

# SharedLiving

Issue 8

**Quarterly  
Performance  
Information**  
April – June 2019



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Sectional Title  
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Pets

**The 2019  
Budget Speech:  
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Management  
Rules for  
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Service Excellence, Transparency, Integrity  
Innovation, Fairness, Independence

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Affordable Reliable Justice



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Performance Information:  
April – June 2019



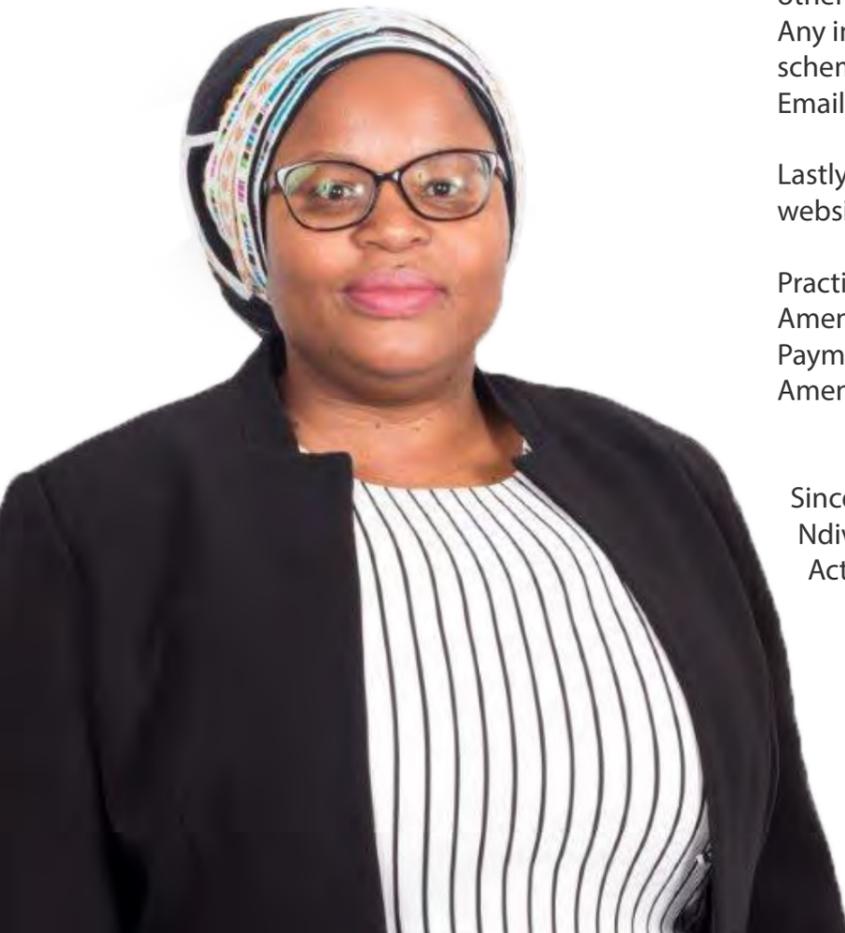
Case Closed  
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# Chief Ombud Foreword

Dear Stakeholders,

Our 2018/2019 Financial Statements have been audited and approved by the Board. The report will be released after presentation to Parliament, notwithstanding that I can share with you that the Auditor-General has given the CSOS an adverse finding. One of the reasons can be attributed to the high number of unallocated Levies payments. This is a challenge for us as we are receiving Levy payments that have either no reference number attached to it or an incorrect reference number is used. We are appealing to all community schemes that use their CSOS registration number when paying levies. E.g CSOS/REG/16/GP/123456. Absa bank users should exclude "CSOS/REG/" when making payments.



We are appealing to all community schemes and executive managers to comply to section 59 of the CSOS Act and ensure they are registered. The CSOS has commenced with the issuing of Notices of Non-Compliance to those community schemes that not registered.

Our performance in the provision of an alternative dispute resolution service is included in this issue. A question I am often asked is why do we include race in our reports. The reason is that we use this information to see in which area the CSOS needs to provide training interventions. I would like to assure you that the CSOS service is offered irrespective of colour, gender, age or income.

We are commencing with Training. In terms of the CSOS Act we are mandated to "provide education, information, documentation and such services as may be required to raise awareness to owners, occupiers, executive committees and other persons as to their rights and obligations". Any individual who is part of a community scheme can apply to have CSOS training. Email [info@csos.org.za](mailto:info@csos.org.za) to make a booking.

Lastly, the following Circulars are available on our website for your review:

Practice Directive on Dispute Resolution; Amendment of the Practice Directive on the Payment of Levies and Fees; and Circular on the Amendment of Rules in terms of STSMA.

