

SharedLiving

Issue 25

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WAIVERS

AGM SEASON IN BODY CORPORATES



WAIVERS

A GUIDE TO CSOS WAIVERS

ANNOUNCEMENT: UNALLOCATED FUNDS REGISTER

SCHEME
REGISTRATION
DRIVE

CSOS URGES ALL
SCHEMES TO
REGISTER AND
COMPLY WITH
THE LAW

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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ACTING CHIEF OMBUD'S FOREWORD



Dear stakeholders,

As we entered the new financial year in April, it marks a significant milestone for the CSOS, prompting us to reflect on our transformative journey. The period of 2023/24 has been both thrilling and inspiring, representing a pivotal chapter in our organization's story.

The CSOS has made remarkable strides. Notably, our 2023/24 performance surpassed the Shareholder Compact Agreement's benchmarks, with achievements exceeding 80% of our APP annual targets. Moreover, we've expanded our reach with a new transactional site in Rustenburg, complementing our six existing national sites and enhancing service accessibility.

Throughout the past financial year, our commitment to modernizing our systems, enhancing the CSOS Connect portal, and strengthening the CSOS brand has remained steadfast. We have taken proactive steps to transform our sector, taking pride in leading these

efforts. Engaging in Transformation Roundtable Discussions nationwide, we have endeavored to promote inclusivity and reflect the diverse demographics of our nation. Your participation is essential; if we have not yet visited your area and you have insights to share, please reach out to us at transformation@csos.org.za. Your contributions are greatly valued.

Despite significant progress, we have faced challenges, including undesirable media coverage.. Rest assured, the Board and Executive Team are unwavering in their commitment to accountability and transparency. For any inquiries or concerns, my office remains open to you.

We acknowledge the pressing issue of existing disputes backlog and are committed to promptly addressing it. In response, we have appointed an additional part-time adjudicator to expedite the resolution process.

Looking ahead to the 2024/25 financial year, our resolve is clear: to persistently pursue our

objectives with discipline and determination. We're actively planning for the next strategic cycle, ready to seize new opportunities and tackle challenges head-on. Our pledge to excellence is steadfast, as we aim to maintain our industry leadership.

Our Commitment to Our Stakeholders:

- Accountability
- Excellence
- Independence
- Integrity
- People-Centred Approach

We, at the CSOS, are resolute in delivering on our mandate – a promise that is non-negotiable. We stand accountable to you, our clients. We remain steadfast in our efforts towards registering schemes, and we urge your support in championing our cause. Please encourage unregistered schemes to complete their registration process..

Our dedication to service remains firm. I want to reaffirm our unwavering commitment to the community schemes' best interests and to upholding our organisation's integrity. We deeply appreciate the continued patience and support from each of you. Warm Regards,

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



Comply with the law
Register your residential complex with CSOS NOW!





NAVIGATING THE AGM SEASON IN BODY CORPORATES

As the financial year draws to a close, it's time for Bodies Corporate to convene their Annual General Meetings (AGMs). These meetings are a cornerstone of communal living, where key decisions affecting the collective are made. Here's what you need to know:

When to Hold the AGM?

By law, the AGM must be held within four months after the Body Corporate's financial year-end, as per PMR 17. Should this timeline not be met, the Act remains silent on the consequences, leaving room for discretion.

Can AGM's Go Digital?

Yes, but with conditions. PMR 17(10) outlines that virtual

meetings must be accessible to all members, allowing them to speak and be identified by the chairperson. If any member cannot attend online, they must be represented by a proxy, filled out using the required form. Without these provisions, the meeting cannot proceed.

The AGM Pack Essentials:

- The Agenda
- Documents for discussion
- Proxy Form (Form C)
- Nomination form for new Trustees

Order of Business:

1. Confirm proxies and nominees.
2. Determine the quorum.
3. Elect the AGM chairperson.
4. Present proof of notice or waivers.

5. Approve the agenda and previous AGM minutes.
6. Address unfinished business and member requests.
7. Receive trustees' report.
8. Approve insurance values and cover.
9. Approve funds and consider audited financial statements (AFS).
10. Appoint an auditor and elect trustees.
11. Set directions and restrictions for trustees.

