

SharedLiving

Oct - Dec 2023

BALLITO

SATELLITE OFFICE
LAUNCH

OFFICE
CLOSURE

FESTIVE
SEASON
OPERATING
HOURS



LETTING

YOUR APARTMENT THIS FESTIVE SEASON

NUISANCE

HOW TO HANDLE IT IN A
COMMUNITY SCHEME

Accountability, Excellence,
Independence, Integrity

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Gedeelde Lewe Ukuhlalisana Tsamisana Ho Dulisana Mmoho



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

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

VALUES: Service Excellence, Independence, Integrity and Accountability.

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CHIEF OMBUD'S FOREWORD



Dear stakeholders,

As the year 2023 draws to a close, I would like to take this opportunity to express my gratitude and appreciation for your continued support and cooperation in the community schemes property sector. It has been a challenging year for all of us, but we have also witnessed remarkable achievements and innovations that have enhanced the quality of life and service delivery in our shared living spaces.

The Community Schemes Ombud Service (CSOS) is proud to present to you the latest edition of the CSOS Shared Living Magazine, which showcases some of the best practices, success stories, and insights from the community schemes industry. We hope that you will find this magazine informative, inspiring, and enjoyable.

As we celebrate the festive season, let us also reflect on the values and principles that bind us together as a community. Let us cherish the diversity, harmony, and solidarity that make our community schemes vibrant and resilient.

On behalf of the CSOS, I wish you all a happy and peaceful holiday season, and a prosperous and healthy new year. I look forward to working and engaging with you in 2024 to further advance the interests and rights of the community schemes members.

*Sincerely,
Acting Chief Ombud
Thembelihle Mbatha CA (SA)*

Happy Holidays

A festive holiday-themed graphic featuring a large red star at the top, surrounded by greenery, red berries, and a gold ribbon at the bottom. The text 'Happy Holidays' is written in a large, white, cursive font across the center.

THINKING OF LETTING YOUR APARTMENT THIS FESTIVE SEASON?

Imagine the possibility of renting out your furnished apartment in Sandton's Golden Mile for just three nights a month and effortlessly covering your mortgage bond and utility bills on the Airbnb platform.

It sounds like a tempting proposition, but before you leap into this lucrative venture, there are essential factors to consider, especially when residing within a community scheme.

When you purchase a unit in a sectional scheme or an erf in a homeowner's association, you become part of a community. While you may own the physical

space you live in, the common property belongs to all owners in the scheme, with shared interests that demand consideration. Community schemes often have specific Rules in place to regulate Airbnb operations or short-term letting platforms, ensuring that the collective harmony is maintained.

The legal landscape surrounding short-term letting in sectional

title schemes saw notable attention in the case of The Body Corporate of the Paddock Sectional Title Scheme No 249-1984 v Nicholl in October 2019. The High Court upheld the body corporate's Rules, prohibiting short-term letting for periods less than six months. This decision set a precedent for community schemes seeking to regulate such activities within their boundaries.

IF YOU ARE CONTEMPLATING TURNING YOUR UNIT INTO AN AIRBNB HOTSPOT, THERE ARE CRUCIAL FACTORS TO ACCOUNT FOR:

1 Insurance Cover:

Extra insurance is necessary to cover the unique risks associated with operating a short-term letting establishment.



2 Legal Compliance:

Adhering to fire safety regulations and security measures is imperative. Necessary safety signs and disclaimers must be prominently displayed in and around the unit.

3 Disclosure of Rules:

The community scheme's Rules must be provided to every short-term lessee to ensure compliance.



4 Security Concerns:

Short-term tenants may compromise the security of the scheme by being lax about gate closures and similar issues.