Sincerely,  
Ndivhuo Rabuli  
Acting Chief Ombud

# CSOS can assist.

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

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

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

Community scheme registration is free and forms can be found on [www.csos.org.za](http://www.csos.org.za)

## For more information contact

**Gauteng:** 63 Wierda Road East, Sandton | Tel: 010 593 0533

**KwaZulu-Natal:** 7th Floor Aquasky Towers, 275 Anton Lambede Street, Durban | Tel: 031 001 4215

**Western Cape:** 8th Floor Constitution House, 124 Adderly Street, Cape Town | Tel: 021 001 2569

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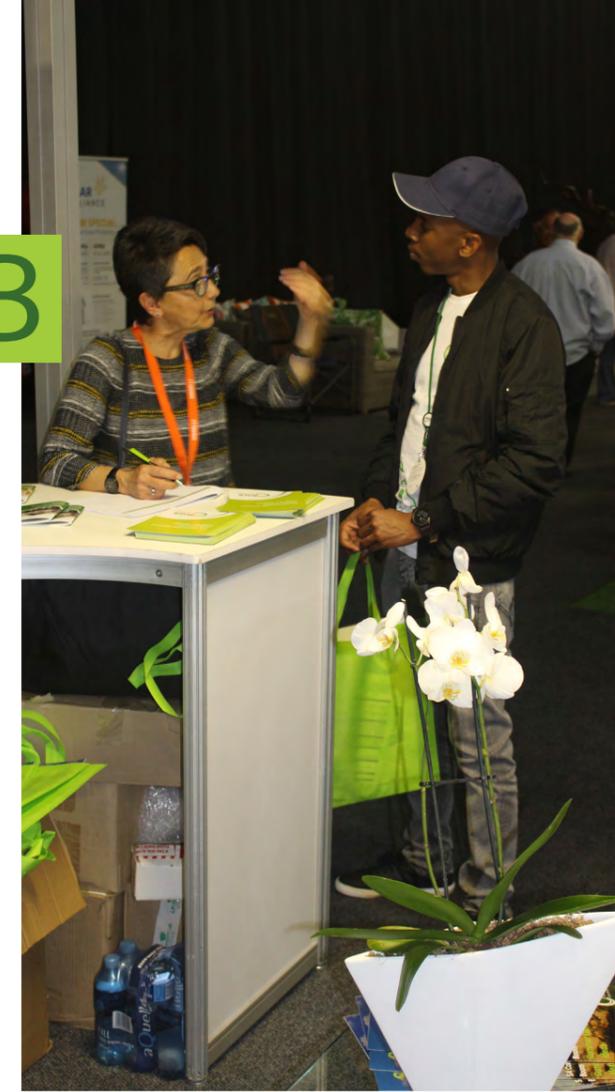


# Budget speech



# The CSOS at DECOREX - JHB

Hundreds visited the CSOS stand at Decorex Johannesburg – Africa’s premier décor, design and lifestyle expo from 7th to 11th August 2019, at Gallagher Convention Centre. The expo attracts over 35 000 home enthusiasts, who have property on their mind. The CSOS exhibition was aimed at creating awareness about the CSOS service, mandate and to sensitise people on the need to ensure that their community scheme is registered. The CSOS stand provided information, accepted dispute applications and assisted with various issues pertinent to the schemes.



The CSOS welcomes the Hon. Ms Lindiwe Sisulu back to the portfolio of Minister of Human Settlements. During her budget speech on 9 July 2019, she committed the department and its entities to the programme of integrating communities that were divided by class and racial lines, and that this needs to be done in a measured approach that provides value for money. The CSOS supported the event through a material display and exhibition.



# New management rules for sectional titles

The Sectional Titles Schemes Management Act 8 of 2011 (the SMTSA, for short) introduced new management and conduct rules. All sectional title schemes are governed by the Act and its Regulations and the management and conduct rules of the development as registered in the Deeds Office.

Getting a copy of the rules and studying them is essential. The onus is on owners to ensure that tenants know the rules. In fact, the STSMA stipulates that the body corporate must keep a record of the management and conduct rules and have these rules available for inspection at trustee and owner meetings and deliver a copy of the rules to every new owner and tenant.

## How the new management rules work

The management rules govern the manner in which sectional title schemes are run and include the appointment of trustees, the format of meetings, voting at meetings, elections, and the duties of the trustees and management agents.

Being aware of the new management rules under the STSMA will help owners and tenants to avoid unnecessary conflict are set out below.

The new rules for sectional title schemes embrace the new concept of executive managing agents. The executive managing agent now assumes the role of trustees and is liable for any loss suffered by the body corporate as a result of negligent management. The function of trustees is not excluded, however, with some schemes having trustees and others managing agents.

Most schemes will eventually resort to having managing agents, however. The upside is that managing agents are professional sectional title scheme managers, whereas trustees are often retired owners sacrificing their time and efforts to manage the scheme. The downside is that managing agents do not have the same vested ownership interest in managing a scheme as outsider managing agents.

The role of an accounting officer has fallen away under the STSMA. As a result, all buildings, including those with 10 or less units, must be audited. The added financial burden of auditing is offset by the advantages of having clean and clear-cut financial oversight.

Another important STSMA amendment is the stipulation that any changes to the management or conduct rules of a scheme must be approved by the CSOS after the necessary resolutions have been taken. This safeguards owners in that the trustees or management agency cannot take unilateral action.

Some of the rights and duties of owners have also been changed. Any change of ownership or occupancy in a unit must be reported to the body corporate in writing. Under the 1986 Act, owners could only attend trustee meetings on invitation of the trustees and were not allowed to actively contribute at these meetings. The STSM Act allows owners to attend trustee meetings whenever they wish to and to participate but not vote at these meetings.

Body corporates are now required to establish a reserve fund, in addition to the normal administrative fund. This fund is suggested to be an amount equal to 25% of the projected annual levy figure, and it 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 capital expenses for 10 years.