Understanding Quorum:

A quorum requires at least members holding a total of 33.3% (one third) of the value of the votes of unit-owners by (by participation quota (PQ)) for schemes with over four units. Votes from the developer or



Body Corporate units do not count towards the quorum. If a quorum isn't met, the meeting is adjourned to the same time and place the following week.

Pre-AGM Checklist for Members:

- Submit motions and nominations by the stated deadline.
- Review all documents beforehand.
- If attending virtually, test the technology.
- Complete the attendance register.
- Clearly state your name and unit number when moving for a motion.
- Vote clearly when resolutions are presented.

Voting and Proxies:

Votes are valued by PQ, and owners in arrears cannot vote on ordinary resolutions unless they have a court judgment or adjudication order against them. A proxy can represent a maximum of two other members, and the proxy form must be submitted before the meeting starts.

The Role of the Chairperson:

The chairperson, typically the chairperson of the trustees, must act fairly and impartially. If the chairperson is absent or unwilling to act as such, the members' present can elect a substitute chairperson

Minutes Matter!:

The minutes of the previous AGM must be checked and approved at the AGM – check

that all resolutions and votes are recorded correctly. The minutes of the current AGM must be made available to all members within seven days of the meeting.

As we embrace the AGM season, let's ensure that our meetings are conducted with clarity, inclusivity and adherence to the rules - thus fostering a harmonious community living experience. When in doubt please feel free to reach us!

Transparency in Sectional Title Developments: Your Right to Information

In the intricate web of community living, the right to information stands as a pillar of transparency and

trust. SharedLiving has delved into the heart of communal disputes, uncovering that financial disagreements reign supreme, closely trailed by the thorny issue of Access to Information. Our investigation reveals a troubling trend: the quest for clarity is often met with barriers, as some bodies corporate shroud themselves in the cloak of the POPIA Act, turning a tool for protection into a barricade against openness.

Transparency is not just a buzzword, it's a legal mandate. Prescribed Management Rule 27(4) to the Sectional Titles Schemes Management Act of 2011 (STSMA), empowers members with the right to access the body corporate documents upon a written request. But what does this entail, and how does it affect you as a member?

Access Granted: A Closer Look at Your Rights:

The trustees or the managing agent must comply with document requests within 10 days, and even faster—5 days—if it's the rules of the body corporate you're after. This promptness highlights the importance of members being informed and involved in the governance of their community.

The Documents at Your Fingertips:

1. **Minutes of Meetings:** Whether it's the AGM or a routine trustees' meeting, you're entitled to the minutes.
2. **Approved Rules and Compliance Certificates:** The CSOS-approved management and conduct rules, along with the section 10 compliance certificate, are yours to review.

3. **Financial Statements:** A clear picture of the body corporate's financial health, including income, expenditure, assets, and liabilities, must be transparent.
4. **Trustee Contacts:** Names and email addresses of the board of trustees are not shielded by POPIA, though their phone numbers may remain confidential.
5. **Bank Account Details:** Insight into the administrative and reserve fund accounts is your right.
6. **Insurance Policy:** The body corporate's insurance policy, as directed by PMR 27(3)(j) must be accessible.

Historical Insight: Members can delve into records up to **6 years old**, ensuring a comprehensive understanding of the body corporate's historical context.

Bank Statements: To Share or Not to Share?

While legislation doesn't bar members from viewing entire bank statements, privacy for levy defaulters is maintained by omitting their names and unit numbers.

A clear directive from the CSOS emphasizes that the scheme's executive must not withhold information. It's a call for openness that aligns with the spirit of communal living.

These rights are more than simply formalities for you as a members of a sectional title development; they are instruments of empowerment that let you take an active and informed part in the upkeep of your neighbourhood.

THE PRE-EMINENCE OF ACCURATE MINUTE-TAKING AND GOOD CORPORATE GOVERNANCE!

Recently, the CSOS dispute resolution department has received a spate of applications for adjudication that have had to be dismissed due to a lack of evidence.

