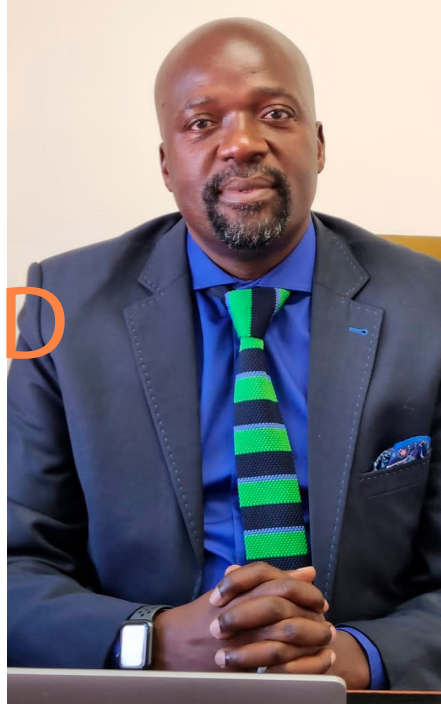


CHIEF OMBUD FOREWORD

It gives me great pleasure to announce that, for the first in its history, the CSOS has unveiled its Service Charter. The Charter is our pledge to you as our stakeholders, and commitment to improve our turn-around-times leading to speedy resolution of disputes. We receive thousands of disputes every year and have in this regard, put measures in place which will enable us to clear the backlog that had accumulated.

A number of outstanding matters on the adjudication and conciliation of disputes coupled with below par performance in terms of not meeting our annual performance targets, which had up to now characterized our operations, is the thing of the past. We are now pledging ourselves to changing our performance trajectory towards a positive outlook.

As an organisation we want to be held accountable on these three pillars, a service driven organisation, efficient organisation, and an effective organisation. The underlying assumption is that when people are empowered with information, they would be able to hold us accountable as a government entity mandated to offer affordable and reliable



justice to all Community Schemes in the country.

We are moving forward with agility to inculcate a culture of excellence in our organisation based on the core values of quality of service, productivity, innovation, integrity, discipline, transparency, accountability, and professionalism.

I would like to thank the industry bodies, the National Association of Managing Agents (NAMA), Association for Residential Communities (ARC), Community Associations Institute of South Africa (CAISA) and Residential Communities Council (RCC) for the collaborative work we have conducted together to solve industry issues. Our engagements have not only been invaluable to address pain points with a view to optimising CSOS efficiencies but have also served as a strategic platform to create understanding of how the CSOS is advancing the notion of communal living as the preferred tenure option

through legislation, training, and awareness.

In our quarterly engagement with the leading industry bodies, we shared our operational developments notably that under adjusted Level 2 Lockdown Regulations, the CSOS is continuing with Conciliations and Adjudications largely using electronic means and adjudications on paper.

In this edition we have decided to clarify our pledge to you, timelines that you can expect from us, we have also profiled the Chief Financial Officer to familiarise you with the CSOS Executives, know maximum interest rates that can be charged for arrears in Sectional Titles Schemes, know the rules and arm yourself with knowledge and many more insightful stories inside.

The threat of the novel corona virus is still with us. Scheme executives are tasked with ensuring strict compliance with the Regulations insofar as the wearing of masks, 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.

Enjoy the read!
Kind regards
Adv. Boyce Mkhize

SERVICE DELIVERY CHARTER OF THE COMMUNITY SCHEMES OMBUD SERVICE

WHO WE ARE

The Community Schemes Ombud Service (CSOS) is the regulatory authority for all community schemes in South Africa. It came into operation on the 7th of October 2016 with a mandate to: regulate the conduct of parties in community schemes, regulate, control and quality assure all scheme governance, provide a dispute resolution service, provide stakeholder training, consumer education and awareness for property owners, occupiers and other stakeholders and ensure that the organisation is managed in an efficient and sustainable manner.

A Community Scheme is any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings. This includes Sectional Title Schemes, Homeowners' and Property Owners' Associations, Share block companies, Retirement Villages and Housing Co-operatives.

WHAT YOU CAN GENERALLY EXPECT AT A CSOS SERVICE POINT

You can expect the personnel to:

- deal with you professionally and accord you fair and equal treatment irrespective of your race, gender, socio-economic status, disability and other social attributes;
- identify themselves by name;
- address you directly, with respect and due regard for your human dignity and other human rights and
- treat you courteously and provide you with an apology coupled with an explanation and remediation if things go wrong.