5 Common Property Use:

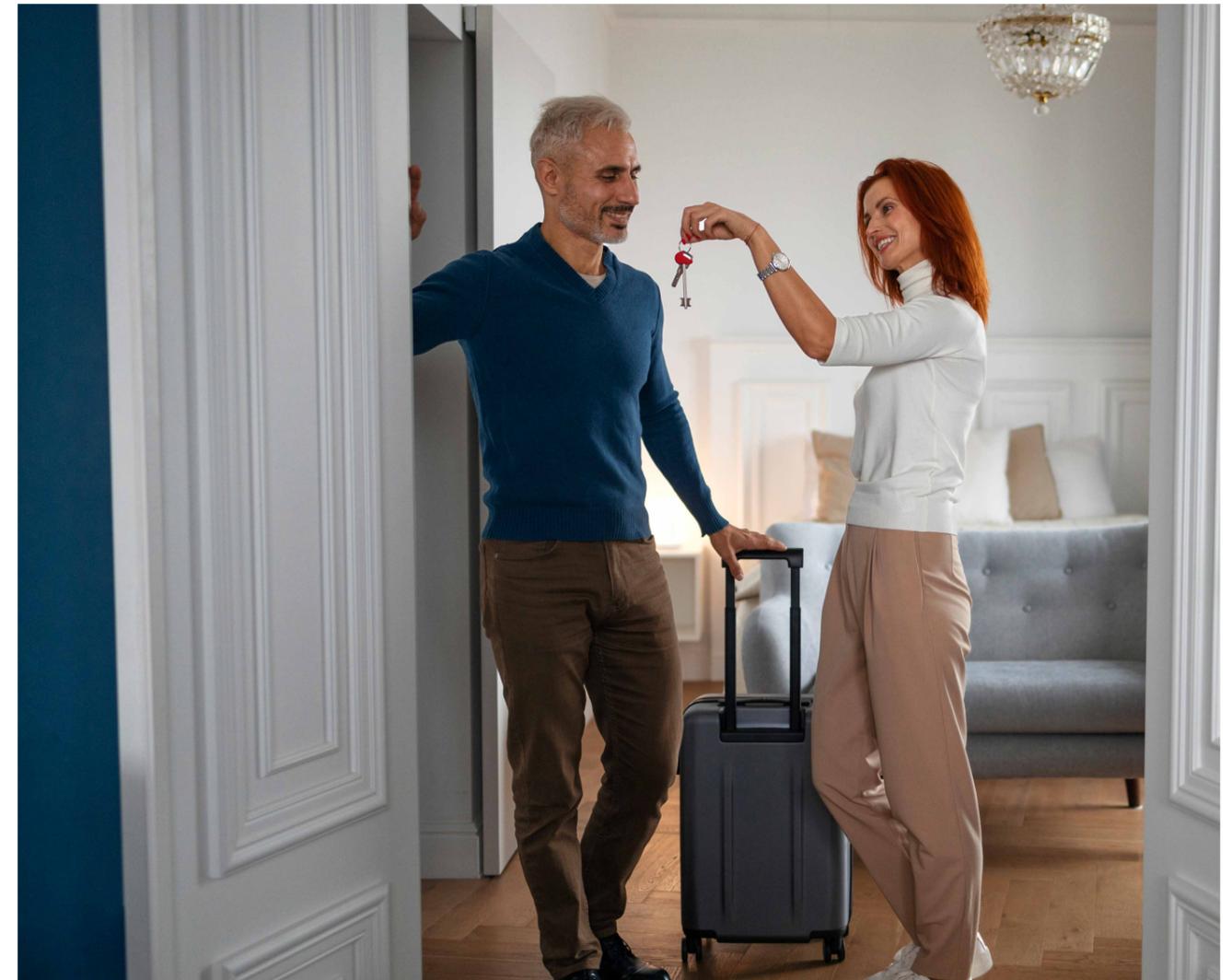
Access to common property areas, including pools, gyms, and tennis courts, may be tightly controlled, but short-term tenants may not prioritize the care of these facilities.

6 Common Property Use:

Noise and Nuisance: Short-term tenants often bring increased noise levels and other nuisances, impacting the well-being of permanent residents and other occupants.

7 Parking Rules:

Short-term tenants may disregard parking rules, causing frustration among existing residents.



As an owner, it is crucial to ensure that your tenant complies with the Conduct Rules of the scheme, as mandated by the Sectional Titles Schemes Management Regulations. Similar provisions are typically included in the Rules made in terms of Memoranda of Association for other types of community

schemes.