We can hear you asking: "What evidence was missing?" The answer is as simple as it is unfortunate and unnecessary: minutes of crucial meetings was missing. These minutes were, in fact, neither taken nor recorded nor sent out to owners as required by legislation.

This is a cardinal sin in community scheme management!

Minutes of meetings form the cornerstone of good corporate governance in community schemes because they ensure accurate documentation of proceedings, resolutions and decisions. Good corporate governance is essential for ethical and transparent business practice.

Minutes of a Body Corporate must be kept in perpetuity in terms of the Sectional Titles Schemes Management Act. In terms of the Prescribed Management Rules, minutes of trustee and body corporate meetings must be sent out within 7 days of the meeting to all owners and minutes of these meeting must include the following information: the date, time and place of the meeting; the names and role of the persons present, including details of the authorisation of proxies or other representative; the text of all resolutions; and the results of the voting on all motions – nothing less and nothing more! (no one cares what Mr van Wyk or his wife specifically said at the meeting, even if they insist that their verbatim utterances must recorded for posterity!!!!!!!)

Remember, members come and go, but the BC has perpetual succession & the minutes form the institutional memory of the Body Corporate. In 10-years' time Mr Ngobeni can go to the minute books and read what happened on the 9th of



June 2024, if he needs to – minutes are invaluable source of information for adjudications or litigation.

The Companies Act requires that a company, including an HOA and a Shareblock Company, must record and maintain the minutes of all meetings and resolutions for a period of 7 years after the date of each meeting or the date on which the resolution was adopted. Furthermore, these records must be accessible from the company's registered office or another location within South Africa.

Even though we must move with the times, and that these days meetings are recorded or we use AI for taking minutes – minutes are taken, nonetheless.

Legislation requires that written minutes must be sent out to members. This is a requirement that cannot be ignored, and members of community schemes must ensure that their scheme executives and managing agents adhere to this requirement for the sake of the scheme and its future.



Is your residential complex compliant with CSOS? Register today.



Visit: www.csos.org.za | 0800 000 653



REGISTER YOUR RESIDENTIAL ESTATE WITH CSOS NOW.

The Community Schemes Ombud Service, CSOS, is calling on all managers of body corporates, home-owners associations, retirement villages, estates and sectional titles in general, who are yet to register their community schemes with CSOS to do so immediately.

Comply with the law and register your community scheme with CSOS now. Avoid being penalised.

To register, visit our website: www.csos.org.za, or call us on our toll-free number: 0800-000-653.

A GUIDE TO WAIVERS

One of the pivotal aspects of the CSOS's mandate is the collection of levies, which fund the essential services it provides. However, not all schemes are equally positioned to meet these financial obligations. Recognizing this, the CSOS makes provision for waivers, a topic that merits the attention of every stakeholder in community schemes.

Community schemes across the nation are subject to the financial obligations set forth by the Community Schemes Ombud Service (CSOS). As per section 59(a), in conjunction with Regulation 11 of the CSOS Act, these schemes are required to contribute a quarterly levy to the CSOS. However, there's a silver lining for those who may find this challenging: waivers and discounts are available.

Should you find the CSOS levies burdensome, relief is within reach. By emailing waiver@csos.org.za using Form CS3A for individuals and CS3B for schemes, you can apply for a waiver or discount. The CSOS will conduct a means test to evaluate your application, ensuring that the process is fair and transparent.

Who Qualifies?

Waivers are not indiscriminate; they are reserved for:

- Units within a community scheme where the monthly levy is R500.00 or less.
- Individuals or households with a monthly net income that does not exceed R5500.

Conditions for Continuation

Beware, the relief provided is not set in stone. It can be retracted if:

- The financial status of the applicant improves.
- The information provided to the CSOS is discovered to be false.
- A renewal application is not submitted within one month of the first application's anniversary.



Automatic Waivers: No Application Needed

In a compassionate move, the Chief Ombud has identified groups eligible for a full waiver without the need for an application:

- Recipients of the SASSA grant.
- Residents in frail care within retirement schemes.
- Residents in assisted living or mid-care within retirement schemes.