If you phone us, you can expect personnel to:

- answer the phone courteously, identify the centre and provide you with their name;
- be helpful and deal with your inquiries promptly;
- transfer your call to the appropriate Business Unit/person, where necessary;
- in cases of an unsuccessful transferred call, a message will be recorded and responded to within 24 hours.

If you send an email, you can expect to:

- receive a courteous and clear reply;
- receive an acknowledgement of receipt within two (2) working days and detailed correspondence within seven (7) working days if your matter is complex;
- receive correspondence in simple language and where possible, in your preferred language.

If you lodge a complaint, you can expect the following:

- Complaints are lodged through email or by a telephone call - the contact information is listed at the end of this Service Delivery Charter.
- Receipt of all complaints will be acknowledged within two (2) working days.
- The name and contact details of the person handling your query will be provided, where possible.
- A progress report will be issued within seven (7) working days.
- The complainant will receive a full response upon finalisation of the case.

OUR RESPONSE

- **Simple cases will be resolved within seven (7) days of receipt.**
- **In responding to complex cases, a progress report will be provided to the complainant within fourteen (14) days and resolved within the 90day period allowed for resolution of such matters.**

SERVICE STANDARDS FOR SPECIFIC SERVICES RENDERED AT OUR SERVICE POINTS

Generally, for all Services: A Client will not spend more than two (2) hours in the queue before being attended to

a) Community Scheme registrations:

- A community scheme must file the registration Form CS 1, within 30 days of the coming into effect of this Regulation.
- A submitted scheme registration form (CS form 1) will be processed within 48 hours of receipt, at no cost.

b) Regulate, monitor and control quality of scheme's governance documentation:

- Quality assurance of scheme rules will be completed within 30 working days of receipt, at no cost to the Scheme.

c) Issuing of compliance certificate:

- When the scheme rules are compliant, a compliance certificate will be issued within 48 hours at no cost.

d) Application for discount or waiver:

- Applications for waivers or discount by schemes or individuals will be responded to within 7 days of request at no cost.

e) Annual Returns:

- All community schemes must file their annual returns to the CSOS within 4 (four) months after the end of the community scheme's financial year and CSOS will respond within 30 days after receipt of the annual returns.

f) Amendment of community scheme Particulars:

- Application to notify CSOS of any changes in the registration information will be processed within 7 days at no cost.

g) Application for special or unanimous resolution:

- Application to obtain a special and unanimous resolution in the respective Scheme will be processed within 30 days at no cost.

h) Access to information:

- Application for access to information according to PAIA Act will be processed within 7 days at no cost.

i) Payment of Levies:

- Scheme owners are obliged to pay their monthly CSOS levies to their schemes.

OUR KEY SERVICE BENEFICIARIES

- Sectional title schemes.
- Homeowners' and property owners' associations.
- Housing co-operatives.
- Share block companies.
- Housing schemes for retired persons.

OUR PLEDGE

We, the incumbents of the Community Schemes Ombud Service, hereby pledge that:

We will uphold and protect the Constitution and rule of law and render an accessible, fair, speedy and cost-effective service, in the interest of an effectively regulated Community Scheme sector. To do this, the Entity will promote and live by its value statement as it relates to:

- Excellence
- Accountability
- Independence
- Integrity
- Responsiveness
- Innovation

SERVICE-BENEFICIARY OBLIGATIONS

We count on a strong partnership with our stakeholders for the realisation of the promises in this Charter. We also count on our stakeholders to be courteous towards our staff and treat them with respect. In order for us to adhere to the service standards noted above, we require stakeholders to adhere to the following:

- Requests for services must be clear (preferably in writing using form available on the CSOS website and via walk-ins).
- All requirements for a service must be adhered to.
- Proper contact details must be provided on the application forms for all our services.
- Clear and readable supporting documents must be submitted together with the application form.

- CSOS collects levies on a quarterly basis and these are payable to a nominated CSOS Bank Account.

j) Provide training to community schemes:

- CSOS will provide training to community schemes at no cost.

k) Provide awareness to our stakeholders:

- CSOS will provide education and awareness to Community schemes at no cost.

l) Provide dispute resolution:

Disputes will be resolved within 90 days as follows:

- A matter is set down after 35 days of assessment
- Disputes are conciliated within 20 days, with a fee of R50 payable.
- A conciliation agreement will be issued within 48 hours after a hearing.
- An adjudication is conducted on the papers within 40 days after an unsuccessful conciliation with a fee of R100 payable.
- Quality Assurance of the draft adjudication order is conducted within 7 days.