With the introduction of fines and penalty provisions in Conduct Rules, owners may be held responsible for any fines incurred by their short-term tenants due to misbehavior.

While the potential financial gains from Airbnb ventures

are enticing, prospective hosts in community schemes must navigate legal intricacies, uphold community harmony, and consider the well-being of permanent residents. By addressing these considerations, you can make informed decisions and turn your apartment into a festive season hotspot responsibly.



The legal definition of nuisance extends beyond mere irritation, as affirmed in the 2003 case of *Vogel v Crewe and Another*. The court described nuisance as conduct that “infringes upon a neighbour’s health, well-being, or comfort in the occupation of his land.” The key test applied is one of “objective reasonableness,” aiming to strike a balance between the competing interests of parties involved.

Regardless of the nature of the nuisance – whether noise, smoke, invasive plants, or overcrowding – the critical factors are whether the behaviour violates the community scheme’s Conduct Rules, is objectively unreasonable, and infringes on the well-being of the complainant.

The 2008 case of *PGB Boerdery v Somerville* clarified that interference with property rights becomes actionable as a nuisance only when it is deemed unreasonable. The determination of unreasonableness is subjective, evaluating whether the interference exceeds expected toleration in the given circumstances.

In the case of *Steenkamp and Another v Knysna Local Municipality and Another* (2010), the judge established a crucial precedent, asserting that any noise disturbing a neighbor’s sleep at an inappropriate time is prima facie unreasonable.

In any CSOS case, the burden of proof rests on the applicant, requiring a presentation of evidence on a balance of probabilities. Allegations alone are insufficient; the complainant must substantiate the claim that the respondent is causing a nuisance.

As the festive season unfolds and community living dynamics intensify, understanding the legal nuances of nuisance becomes paramount. The CSOS Act provides a robust framework to address nuisances, offering a pathway for relief for those affected. Navigating these legal waters requires a careful examination of conduct rules, objective reasonableness, and the presentation of compelling evidence. In the realm of community schemes, legal remedies exist to ensure a harmonious coexistence, where the well-being and comfort of residents are respected.

NUISANCE IN COMMUNITY SCHEMES: UNDERSTANDING LEGAL REMEDIES

As the festive season ushers in joy and celebration, it also brings forth a host of challenges within community schemes. From boisterous activities and alleged spying using CCTV cameras to unexpected ‘egging’ attacks by neighbors’ children, the spectrum of nuisances is wide and varied. While the concept of nuisance dates back to Roman Law, its contemporary implications in community living prompt us to explore legal remedies available under the Community Schemes Ombud Service (CSOS) Act.

The Law of Nuisance, inherited from Roman Law, has found its way into South African jurisprudence. The CSOS Act, in Section 39(2)(a), empowers disgruntled owners, residents, or scheme executives to seek relief by obtaining an order that addresses specific behaviors deemed a nuisance. This raises the pertinent question: What constitutes a legal “nuisance”?

ENTREPRENEURSHIP IN COMMUNITY SCHEMES: UNRAVELING THE WEB OF STARTING A BUSINESS

Embarking on the entrepreneurial journey while residing in a Homeowners Association (HOA), often referred to as an ‘Estate’ can be a complex and nuanced endeavor.



The dream of running a business from the comfort of your residence within a community scheme may face various challenges, given the diverse rules and regulations governing different HOAs. Let’s delve into the intricacies and implications of starting a business within the unique context of community living.

The very essence of a Homeowners Association lies in its foundation, typically built

upon a township with specific zoning regulations. Zoning can include designations for residential, business, or other purposes. To unravel the possibilities of starting a business within your community, it’s essential to consult local municipality regulations, township establishment conditions, or refer to governing documents such as the Memorandum of Incorporation (MOI) for non-profit associations or the Constitution for common-

law associations.

RESIDENTIAL NATURE AND ZONING LAWS

A crucial factor to consider is the residential nature of most community schemes. If your HOA falls under this category, zoning laws usually prohibit most businesses from operating within a residential area. Understanding and respecting these regulations is vital for a harmonious coexistence between entrepreneurial ambitions and

community living.