For these individuals, the executive committee of the scheme must maintain and submit SASSA card copies alongside the levy schedule, clearly indicating the beneficiaries of this waiver.

For a comprehensive understanding of the waivers and discounts, refer to the **CSOS Practice Directive On Waiver Of Levies and Fees: version 4 of 2022**, a valuable resource that provides clarity and guidance on navigating these financial waters: <https://csos.org.za/wp-content/uploads/2023/03/Practise-Directive-on-Waiver-of-Levies.pdf>

THE CSOS ROUNDTABLE DISCUSSION: EMBRACE CHANGE, IGNITE GROWTH



Since March, the Community Schemes Ombud Service (CSOS) has embarked on a nationwide mission, engaging with key industry stakeholders across various provinces. The goal? To spearhead a transformative dialogue that reshapes the community schemes sector in alignment with the CSOS mandate.

The roundtable discussions

have been more than mere meetings; they are the vessel where the future of community schemes is being forged. The CSOS has initiated these discussions to finalise a comprehensive Transformation Strategy, a blueprint for fostering economic participation and advancing the sector's evolution.

At the heart of this initiative lies the belief that transformation is

a collaborative effort. The CSOS has developed a Transformation Strategy Concept Note. This document outlines the principles and initiatives that have already garnered support from the Transformation Breakaway Commissions at the CSOS Inaugural Indaba in August 2023.

Despite the community schemes sector's estimated value of R643 billion, a gap remains between the demographics of South Africa and those represented in scheme management and service suppliers. The CSOS's roundtable discussions have highlighted several challenges that need to be addressed:

- Inadequate representation and participation
- Limited economic empowerment opportunities
- Governance gaps and social inequality
- Unemployment and skills gap
- Limited impact of transformation initiatives
- Inconsistent alignment with national development goals

Recognizing the need for a diverse and inclusive sector, the CSOS has developed "Catalysing Change: A Strategic Blueprint for Transforming the Community Schemes Sector." This strategic blueprint serves as a roadmap to integrate

sustainability, inclusivity, and community engagement within the sector.

Key Themes for Transformation

To facilitate this transformation, the CSOS has outlined two key themes:

1. Capacitation and access to funding
2. Market access and opportunities

The CSOS aims to:

- Examine factors that impede a truly transformed and inclusive sector
- Change the demographic profile of the sector to reflect the nation's diversity
- Explore opportunities to foster an inclusive, integrated sector
- Accelerate transformation through governance mechanisms, entrepreneurial development, employment equity, and property ownership

As the roundtable discussions continues, the message is clear from the stakeholders and the industry: it's time for the community schemes sector to embrace change and become a beacon of transformation, reflecting the true spirit of South Africa's vision for its future.

The Acting Chief Ombud has announced that our transformative initiative is advancing robustly, highlighted by the successful facilitation of 17 roundtable discussions across the nation, coupled with key interactions with essential industry entities. These conversations are crucial, emphasizing our unwavering dedication to inclusive stakeholder involvement.

"I call upon each of you to wholeheartedly adopt your roles as catalysts for change and to engage actively in propelling the transformation of our sector."

We invite you to contribute your insights at transformation@csos.org.za and join us in forging a more equitable future for our community schemes," she added.



ANNOUNCEMENT: ENHANCING TRANSPARENCY WITH OUR UNALLOCATED FUNDS REGISTER

We are excited to announce the introduction of our Unallocated Funds Register, a new feature on our website that emphasizes our dedication to transparency and operational efficiency. This initiative is part of our strategic approach to resolve the challenges associated with unallocated funds.

We invite all schemes to visit our website to review the register and ascertain if they have any funds categorized as unallocated. This streamlined

process is intended to facilitate the identification and subsequent allocation of funds to the appropriate accounts.

To guarantee the register's

relevance and accuracy, we will perform monthly updates. Your active participation in this update process is essential, and we appreciate your support in this endeavour.