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Affordable Reliable Justice

OUR PLEDGE TO YOU

UNVEILING THE CSOS SERVICE CHARTER



Reaffirming Community Schemes Ombud Service (CSOS) as an affordable and reliable dispute resolution champion for community schemes members, the CSOS Chief Ombud, Adv Boyce Mkhize unveiled the organisational Service Charter on Friday, 17 September 2021. The Charter is aimed at illustrating CSOS's commitment to improve turn-around-times leading to speedy

resolutions of disputes.

Thousands of disputes are received by the CSOS every year and organisation has now put measures in place which will clear the backlog that had accumulated. A series of backlogs on the adjudication and conciliation of disputes, below par performance in terms of meeting or not meeting annual performance targets,

which has characterized CSOS operations and inability to account comprehensively and holistically for the universe or total and complete universe of schemes are some of the adverse characteristics and issues that the organisation has.

“We are moving forward with agility. We are moving forward with purpose and what we want to promise you that our regulatory and legislative framework must change and is going to change to enable us to be efficient and effective” - **ADV. BOYCE MKHIZE**

“This was the CSOS of yesterday or of the yesteryear. We are now pledging ourselves that we are changing the trajectory. Things that might have hindered our progress or inhibited our ability to become the most efficient, most recognised, and well-oiled machine that achieves its target that deals with its mandate in an efficient and effective manner is a historical context” said Mkhize when unveiling the Charter.

He said the organisation have begun steps towards a positive outlook in terms of their performance and the fact that they have moved from an adverse opinion to qualified audit opinion is indicative of the baby steps that the organisation has started to register as they move forward to the achievement of a greater CSOS.

Reiterating on his message when he first addressed the industry bodies in April the Chief Ombud said that there needs to be accountability and action. "We are not married to the past and we do not like the past, we would like to make a decisive break with the outlook that is going to be premised on these three pillars, a service driven, efficient, and an effective organisation. This is what we want. We are moving forward with agility. We are moving forward with purpose and what we want to promise you that our regulatory and legislative framework must change and is going to change to enable us to be efficient and effective"

Mkhize urged industry bodies to continue to partner on issues that affect the different types of community schemes, to learn from each other and to solve the myriad of challenges faced by property owners, executives, managers, and agents alike. "We are committed to driving transformation in the industry, not just in terms of numbers, but also in terms of serious economic empowerment opportunities that our people deserve and that we can be able to see a change in

the shift in the reflection of those that manage these schemes in the reflection of those that in fact, collecting the levees, managing peace within these residential communities", he said.

WHAT YOU CAN GENERALLY EXPECT AT A CSOS SERVICE POINT:

- You can expect the personnel to deal with you professionally and accord you fair and equal treatment irrespective of your race, gender, socio-economic status, disability, and other social attributes; identify themselves by name; address you directly, with respect and due regard for your human dignity and other human rights and treat you courteously and provide you with an apology coupled with an explanation and remediation if things go wrong;
- If you phone us, you can expect personnel to answer the phone courteously, identify the centre and provide you with their name; be helpful and deal with your inquiries promptly; transfer your call to the appropriate Business Unit/person where necessary; in cases of an unsuccessful transferred call, a message will be recorded and responded to within 24 hours;
- If you send an email, you can expect to receive a courteous and clear reply; receive an acknowledgement of receipt

within two (2) working days and detailed correspondence within seven (7) working days if your matter is complex; receive correspondence in simple language and where possible, in your preferred language;

- If you lodge a complaint, receipt of all complaints will be acknowledged within two (2) working days; the name and contact details of the person handling your query will be provided, where possible a progress report will be issued within seven (7) working days and the complainant will receive a full response upon finalisation of the case.

Find attached a detailed CSOS Service Charter and Catalogue or visit our website www.csos.org.za





WHO IS THE CSOS CFO?

Following several numbers of years with the organisation without the permanent CFO the CSOS is excited to introduce to you Thembelihle Mbatha, a multi-talented young CA(SA) who is consistently rewarded for her success in financial planning, strategic and operational improvements. She assumed her duties effective June 2021.

Mbatha who assumed her duties effective June 2021, brings more than 10 years of experience in finance and audit, an excellent reputation in problem solving, improving customer satisfaction, and driving overall operational improvements, she is also known for consistently saving costs while increasing revenue collections.