Since the reserve fund aims to ensure that buildings do not fall into disrepair, this is a 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 demanded for expenses out of the ordinary, such as major repairs, created problems for owners as they did not budget for these expenses.

Special levies are a major bone of contention. However, the STSMA does not rule out the right to raise special levies. It is important to know that the trustees or managing agent have the sole power to raise special levies. Don't think that special levies are invalid, if you as owner was not consulted or did not vote in favour of such a levy.

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 regulations in 2016. 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.

It is vital for prospective owners to make sure that they know the management rules when buying a sectional title property. They should look for a scheme that has a reserve fund and manageable debt and is well managed and maintained.



# Avoiding 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.

### **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.

- 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?			
Are the security arrangements for the scheme adequate?			
Do you know the management set-up in your scheme?			
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 fairly 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			

Sectional title living offers tremendous advantages in terms of security, affordability, convenience and community sharing. All you need to ensure a happy lifestyle in your complex or estate is to be informed and prepared.



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

#### What is a Community Scheme?

In terms of the Community Schemes Ombud Service Act No. 9 of 2011 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, including but not limited to a 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 as contemplated in the South African Co-operatives Act No 14 of 2005.

#### What is a trustee?

Trustees are tenants or owners who are appointed by the members of a body corporate to look after the finances and management of a community scheme.

#### What are reserve funds?

To ensure unexpected costs can be covered by a body corporate, it is now a requirement that a portion of funds from levies be allocated to a reserve fund.

#### What is a managing agent?

Any person who provides scheme management services to a body corporate for reward, whether monetary or otherwise, including any person who is employed to render such services.

#### What is a scheme management service?

Any financial, secretarial, administrative or other service relating to the administration of a scheme.

#### What is a utility section?

Means a section which, in terms of local municipality by-laws, is designed to be used as an accessory to a primary section, such as a bathroom, toilet, storeroom, workshop, shed, servant's quarters, parking garage, parking bay or other utility area, not being a primary section.

## DID YOU KNOW

As the people in charge of running a community scheme, the management of a body corporate has certain rights and obligations to its members. The body corporate needs a unanimous decision to make improvements to the common property that are 'not necessarily necessary'.

If alterations or improvements are 'reasonably necessary', then members must be given at least 30 days written notice with:

1. Estimated costs
2. Details of how costs will be met
3. A motivation with drawings of the alteration

The body corporate must ensure owners and occupiers do not do any of the following:

1. Unreasonably interfere with others lawfully
2. Cause a nuisance
3. Make alterations that impair the building's stability
4. Use a section or exclusive use area inappropriately.

# Performance Information:

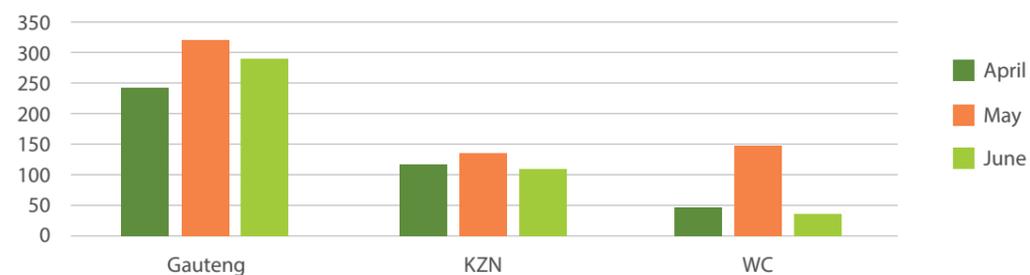
## April – June 2019

### REGIONAL OFFICES COVERAGE

New applications for dispute resolution were handled in three Regional Offices namely: Gauteng, KwaZulu-Natal and the Western Cape.

The table and diagram below depict the number of applications for dispute resolution that were received for each regional office and per month for the first quarter (April 2019, May 2019 and June 2019).

	April	May	June	Total
GP	303	343	279	<b>925</b>
KZN	140	125	95	<b>360</b>
WC	105	105	88	<b>298</b>
<b>GRAND TOTAL</b>				<b>1583</b>



### MODE OF CONTACT

The received applications for dispute resolution came through e-mail, walk-ins, and by post. It is important to note and document the number of applications received through various modes of contact for the following reasons:

- To keep track on the accessibility of the CSOS service to the public; and
- To monitor the applications intake process.

The table, and diagram below depict the number of applications for dispute resolution received through e-mail, walk-ins, and/or post per month for the first quarter (April 2019, May 2019 and June 2019).

	April	May	June	Total
E-mail	454	488	387	<b>1329</b>
Walk-In	94	85	75	<b>254</b>
Post	0	0	0	<b>0</b>
<b>GRAND TOTAL</b>				<b>1583</b>



### CASE LOAD PER COUNCILLOR

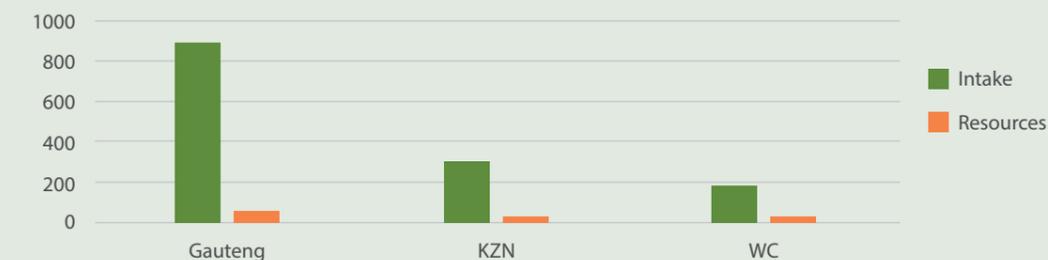
The average case load per conciliator/investigator is calculated per province based on the number of cases divided by number of officials. This is meant to assist in determining whether officials are adequately engaged or if there is a need for additional resources.