For your reference, the register will list only the date and reference number. Claimants are required to provide the exact amount linked to their reference when coming forward to claim their funds. See link: <https://csos.org.za/media-centre/unallocated-funds/>

Should you have any questions or require assistance, please do not hesitate to contact Levies at: levyqueries@csos.org.za

IN TALKS WITH ESTATE LIVING

Understanding CSOS: A guide for homeowners and property managers



Estate Living recently met with Acting Chief Ombud of the Community Schemes Ombud Service (CSOS), Thembelihle Mbatha, to spend time discussing the key issues that CSOS is focusing on right now.

Introduction to CSOS

CSOS is a relatively new organisation, having opened its doors in 2016. Despite its short existence, CSOS has already made a significant impact in the residential community sector. With offices across the country, CSOS provides conflict resolution services for community schemes, ensuring that disputes are managed efficiently and fairly.

The role of CSOS

CSOS's primary mandate is dispute resolution, but it also serves as an ombud, adjudicating on various matters and issuing adjudication orders. These orders, which have been upheld by the courts, help prevent the judiciary from being overwhelmed with cases that CSOS can resolve.

Moreover, CSOS focuses on mediation and conciliation, encouraging parties to talk and agree before escalating to formal adjudication.

Another critical aspect of CSOS's work is consumer and homeowner awareness. CSOS conducts extensive training across the country for homeowners, trustees, bodies corporate, and residents of sectional title living arrangements, including retirement villages. This training helps individuals understand their rights and obligations in their communities.

Governance and regulatory compliance

CSOS also plays a crucial role in governance, ensuring that community scheme rules comply with all relevant legislation, including the Sectional Titles Schemes Management Act. This compliance helps protect constitutional and human rights, ensuring that homeowners are aware of what they are committing to before purchasing a property.

For homeowners, understanding their financial



ARE YOU COMPLIANT?

Please enquire to see if your CSOS levies are up to date



obligations, including the payment of levies, is essential. CSOS assists in clarifying these responsibilities, ensuring that everyone knows their role in the body corporate or homeowners association (HOA).

Bridging legislative gaps

One of the challenges CSOS faces is the conflict between the Sectional Titles Schemes Management Act and the Companies Act, which governs HOAs. CSOS is actively working to bridge these gaps, developing memorandums of understanding (MOUs) with relevant authorities to ensure comprehensive coverage and compliance.

Since 2016, new developments require a Section 10 certificate from CSOS, confirming that their rules are compliant and allowing them to operate. However, older schemes may still have undesirable rules, and CSOS is working on legislative projects to address these issues.

Managing levy payments

Levy payments have been a point of contention for many homeowners. CSOS introduced a billing and statement system about two years ago, which is still being refined. Homeowners should be aware that they will not be charged more than R40 for CSOS levies. Managing agents and trustees should ensure accurate reconciliation of these payments.

To verify payments, homeowners can email CSOS with their scheme details. This verification ensures that funds are correctly allocated, and any discrepancies can be addressed promptly.

Ensuring registration and compliance

It is a legal requirement for all HOAs and sectional title schemes to register with CSOS. Homeowners can request their body corporate or chairperson to provide the CSOS registration number. If there is any doubt, homeowners can contact CSOS directly to verify registration and compliance.

CSOS issues compliance certificates, ensuring that all rules and financial statements are in order. These certificates provide homeowners with the assurance that their scheme operates transparently and in accordance with the law.

Addressing disputes and ensuring fair practices

CSOS is committed to resolving disputes efficiently. Homeowners experiencing issues with levy payments, access to utilities, or other community-related problems should not hesitate to bring their concerns to CSOS. It is illegal to cut off basic utilities, like water or electricity, due to non-payment of levies, and CSOS treats such cases with urgency.

By intervening early in disputes, CSOS helps prevent minor issues from escalating into significant problems that require legal intervention. This proactive approach ensures that communities function smoothly and that residents' rights are protected.

Louise Martin from Estate Living shares her thoughts on CSOS's impact: 'We at Estate Living are immensely proud to be part of the process of seeing CSOS come alive in the residential community sector. In the short period that CSOS has been around, there has been a monumental movement in the market, showcasing the organisation's commitment to enhancing community living.'