SharedLiving got an opportunity to talk to Ms Mbatha and tells us her vision for the CSOS...

What entails your role as the CSOS CFO?

I am contributing to the CSOS's strategic objectives by providing financial services that enables the achievement of strategic goals. This entails the provision of financial management, financial

reporting, and accounting services. The Chief Financial Officer is responsible for the provision of strategic support to the Chief Ombud in the management of financial objectives.

The role leads in the preparation and implementation of the CSOS Budget, and Financial Plans aligned to CSOS's strategy. The role further ensures compliance with accounting policies, standards, principles, all acts, and other statutory requirements.

People think the CFO is there to tell you there isn't enough budget when you need something or to simply report financial results after the fact. I bet there is more, kindly share with us what entails your strategic role as an executive?

Unlike any other role that may be specific to a particular speciality, being a CFO enables one to add value through-out the entire value chain of any organisation from strategy to leadership and operations. As you know, we can make all plans and strategies but if those plans are not backed up by the right financial strategies to turn them into a reality, then it would just be a pointless exercise,

hence that is where the CFO then comes in with budgetary advice, procurement planning and compliance inputs.

The strategic role also entails input to the overall CSOS Strategy, market positioning, revenue enhancement strategies and playing a part in HR processes and Supply chain management value chain overall.

As a CFO you are in essence a Chief Value Officer because in every area, I would be involved in I would have to add value either by giving direction and financial advice in line governing prescripts.

What can CSOS clients expect from you as the CFO?

Our clients can expect service excellence and assistance to ensure compliance to the CSOS Act as responsible citizens of our beloved country and I will ensure they derive value for money on levies paid to the CSOS.

From our employees who I prefer to refer to them as fellow CSOS Team members, my expectation is that we work together seamlessly to make sure we provide a world class service to our clients, be ambassadors of the CSOS by brining awareness and advocates for the work that we do.

Vision/Message to the CSOS Clients?

Let us hold hands to ensure we all comply with the payment of CSOS levies so that our mandate is fully funded to ensure we deliver a world class value driven service to you, our valued CSOS clients. We have been struggling to ensure schemes comply with levy payments and submission of levy calculators, therefore I would like to implore upon schemes who are already complying to also become ambassadors and partner with us in brining awareness to the CSOS especially to the missing schemes. Similarly, if every person residing in a community scheme can take it upon themselves to ask and also ensure their managing agents and body corporates are registered and complying, it could definitely go a long way.

What are your qualifications/experience/achievements?

I am a CA(SA) with a Master's in Business Leadership pursuing a Doctoral qualification soon. I am an Executive with over 10 years of experience in Finance and audit fields with a proven track record of success in financial planning, strategic and operational improvements in audit and PFMA Public sector environments. I have served in various Boards which include the Board of the South African Institute of Chartered Accountants and other governance audit committee structures.

On the Achievements side:

- Winner of the 2018 Oliver Tambo Public sector leader award 20Finalist in the CA(SA) Top under 35 CAs under 35 National awards 2019
- Finalist for two categories in the Standard Bank Top women awards in 2017 (Top women in Female Public Sector Leader Award and Top Young Achiever of the Year)

Mbatha is also a philanthropist at heart, who is passionate about mentoring the young girl child to ensure the building of a sustainable pool of future female leaders. "If we can lift one another as we rise, we can definitely change the world", she said.



LEVY ALLOCATION DRIVE



TO ALL COMMUNITY SCHEMES THAT HAVE BEEN PAYING CSOS LEVIES

Have you received any payment acknowledgment from the CSOS?

Have you received a statement receipt reflecting all the levy payments made to the CSOS?

If **NOT** we do ask that you come forward so we can allocate your payments accordingly.

WE REQUIRE THE FOLLOWING FROM YOU:

- All proof of payments made to the CSOS and the relevant levy calculators.
- CSOS registration number.
- Notification of changes within the Schemes Management e.g. Managing agent, Executive Committee etc.