It must be noted that Adjudications are done by Part-Time Adjudicators nationally, apart from the WC and GP where there is also one full time Adjudicator. The GP Adjudicator commenced employment on the 15 April 2019.

The table and diagram below depict the number of resources available for dispute resolution posed against the number of applications received in the first quarter (April 2019, May 2019 and June 2019) and can be interpreted as seen below:

- Gauteng – 732 cases per resource per quarter;
- KZN – 180 cases per resource per quarter;
- WC – 272 cases per resource per quarter;

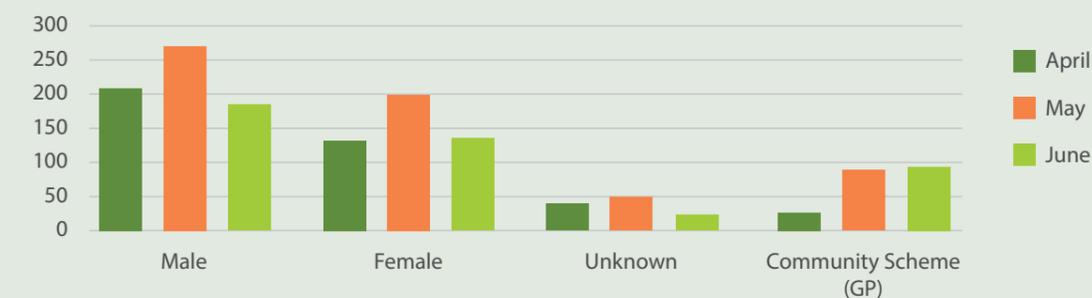
	Conciliators	Investigators	Adjudicators	Part-time Adjudicators	Total
Gauteng	3	0	1	0	<b>4</b>
KZN	1	1	0	0	<b>2</b>
WC	2	0	1	0	<b>3</b>
<b>GRAND TOTAL</b>					<b>9</b>



### GENDER

The number of applicants per gender, who submitted applications for dispute resolution, is depicted in the table, and diagram below, per month for the first quarter (April 2019, May 2019 and June 2019).

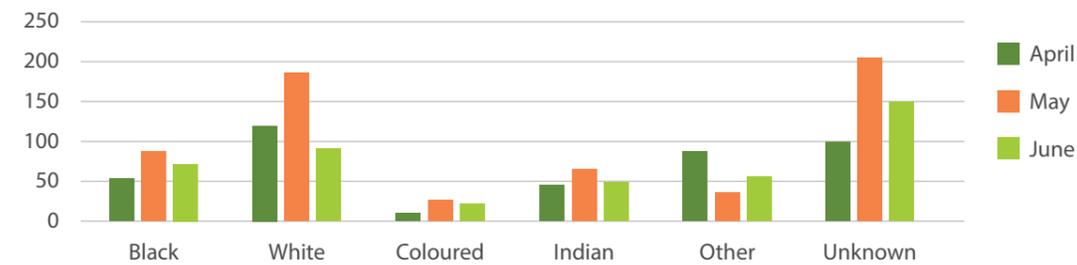
	January	February	March	Total
Male	270	277	227	<b>774</b>
Female	247	244	206	<b>697</b>
Unknown	29	31	16	<b>76</b>
Community Scheme (only GP)	2	21	13	<b>36</b>
<b>Grand Total</b>				<b>1583</b>



## RACE

The number of applicants per race, who submitted applications for dispute resolution, is depicted in the table and diagram below, reported on per month and for the first quarter (April 2019, May 2019, and June 2019).

	April	May	June	Total
Black	77	74	66	<b>217</b>
White	186	205	167	<b>558</b>
Coloured	19	14	14	<b>47</b>
Indian	49	58	37	<b>144</b>
Other	38	48	43	<b>129</b>
Unknown	179	174	135	<b>488</b>
<b>GRAND TOTAL</b>	<b>548</b>	<b>573</b>	<b>462</b>	<b>1583</b>