CSOS plays a vital role in maintaining harmony and compliance in residential communities. By understanding the services and support CSOS offers, homeowners and property managers can ensure that their schemes operate fairly and efficiently.

For more information, visit the CSOS website or contact them directly to learn how they can assist with your community scheme's needs.

By Estate Living: Louise Martin



Register Your Residential Estate with CSOS

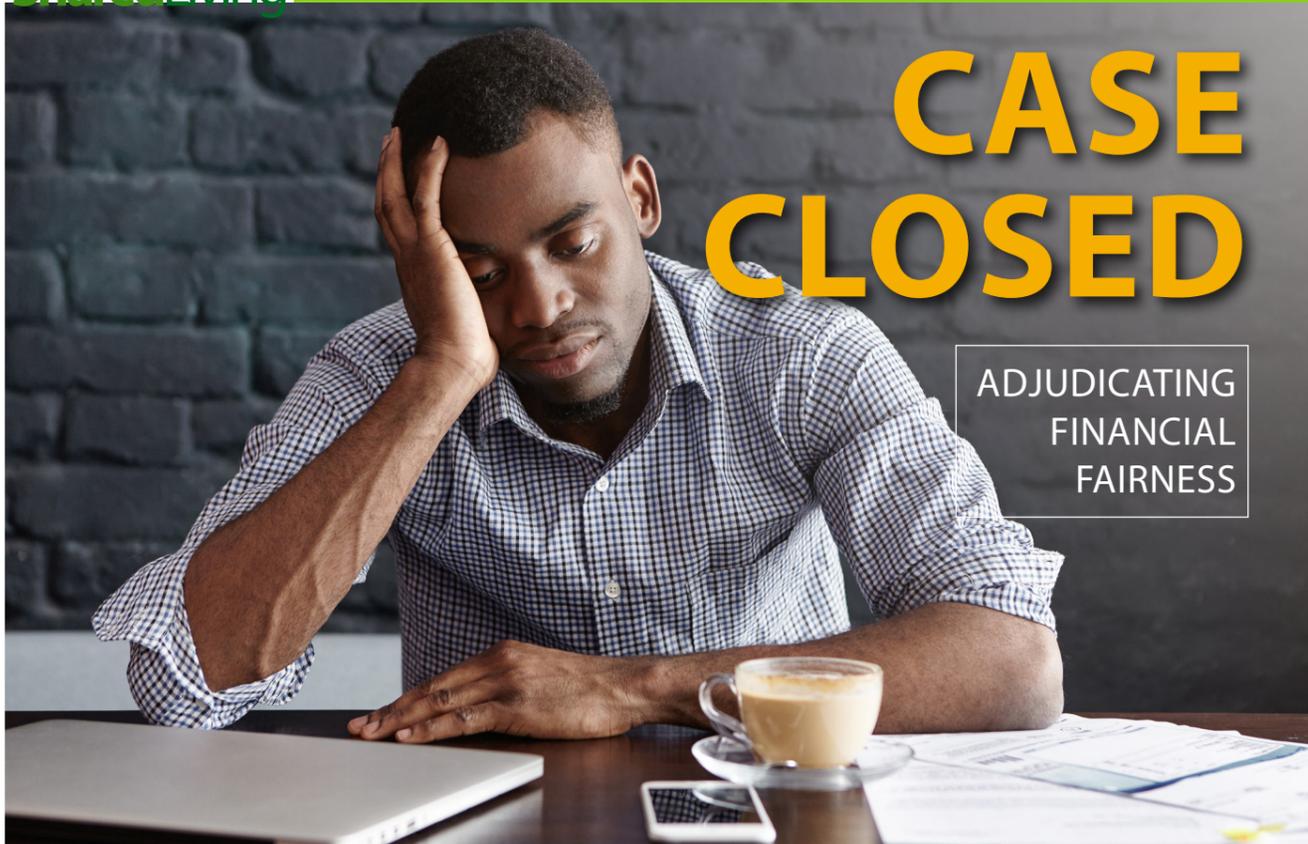
(Community Schemes Ombud Service)

Now. It's Mandatory.