OUR PLEDGE TO YOU:

- We will respond within 48 hours to your email queries.
- Attend to all queries in a professional manner.
- We have our readily available qualified personnel: levypayments@csos.org.za



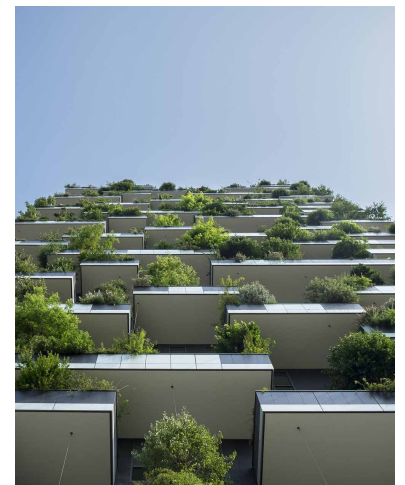
CALCULATION OF LEVIES

- The CSOS levy amount is calculated as follows: (ADMINISTRATION LEVIES PAID PER UNIT less R500.00)*2%, **OR** the Lesser of R40 per unit) per month
- The CSOS Levy Calculator is available on the website: <https://csos.org.za/payment-of-levies/>
- Click here to go to a standardised and recommended CSOS levy template which can be customised for each scheme



OUTSTANDING LEVIES OR ACCRUED LEVIES

- If the scheme existed before January 2017, amounts need to be backdated from January 2017 to Current - 2021, regardless of the registration with the CSOS
- However if the scheme existed after January 2017, the payments must start on such date of existence, regardless of the registration with the CSOS, in terms of the CSOS Act 9 of 2011



HOW OFTEN ARE LEVIES PAYABLE?

- Levies are payable every quarter
- The quarters are as follows:
31 March - Q1 (Jan, Feb, Mar)
30 June - Q2 (Apr, May, Jun)
30 September - Q3 (Jul, Aug, Sep)
31 December - Q4 (Oct, Nov, Dec)
- Schemes that opt to pay annually are required to pay in advance on 31 March

LEVY ALLOCATION DRIVE CONTINUED

BANKING DETAILS

The CSOS (Community Schemes Ombud Service) is listed as a public beneficiary on FNB, Capitec, ABSA and Standard Bank; EFTs and cash deposits via the ATM are accepted.

Alternatively, the banking details below can be used:

Bank: First National Bank

Account Number: 62682595205

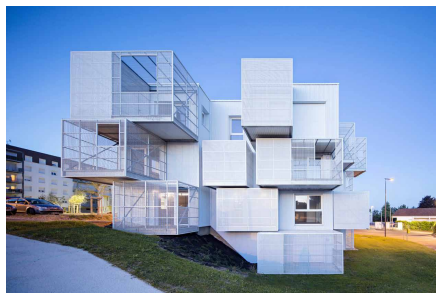
Branch Code: 200607

Branch Name: 4 MERCHANT PLACE 390



REFERENCING WHEN MAKING PAYMENTS

- Schemes are required to make payment using their CSOS registration number; this is to ensure that the amount is allocated to correct scheme.
- Example of a CSOS registration: CSOS/REG/16/GP/000000
- Each scheme is allocated a unique number.



PROOF OF PAYMENTS AND LEVY SCHEDULES

- Schemes are requested to forward proof of payments and levy schedules to: levypament@csos.org.za.
- The levy calculator determines the amount to be paid to CSOS.



INVOICING AND STATEMENTS

- The CSOS does not issue out invoices nor billing statements as yet (Refer to Practice Directive 10.1- Attached). It is scheme's responsibility 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 use your CSOS registration number as reference when making payments. This enables our system to allocate payment directly to schemes relevant account.
- For any levies payment queries please email us on levyqueries@csos.org.za for a prompt response.

KNOW YOUR RIGHTS

Owners request for SGM

The Trustees have 14 days in which to call the meeting. The notice period for the meeting depends on the business to be conducted for the meeting.

If ordinary business is to be conducted, i.e., no Special or Unanimous Resolutions will be voted on, then 14 days' notice must be given in terms of the Act and the Prescribed Management Rules. If a Special or Unanimous Resolution must be voted on, then 30 days' notice of the meeting must be given, failing which the owners that requested the meeting can themselves call the meeting.

The Trustees may check if the signatories are owners.

Can a Caretaker ALSO be a Trustee?

The STSMA does not specifically exclude it however:

PMR 6(2) says an employee of the body corporate cannot be a trustee unless that person is an owner in the scheme.

PMR 6(3) says a trustee cannot take any part in a trustee decision in which he or she has a personal interest.

PMR 8(2) says owner trustees may not be paid for their services as a trustee without the authority of a special resolution.

PMR 21(3)(e) requires employees of the body corporate to be appointed in terms of a written contract.

The duties of a caretaker can be seen as duties of the trustees.