DISTINGUISHING BETWEEN HOME BUSINESS AND WORKING FROM HOME

There exists a significant difference between running a full-fledged business from home and engaging in remote work. The scale, size, and potential disturbance to neighbours differ significantly between these two scenarios. If you envision running a business within your residence, you'll likely need to navigate through a series of considerations.

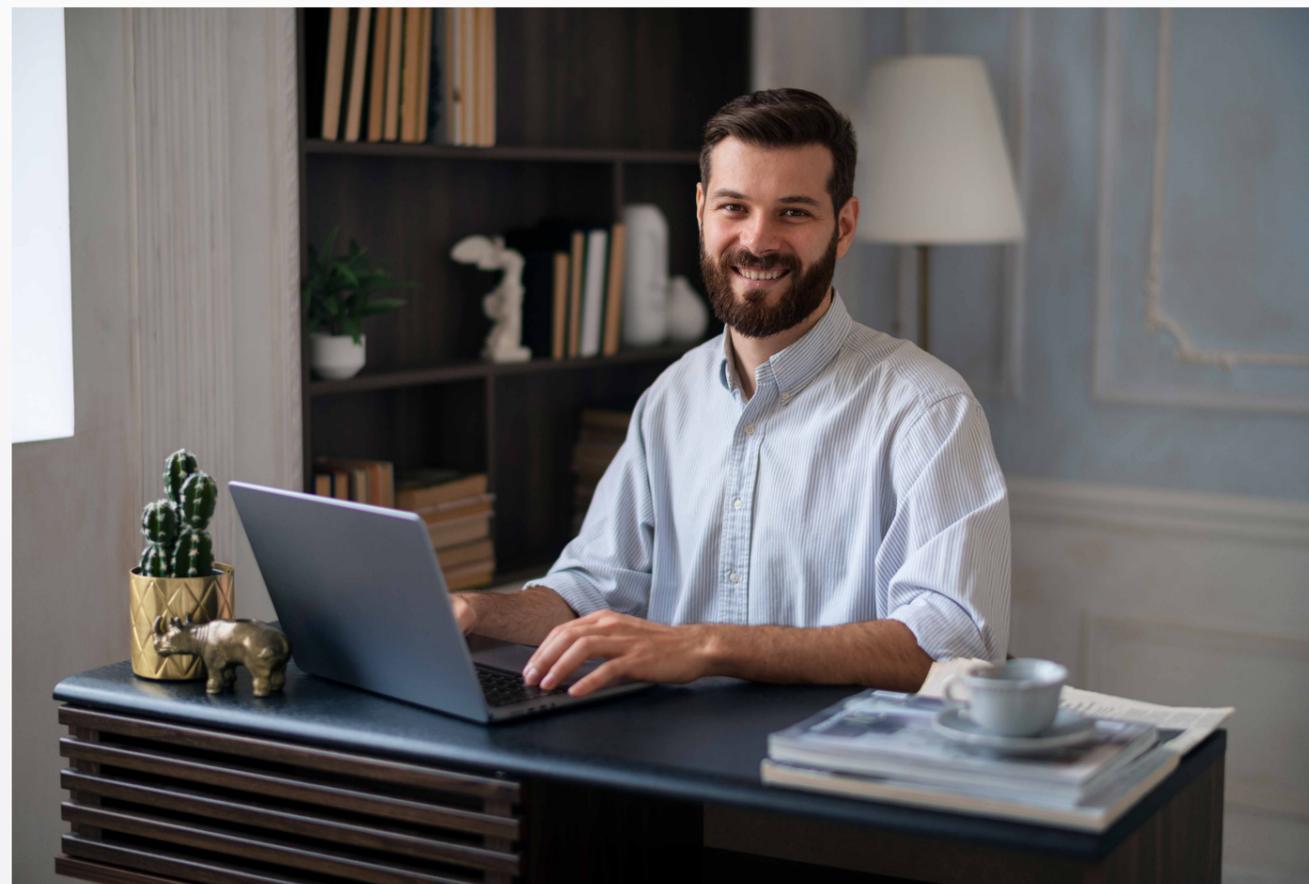
OBTAINING WRITTEN CONSENT: THE FIRST HURDLE

For those with aspirations of transforming their living space into a workspace, the first hurdle involves obtaining the written consent of the HOA Directors. These decision-makers assess factors such as the number of clients anticipated, potential impacts on road usage, security concerns, and the possibility of noise disturbances. Each application is unique and must be considered on its individual merits.