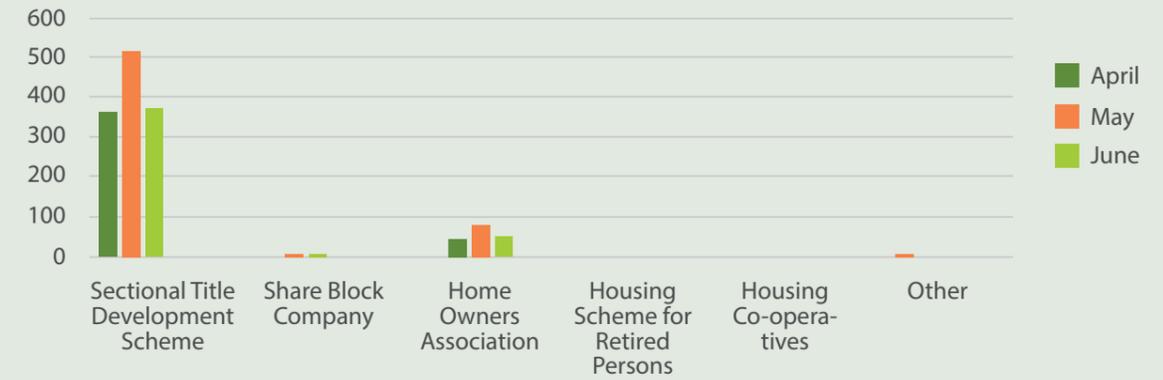


## TYPE OF SCHEME

The types of schemes regulated by the CSOS are as defined in section 1 of the Community Schemes Ombud Service Act, No. 09 of 2011.

As part of empirical evidence, CSOS records all disputes lodged and uses that information to determine the various schemes' types where disputes are prevalent; and the number of disputes lodged per scheme type as depicted in the table and diagram below and further classified by month for the first quarter (April 2019, May 2019 and June 2019).

	April	May	June	Total
Section Title Development Scheme	470	506	409	<b>1385</b>
Share Block Company	10	2	2	<b>14</b>
Home Owners Association	64	64	43	<b>171</b>
Housing Scheme for Retired Persons	1	0	3	<b>4</b>
Housing Co-operative	1	0	1	<b>2</b>
Other	2	1	4	<b>7</b>
<b>GRAND TOTAL</b>	<b>548</b>	<b>573</b>	<b>462</b>	<b>1583</b>

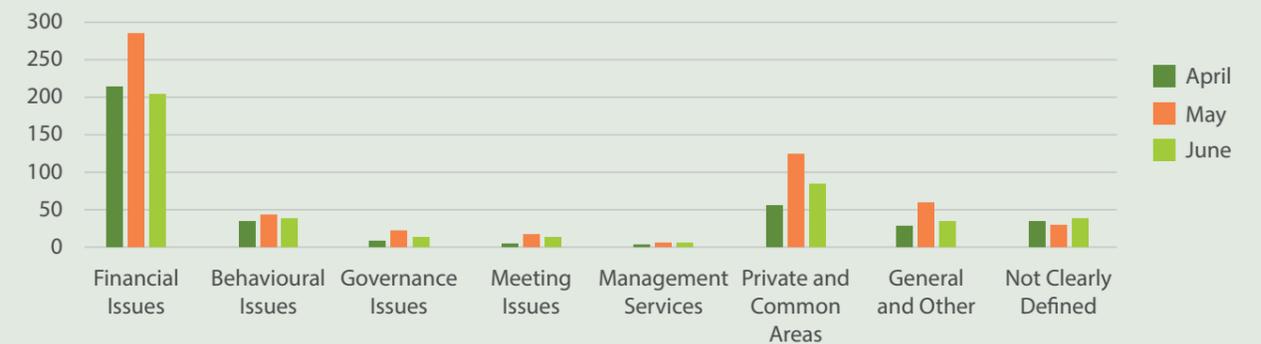


## CLASSIFICATION (S39 OF THE CSOS ACT, NO 09 OF 2011)

Section 39 of the Community Schemes Ombud Service Act, No. 09 of 2011, prescribes Prayers for Relief which must be ordered and depending on merits, in resolving disputes emanating from community schemes.

It is important for the CSOS to understand, and record, the various prayers for relief sought by the applicants, the numbers per prayer for relief are depicted in the table and diagram below, per month for the first quarter (April 2019, May 2019 and June 2019).

	April	May	June	Total
Financial Issues	288	303	240	<b>831</b>
Behavioural Issues	62	45	40	<b>147</b>
Governance Issues	1	9	4	<b>14</b>
Meetings Issues	24	31	21	<b>76</b>
Management Services	33	21	18	<b>72</b>
Private and Common Areas	93	93	80	<b>266</b>
General and Other Issues	20	33	15	<b>68</b>
Not Clearly Defined	27	38	44	<b>109</b>
<b>GRAND TOTAL</b>	<b>548</b>	<b>573</b>	<b>462</b>	<b>1583</b>



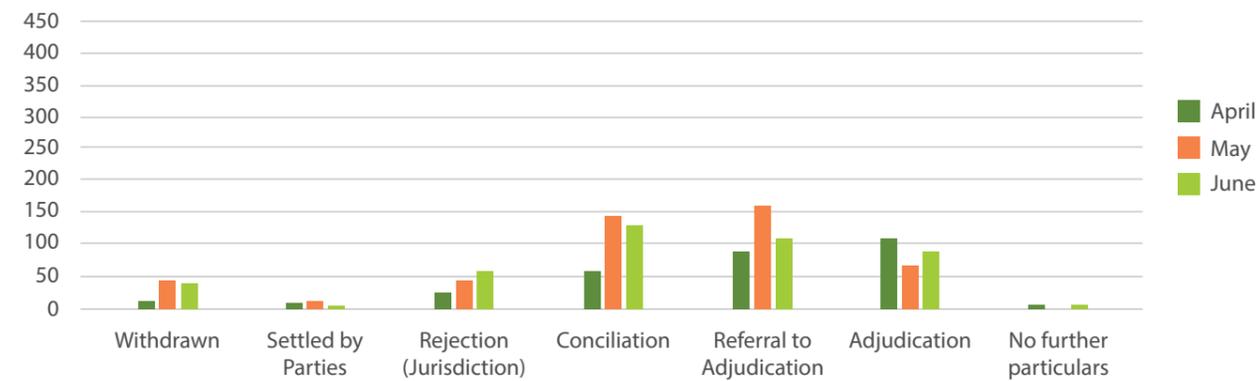
## FINALIZED MATTERS

The CSOS Dispute Resolution Model (DRM) maps out stages to be followed in the dispute resolution process, including but not limited to, the manner and instances upon which matters must be finalized.