Body Corporate has perpetual succession and an owner buy into the debts and assets

When portions of the 1986 Act were repealed and replaced in 2011 by the STSMA the section,

as so amended, was re-enacted as section 2(7) reads as follows:

'The body corporate has perpetual succession and is capable of suing and being sued in its corporate name in respect of -

- (a) any contract entered into by the body corporate;
- (b) any damage to the common property;
- (c) any matter in connection with the land or building for which the body corporate is liable or for which the owners are jointly liable;
- (d) any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties under this Act or any rules; and
- (e) any claim against the developer in respect of the scheme if so determined by special resolution.'

Section 2(7) of the STSMA provides that a body corporate has perpetual succession and is capable of suing and being sued in its own name in respect of, amongst other matters, any matter arising out of the exercise of any of its powers or the performance or non-performance of any of its duties under that Act or any rule.





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WHAT IS THE MAXIMUM INTEREST RATE THAT CAN BE CHARGED FOR ARREARS IN SECTIONAL TITLES SCHEMES?

WHAT IS AN "INCIDENTAL" CREDIT AGREEMENT?

A typical example of an incidental credit agreement is a cell phone or doctor's account – clients or patients usually have 30 days to pay, and interest is charged on overdue amounts. The same logic applies to an agreement where the client is provided with a discount where an account is settled on or before a predetermined date.

The correct legal position in terms of the Sectional Titles Schemes Management Act 8 of 2011 (Management Rule 21(3) (c)), is the following:

On the authority of a written Trustees resolution, a body corporate can charge interest on an overdue amount payable by a member, provided the interest rate does not exceed the maximum rate payable per annum by the National Credit Act ("the NCA"), compounded monthly in arrears. This interest rate is 2% per annum, which is the interest rate payable on incidental credit agreements.

An agreement between a body corporate and each of its members, which is deemed to come into being by operation of

Law when a person buys a unit in a sectional title scheme, falls into this category, which is defined by the NCA as an agreement for the provision of goods or services over time, in terms of which a fee, charge or interest becomes payable if the amount charged isn't paid before a certain date. It sounds simple, but a few criteria must be met before interest can be charged in terms of the Act. The Trustees resolution must be in writing and signed by the Trustees. Within 14 days after the Annual General Meeting the body corporate must give each member written notice of the contributions and charges due by that member for the forthcoming year and state the interest rate payable in respect of overdue contributions, amongst other things (Management Rule 25).

Prior to the promulgation of the Sectional Titles Schemes Management Act in 2016, the NCA had no bearing whatsoever on interest charged in sectional title schemes as a result of a 2010 unreported judgment of the KwaZulu-Natal High Court in Pietermaritzburg, in the matter of the Body Corporate of Frenoleen v Dlamini (case no. AR 611/09,11/03/2010).

In terms of prescribed Management Rule 21(3)(c) (contained in the Regulations to the STSMA, and which would apply unless the body corporate has taken a unanimous resolution to amend it as per Regulation 6(6))) the trustees of a sectional title body corporate are entitled to charge interest (as

they may determine from time to time) on arrear amounts. This interest may only be charged on the authority of a written trustee resolution, and the rate may not exceed the capped rate prescribed by the National Credit Act 34 of 2005 (as amended) ("the NCA"). This interest may be compounded monthly in arrears.

It was held in the Dlamini case, that the NCA finds no application to sectional title bodies corporate because the body corporate is not supplying a service to the owner of a unit and that the relationship between an owner and the body corporate is not an 'incidental credit agreement'.

However, with the coming into law of the STSMA (particularly Regulation 21(3)(c)) the maximum interest rates prescribed by the NCA has now been expressly made to apply to the charging of interest by a body corporate. The problem is, however, that the STSMA does

not explain how exactly the NCA applies.

In terms of section 101(1)(d) of the NCA (which applies to credit agreements) interest may be charged on an account in arrears and may not exceed the maximum prescribed rate determined in terms of section 105 of the NCA. Section 105 allows the Minister to prescribe maximum interest rates for different sectors of the consumer credit market. These maximum interest rates are set out in a regulation known as the "Review of Limitations on Fees and Interest Rates Regulations". The limits are determined with reference to the type of agreement set out in Table A. The obvious problem is that the court (as per Dlamini) has held that the relationship between the body corporate and an owner is not an incidental credit agreement. However, the relationship between a member of a body corporate and the body corporate could

hardly be any other type of credit agreement provided for under the NCA. As such, it is now unclear which of the categories of credit agreement (if any) applies to the body corporate/owner relationship, and thus it is not clear to what extent (if any) interest rates charges by trustees is limited at all.