CASE CLOSED

ADJUDICATING FINANCIAL FAIRNESS



In a recent ruling that continues to set a continued standard for fairness, the message is clear. **Trustees, take note:** you have the power to decide on penalties, but they must be fair and justified.

The CSOS Act plays a crucial role in protecting homeowners from unfair financial demands. It's a strong message for fair management, making sure that fines are given out fairly.

As we delve into the details of this ruling, let's remember that at its heart lies a fundamental principle: the enforcement of rules within community schemes must be a tightrope walk of fairness and reasonableness, ensuring that justice prevails for all parties involved.

On April 16, 2024, Adjudicator

Lindiwe Bulu made a pivotal decision under Section 39(1)(c) of the Community Schemes Ombud Service (CSOS) Act, determining the reasonableness of financial contributions levied on unit owners or occupiers within community schemes. The case involved Gert Jacobus*, the owner of unit 10 at Oos Body Corporate*, and the Trustees of the Oos Body Corporate, represented by their Chairman, Mr. Dirk van Niekerk*.

Gert Jacobus, the applicant, contested the imposition of a penalty by the Oos Body Corporate. The dispute arose when Gert Jacobus' tenant, residing in unit 10, kept a dog in his section against the Body Corporate's conduct rules, leading to a daily fine of R100 from December 1. By March 31, the following year, when the

tenant vacated the property, the accrued fine totalled R12,100.

Jacobus argued that the fine was unreasonable and not aligned with the Conduct Rules approved in 2018, which stipulated a penalty of R50 per month for similar infractions. In contrast, the Trustees justified the increased fine, citing persistent violations and aggressive behaviour from the tenant and Jacobus' family, exacerbating the situation.

Under the CSOS Act, Section 39(1)(c) allows for adjudication of disputes regarding financial contributions within community schemes. The Act provides a structured process for resolving such disputes, including opportunities for conciliation and, if necessary, adjudication based on written submissions.

The adjudication process for this case commenced after the conciliation failed on August 17, 2023. A Certificate of Non-Resolution was issued, and the matter was referred to Adjudicator Bulu on March 1, 2024. Both parties submitted extensive written evidence, detailing the events and justifications for their respective positions.

In his submissions, Jacobus, the applicant, contended that the daily fine was not supported by the Conduct Rules or any statutory authority. He emphasized that as pensioners, he and his wife could not afford such a substantial penalty. He sought an order for the removal of the charges from his levy statement.

The Body Corporate, as the respondent, argued that the penalty was a necessary measure to enforce compliance with the Conduct Rules. The Trustees highlighted the tenant's aggressive behaviour and the potential danger posed by the dog, which had attacked a worker, as well as a resident's child. The Trustees maintained that they exercised their discretion judiciously in escalating the fine.

Adjudicator Bulu evaluated the evidence, emphasizing the need for relevance and balance of probabilities. The crux of the dispute was whether the Trustees acted reasonably in imposing the daily fine.

Bulu noted that while the

Trustees have discretion under the Conduct Rules, this discretion must be exercised equitably and reasonably. The historical context of fines within the scheme indicated a precedent of R100 per month, not per day. The dramatic increase in fines was therefore deemed excessive and unreasonable, failing to align with established practices.

Based on the assessment, Adjudicator Bulu found in favour of the applicant, Gert Jacobus. The ruling declared the daily fine of R100 unreasonable and ordered the adjustment of the penalty to align with the previously established rate of R100 per month.

*Names changed**

Complex neighbours keeping you up at night?

0800 000 653

Talk to us about your rights, visit [CSOS.org.za](https://www.csos.org.za)



Community Schemes Ombud Service



CONTACT US!



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- 4 BALLITO:** Suite 6; Second Floor, Regency House, 3 Douglas Crowe Drive Ballito
- 5 GEORGE:** 14 CJ Langenhoven Road, George Central
- 6 MBOMBELA:** Block 1 Riverside Office Park, 1 Aqua Street, Riverside Park Extension 24, Mbombela
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