The numbers and the way matters have been finalized are as depicted in the table and diagram below, analyzed for each month for the first quarter (April 2019, May 2019 and June 2019).

The consolidated finalized matters were 1214 and each regions' overall performance is as summarized below the tables:

Matters finalised	April	May	June	Total
Withdrawn	43	57	34	134
Settled by Parties	33	12	11	56
Rejection (Non- Jurisdiction, Referral)	61	75	47	183
Referral to Conciliation	387	333	334	1054
Conciliation	86	84	97	267
Referral to Adjudication	192	186	149	527
Adjudication	76	77	39	192
No Further Particulars	150	85	93	328
Other / No application fee received (GP)	49	17	11	77
Appeals	8	2	3	13
<b>Grand Total</b>	<b>1085</b>	<b>928</b>	<b>818</b>	<b>2831</b>



### Gauteng

- 783 finalized matters out of 927 = 84%
- 320 referred for adjudication
- 160 adjudications completed
- 160 awaiting adjudication and at various stages

### KwaZulu Natal

- 259 finalized matters out of 360 = 71,9%%
- 113 referred for adjudication
- 8 adjudications completed
- 105 awaiting adjudication and at various stages

### Western Cape

- 172 finalized matters out of 298 = 57,7&%
- 94 referred for adjudication
- 22 adjudications completed of which some have been carried over from the previous quarter
- 72 waiting adjudication and at various stages

Accordingly, matters finalized for each region are broken down in the tables below:

### Gauteng

	April	May	June	Total
Matters Received	303	343	279	925
Matters Referred to Conciliation	264	248	220	732
Withdrawn	21	44	19	84
Settled by Parties	25	0	0	25
Rejection (Non-Jurisdiction, Referral)	31	36	26	93
Referral to adjudication	129	107	84	320
Conciliation	64	65	83	212
Adjudication	56	71	35	162
No Further Particulars	104	75	28	207
Matters Appealed	7	2	2	11
Other / No application fee (GP)	0	0	0	0
Appeals	7	2	2	11

### Western Cape

	April	May	June	Total
Matters Received	105	105	88	298
Matters referred to Conciliation	66	37	61	164
Withdrawn	8	9	7	24
Settled by Parties	0	0	3	3
Rejection (Non- Jurisdiction, Referral)	16	9	12	37
Rejection (non-payment)	10	4	7	21
Referral to adjudication	32	39	23	94
Conciliation	19	12	10	41
Adjudication	15	4	3	22
No Further Particulars	7	7	10	24
Appeals	0	0	0	0

### KwaZulu Natal

	April	May	June	Total
Matters Received	140	125	95	360
Matters Referred to Conciliation	57	48	53	158
Withdrawn	14	4	7	25
Settled by Parties	8	12	8	28
Rejection (Non- Jurisdiction, Referral)	14	30	9	53
Rejection (non-payment)	16	13	4	33
Conciliation	3	7	5	15
Referral to Adjudication	31	40	42	113
Adjudication	5	2	1	8
No Further Particulars	39	3	55	97
Appeals	1	0	1	2

# CASE CLOSED

## ADJUDICATION ORDER IN TERMS OF SECTIONS 53 AND 54 OF COMMUNITY SCHEMES OMBUD SERVICE ACT 9 OF 2011

Case Number: CSOS000638/GP/18



### In the matter between Donbry Body Corporate (Applicant) and M. Kunn (Respondent)

#### EXECUTIVE SUMMARY

This is an application for dispute resolution in terms of the following section of Community Scheme Ombud Service Act:

- Section 39 (6) in respect of works pertaining to private and common areas;

Applicant seeks an order in the following terms:

- That the Respondent be ordered to remove the satellite dish and cabling that was installed by her tenant, repair and repaint all holes on the outside walls in the colour palette of the complex.

The order is in line with Section 39 (6) of the CSOS Act No.9 of 2011 (the CSOS Act)

#### FINDINGS

The relief sought by the Applicant is granted.

#### INTRODUCTION

1. This is an application for dispute resolution in terms of Section 38 of the Community Ombud Services Act No.9 of 2011. The application was made in the prescribed form and lodged with the Gauteng Provincial Ombud Office. The application includes a statement of case which sets out the relief sought by the applicant.
2. The adjudication hearing was held on the 27th of June 2019. The application is before me because of a referral sent by the Gauteng Provincial Ombud in terms of section 48 of the Act, which Notice of referral was communicated to both parties.
3. On the 13th of March 2019, the Respondent failed to attend the Conciliation hearing that was scheduled at the CSOS. The parties entered an appearance in terms of the Notice of Set Down as contemplated in Section 48 (4) of the Community Schemes Ombud Service Act No.9 of 2011.