It is submitted that for the purposes of determining what the maximum permitted interest rate by sectional title schemes is, that the Dlamini case must be ignored. The writer hereof is of the opinion that the only possible category that the relationship between a body corporate and an owner could fit into in terms of Table A, would be "incidental credit agreement", meaning that the legislature intended to override the court's decision in the Dlamini case when it legislated prescribed Management Rule 21(3)(c). The author is thus of the view that the maximum interest rate which affects sectional title bodies corporate is 2% compounded in any given month.

Interest may only be imposed if the consumer is in arrears and may not exceed the principal debt in value (section 103(5) of the NCA). However, the trustees will be subject to any other limitations on the maximum amount of interest imposed by the body corporate's rules. As such, the trustees should ensure that they comply with whatever restrictions are placed on them by the rules as well as the legislation when it comes to the imposition of interest.



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AVOID UNNECESSARY CONFLICT

KNOW THE RULES OF SECTIONAL TITLE
CONDUCT AND ARM YOURSELF WITH
KNOWLEDGE



The SMTSA, which is the short name for the Sectional Titles Schemes Management Act 8 of 2011, specifies certain rules of conduct with a social impact where prescribed rules may help to protect the majority of scheme members from unacceptable behaviour on the part of a minority of members. Conduct rules set out how people should behave with regard to common property, pets, refuse removal, parking of vehicles, maintenance of the aesthetics of the building, the

use of gardens and other exclusive use areas, and so on.

Let us have a look at the new conduct rules:

Care of common and exclusive use areas:

The appearance of common areas may not be changed without the consent of the trustees. For example, consent is needed to put up signposts or washing lines. Common property may not be defaced. For instance, occupants may not paint common

walls or insert nails or screws. However, the law allows the installation of security devices provided these are properly installed.

Pets:

Owners (or tenants) may keep pets on their property, but they need the consent of the trustees. In the case of occupants with a disability, such as visual impairment, the consent of the trustees to keeping a guard dog can be assumed. In all other cases, the trustees may not

unreasonably refuse permission for occupants to keep a pet, but they may prescribe certain conditions as to the number and size of pets. The norm in most townhouse complexes for keeping dogs is two small dogs.

Parking:

Owners or tenants are allocated parking bays or parking areas. You need to make sure that your visitors comply with the requirement to park in designated areas for visitors.

Behaviour of occupants and visitors:

The STSMA makes explicit provision for acceptable conduct. Noise must be kept at a reasonable level, and an occupant or visitors may not hinder the use or enjoyment of common property by other occupants in any way. This is to ensure peaceful co-existence of all the occupants in the complex.

Pest control:

All occupants must ensure that their unit is free from wood-destroying pests such as termites, white ants, and borer beetles. Trustees have the right to inspect the premises and to demand that remedial action is taken. Any associated costs must be borne by the occupant.

Waste disposal:

Since rubbish bins and waste disposal often lead to conflict,

the STSMA prescribes rules of conduct for refuse removal practices. All scheme members are responsible for procuring their own refuse bin and keeping it clean and dry in a designated area of the common property. No one may leave rubbish where it may cause an obstruction or nuisance (such as unpleasant odour), and bins must be put out for collection and brought back in at the appropriate times. Refuse must be disposed of in such a manner that it does not pose a health and safety risk to other scheme members.

Storage of flammable materials: The consent of the trustees is required for storing flammable materials, other than gas bottles and fuel containers for generators. While the rules of conduct go a long way in governing the conduct of occupants, they do not cover every potential area of conflict. This becomes clear when you

look at the causes of actual occurrences of conflict arising in sectional title complexes, as listed below.

While the rules of conduct go a long way in governing the conduct of occupants, they do not cover every potential area of conflict. This becomes clear when you look at the causes of actual occurrences of conflict arising in sectional title complexes, as listed below.

- Lack of understanding how sectional title schemes work
- Cash-strapped body corporates being unable to pay service providers for services such as maintenance and repairs
- Owners refusing to pay levies or to abide by the rules of the body corporate
- Owners being in arrears with levies

- Enforcement of special levies
- Security breaches
- Mismanagement of funds by trustees or managing agents
- Inefficient management of schemes (minutes not kept, meetings not held as required by law)
- Lack of maintenance
- Occupants violating the rules of conduct, by not adhering to noise levels, for instance
- Lack of respect for the rights of other occupants
- Disconnection of municipal power supply because of non-payment

It is interesting to note that cultural differences do not feature prominently in the conflict arena. Occasionally, social gatherings, particularly funerals, cause contention in some complexes, leading to overcrowding by visitors. It would be advisable for the body corporate in schemes where such gatherings are likely to take place to devise guidelines and rules applying in the event of such gatherings.