PRESERVING THE RESIDENTIAL HARMONY

Ultimately, the Directors of an HOA have a duty and obligation to maintain the residential nature of the community scheme. While entrepreneurial endeavour are encouraged, they should not compromise the tranquility and residential environment that residents value. The balance between economic pursuits and community harmony is delicate and requires thoughtful consideration.

In the realm of community living and entrepreneurship, there is no one-size-fits-all answer. The feasibility of starting a business within a community scheme is contingent on various factors, including local regulations, zoning laws, and the specific rules outlined in the HOA's MOI or Constitution. Aspiring entrepreneurs must navigate this intricate web with diligence, seeking written consent where required and always respecting the unique nature of their community. By doing so, individuals can pursue their entrepreneurial dreams while contributing to the overall harmony of the community scheme they call home.



CSOS OPENS NEW OFFICE IN BALLITO TO SERVE COMMUNITY SCHEMES

The Community Schemes Ombud Service (CSOS) has opened a new satellite office in Ballito, KwaZulu-Natal (KZN) on December 6, 2023. The satellite office aims to improve the quality and accessibility of the CSOS services for community schemes in the area.

The opening ceremony of the new office was attended by various stakeholders, including representatives from the CSOS Board, the STSM Advisory Council, the National Association of Managing Agents (NAMA), the Kwa-Dukuza Municipality and the Department of Human

Settlements (DHS).

Ms. Maemili Ramataboe, a board member who represented the CSOS Board at the event, said that the CSOS presence in Ballito marks a significant milestone in the CSOS journey. "We understand that face-to-face engagement with the CSOS and its dedicated staff is essential to creating a sense of belonging within our community. We acknowledge that the CSOS cannot operate in isolation; it thrives on the active involvement and collaboration of its stakeholders. While internal business planning and resource allocation are crucial aspects of our operations, they

must translate into practical benefits for the people we serve," said Ramataboe.

Mr. Mervin Dorasamy, the KZN Regional Ombud, delivered the keynote address and highlighted the role and functions of the satellite office. He said that the office will deal with all sorts of issues that an owner or occupier might have, such as levy disputes, maintenance problems, governance issues, scheme rules and general enquiries. He also said that the office will conduct outreach and education programmes to raise awareness and promote compliance with the CSOS Act

and the Sectional Titles Schemes Management (STSM) Act.

Dorasamy further said that over the past seven years, the CSOS has not only entrenched itself but has also expanded its footprint, reaching new heights in visibility and service delivery. "Our commitment to bringing services directly to the people is unwavering, recognizing that the true impact of our work lies in its meaningful

integration into the lives of those within our sector," he added.

The satellite office is now fully functional and located at Second floor, Suite 6, Regency House, Douglas Grove Drive, Ballito.

For more information, please visit www.csos.org.za



NOTICE: OFFICE CLOSURE FOR THE HOLIDAY PERIOD

Community Schemes Ombud Service

The CSOS offices will be closed for the holidays from Friday, 22 December 2023 at 11:00 am to Wednesday, 3 January 2024

If you have any urgent matters, please contact the Regional Ombuds on the following numbers:

KZN-Natal, Mpumalanga, Free State:
Mr. Mervin Dorasamy (063 684 7740)

Gauteng, North West, Limpopo:
Mr. Abe Masilo (066 302 9517)

Western Cape, Northern Cape, Eastern Cape:
Ms. Maletsatsi Wotini (066 302 9492)

We wish you a happy and peaceful festive season!

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