#### APPLICABLE PROVISIONS OF THE ACT

4. Section 45 (1) provides that – “The Ombud has a discretion to grant or deny permission to amend the application or to grant permission subject to specified conditions at any time before the ombud refers the application to an adjudicator”
5. Section 47 provides that – “on acceptance of an application and after receipt of any submissions from affected persons or responses from an applicant, if the ombud considers that there is a reasonable prospect of a negotiated settlement of the disputes set out in the application, the ombud must refer the matter to conciliation”.
6. Section 48 provides that – “if conciliation contemplated in section 47 fails, the ombud must refer the application together with any submissions and responses thereto to an adjudicator”.
7. Accordingly, a certificate of Non – Resolution was issued in terms of Section 48(4) of the CSOS Act No.9 of 2011. The Ombud therefore, referred the matter to adjudication, in terms of Section 47 of the Act.

#### SUMMARY OF EVIDENCE

##### Applicant’s Submissions

The Applicant was sworn in and testified as follows;

8. The applicant testified that on the 19th of September 2017, the chairperson of the Body sent an email to the Respondent advising her that her tenant has without the necessary consent of Trustees installed a satellite dish.
9. The Respondent responded to the chairperson email correspondence requesting a copy of the Conduct Rules, which was provided to her.
10. According to the Applicant, when they were unable to secure a favourable response to their request from the Respondent. The managing agent sent an email to the Respondent on the 27th of September 2017,

requesting the removal of the satellite dish within seven days of receipt of their letter.

11. The Applicant testified, that the Respondent refused to remove the satellite dish claiming that her unit did not have a port installed. Alternatively, that the port to her unit was illegally removed by the Body Corporate.
12. According to the Applicant, following the allegations that were made by the Respondent. The chairperson accompanied by the technician from the contractor discovered on inspection that the existing cable had been cut by the Respondent’s building contractor, when they were contracted to do renovations to the Respondent’s unit.
13. According to the Applicant, when the communal satellite system was installed, it replaced the Analogue Aerial Communal System. The upgrade to the system was paid for by all owners via a special levy.
14. The Applicant testified that a Trustee meeting held on the 1st of February 2018, it was decided to upgrade the DSTV with no special levy being raised, as this process would take too long to resolve the problem faced by the Body Corporate.
15. Two quotations were obtained, a decision was made to appoint ATV Services to proceed to upgrade the DSTV. According to the Applicant no objections were received from owners regarding the appointment of ATV Services who were then appointed to proceed with the upgrade.
16. The Applicant submitted that on the 26th of March 2018, the Respondent sent an email to the Applicant requesting the Body Corporate to obtain two additional quotes and enquired as to the need of a splitter.
17. According to the Applicant she responded to the Respondent email correspondence, on the same day.

## APPLICANT'S PRAYERS

18. That the Respondent be ordered to remove the satellite dish and cabling that was installed by her tenant, repair and repaint all holes on the outside walls in the colour palette of the complex.

## Respondent's Submissions

19. The Respondent did not attend the adjudication and accordingly, the Respondent's version is not before the adjudicator. The Respondent failed to attend the adjudication despite proper service of the notice of set down of the adjudication hearing on the Respondent.
20. The adjudicator, in terms of Chief Ombud's Practice Directive 25.1 telephoned the Respondent on her cell phone which went unanswered. The Adjudicator was however satisfied that the Respondent had received timeous notification of the Adjudication hearing but failed to attend.

## RESPONDENT'S PRAYERS

None submitted.

## EVALUATION OF INFORMATION AND EVIDENCE OBTAINED

21. In evaluating the evidence and information submitted, the probabilities of the case together with the reliability and credibility of the witnesses must be considered.
22. The general rule is that only evidence, which is relevant, should be considered. Relevance is determined with reference to the issues in dispute. The degree or extent of proof required is a balance of probabilities. This means that once all the evidence has been tendered, it must be weighted up and determine whether the applicant's version is probable. It involves findings of facts based on an assessment of credibility and probabilities.

## DISCUSSION

23. I have perused all written submissions and taken into consideration all submissions stated before me at the day of the hearing.
24. The Conduct Rules of the Body Corporate provides as follows;  
(7) Maintenance of Sections  
(7.1.6) No person shall place or cause or permit to be place on or about any section, its garden, back courtyard or the entrances to its or part thereof, any air conditioning equipment, advertising signs, writing emblems, notices, blinds, sunshades, awnings, projections structure, generators, solar panels, and gas cookers, garage door motors or additions to televisions antennae except with the WRITTEN CONSENT OF THE TRUSTEES who when giving such consent may impose conditions as to the nature, type, size, colour, extent, position, fixing and removal thereof, as they in their absolute discretion shall deem fit. The trustees may at any time vary such conditions or withdraw such consent. Owners are advised that the maintenance of such installations, once approved, shall be the sole responsibility of the relevant owner". (the writer's emphasis)
25. From the submission made at the adjudication hearing, it is evident that the Respondent or her tenant did not obtain the necessary written consent from the Trustees, prior to the installation of the DSTV satellite dish. Which is in violation of the abovementioned Conduct Rules of the Body Corporate.
26. The minutes of the Annual General Meeting held on the 26th of July 2017, at paragraph 12.5 under the heading Special Business, states "that the DSTV feed/upgrade was discussed. Everyone who has Explorers/ PVRs now have used up all ports. There are currently 18 ports. No 9 wanted to install and have port and No 11 decided to stream Netflix. Most people are streaming lately so no more DSTV ports will be commissioned".