So far, we've covered matters pertaining to most sectional title schemes. However, sectional title schemes come in different types and sizes: from mini subtype houses (cookie cutters), semi-detached houses, townhouses, flats or apartments, to some golf or lifestyle estates, or parts of them.



WE HAVE COMPILED A USEFUL CHECKLIST TO ASSIST OWNERS AND TENANTS TO PREPARE THEMSELVES FOR SECTIONAL TITLE LIVING.

Sectional title checklist – owners and tenants			
Question	Yes	No	Comment
Did you check if the sectional title scheme is financially secure?			
Did you find out if the scheme is effectively managed? Are the levies up to date and has a reserve fund been established (for schemes registered after 2011)			
Did you check the sectional title plans?			
Did you check your participation quota and the levy you have to pay?			
Do you know if you might have to pay any special levies?			
Do you know how your levy will be affected by the requirement of the SMTSA in terms of which sectional titles must keep a reserve fund?			
Do you know exactly how the three types of ownership work in your sectional title scheme?			
Did you establish if your parking rights are in order? (Don't assume that the previous owner's rights are automatically transferred to you.)			
Did you walk around the complex to observe if the buildings and facilities are properly maintained?			
Did you talk to a few neighbours to establish if your scheme is problem-ridden or problem-free?			
Did you obtain a copy of the rules and study them?			
Are you prepared to participate fully in the scheme as a member of the body corporate?			
Did you familiarise yourself with the rules of conduct applying in your scheme concerning the following: • Pets • Parking of vehicles • Maintenance of owners' sections and common and exclusive-use areas • Conduct of occupiers and visitors • Waste disposal • Pest control • Storage of flammable material • Noise • Non-smoking areas			



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CASE CLOSED

LODGING A DISPUTE 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 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 Community Schemes Ombud Service (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 the video on completing the form).

Method of application for dispute resolution

Applications for Dispute Resolution may be lodged

- 1) **in person:** (walk ins);
- 2) **online:** 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

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.

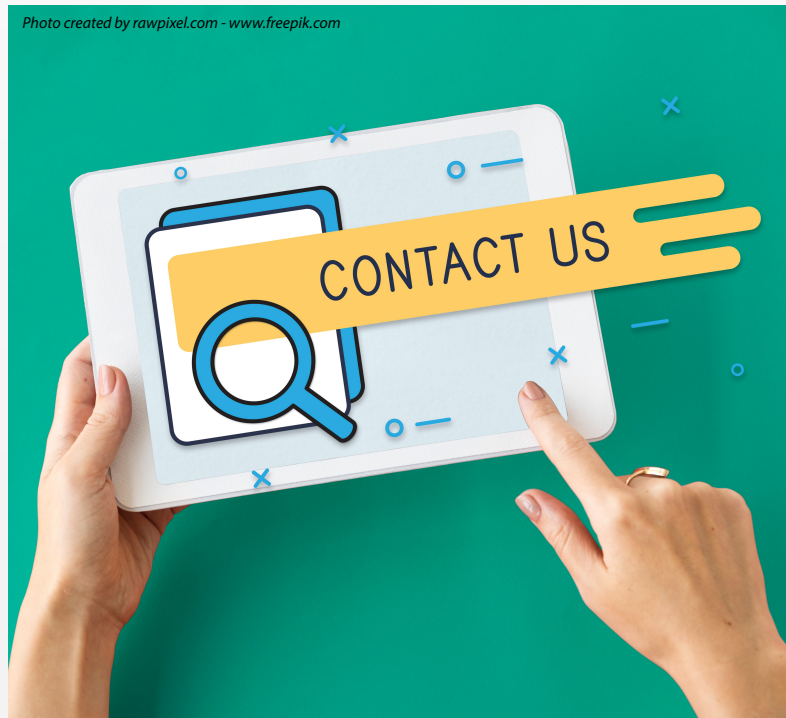
Adjudicator orders are enforceable in the Magistrate Court or High Court depending on the quantum or nature of the relief granted in the determination.

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.

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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

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 or [Click Here](#)