27. From the attendance register of the abovementioned Annual General Meeting (AGM) held on the 26th of July 2017, the Respondent was in attendance, and did not object to the decision taken at said AGM.
28. Accordingly, the Applicant succeeds in the Applicant's complaint against the Respondent.

## POWERS AND JURISDICTION OF THE ADJUDICATOR

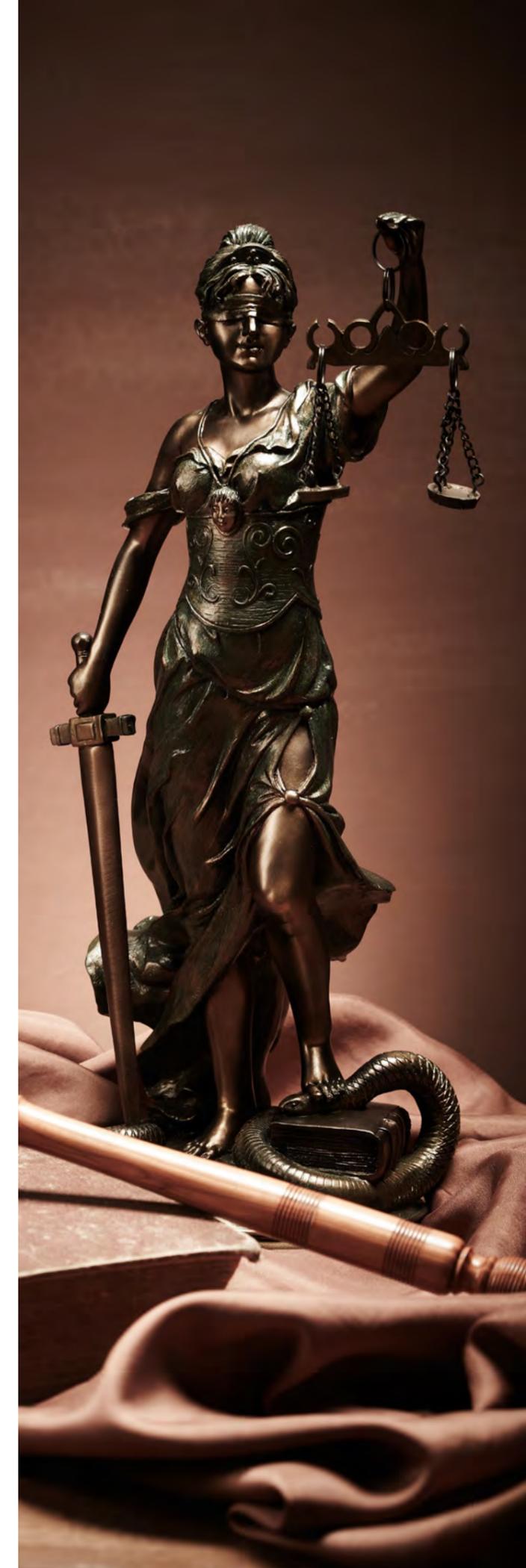
29. The Adjudicator is empowered to investigate, adjudicate and issue an adjudication order in terms of sections 50, 51, 53, 54 and 55 of the Community Schemes Ombud Act. The CSOS Act enables residents of community schemes including sectional title schemes to take their disputes to a statutory dispute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

## ADJUDICATION ORDER

30. Accordingly, the following order is made;
  - (a) The relief sought by the Applicant is granted.
  - (b) The Respondent is ordered to remove the satellite dish as well as the cabling and attend to the repair and repainting of the wall, within 30 (thirty) days of receipt of this order.
  - (c) There is no order as to costs.

## RIGHT OF APPEAL

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



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Twitter: @CSOS\_SA

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## COMPLAINTS

### 1. Gauteng, Limpopo and North West

Email applications to [gp-complaints@csos.org.za](mailto:gp-complaints@csos.org.za)

Contact (+27 10) 593 0533

Visit 1<sup>st</sup> Floor, 63 Wierda Road East, Sandton

### 2. KwaZulu-Natal, Free State and Mpumalanga

Email applications to [kzn-complaints@csos.org.za](mailto:kzn-complaints@csos.org.za)

Contact (+27 10) 593 0533

Visit 7<sup>th</sup> Floor Aquasky Towers, 275 Anton  
Lembede Street, Durban

### 3. Western Cape, Eastern Cape and Northern Cape

Email applications to [wc-complaints@csos.org.za](mailto:wc-complaints@csos.org.za)

Contact (+27 10) 593 0533

Visit 8<sup>th</sup> Floor Constitution House, 124 Adderley  
Street, Cape Town

## COMMUNITY SCHEME REGISTRATION

1. Download and complete the CS1 Form at  
[www.csos.org.za](http://www.csos.org.za)

2. Email registration to [registration@csos.org.za](mailto:registration@csos.org.za)

