

SharedLiving

Issue 27

Oct - Dec 2024

FIREWORKS AND FESTIVE DECORATIONS IN AN HOA

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FEEDBACK



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AMSHOVA 2024 PICTURE HIGHLIGHTS

CASE CLOSED

MISMANAGEMENT AND
MISCOMMUNICATION

Accountability, Excellence,
Independence, Integrity

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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 the year 2024 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 sector. It has been a challenging year for all of us, and we acknowledge that our services have not always met your expectations due to backlogs. However, we assure you that we are addressing these issues and will provide a comprehensive update at the beginning of the year.

I would like to thank the industry bodies, individuals, and everyone else for the stellar collaborative work we have conducted together to solve industry issues. Your constructive criticism has kept us on our toes, and we gladly welcome it as it gives us a chance to review our operating procedures and improve where necessary.

Your engagements have been invaluable in identifying pain points and optimizing CSOS efficiencies. These interactions have served as strategic platforms to create an understanding of how the CSOS is advancing the notion of communal living as the preferred tenure option through legislation, training, and awareness.

The Community Schemes Ombud Service (CSOS) is proud to present 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 you find this magazine informative, inspiring, and enjoyable.

As we celebrate the festive season, please note that our offices will be closed from December 20 at 11:00 am and will reopen on January 6, 2025, at 08:00 am. For any emergencies, please do not hesitate to reach out to our Regional Ombuds, whose contact details are shared inside the magazine. Let us use this opportunity to 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 with you in 2025 to further advance the interests and rights of community schemes members.

**Sincerely,
Kedibone Phetla
Acting Chief Ombud**



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.



UNDERSTANDING THE LEGALITIES OF FESTIVE FIREWORKS AND DECORATIONS IN AN HOA

Many eagerly anticipate celebrating with fireworks and elaborate decorations during the festive season. However, for those living in Homeowners' Associations (HOAs), understanding the legalities of these activities is crucial. We look at the rules and regulations governing the use of fireworks and decorations within community schemes.

FIREWORKS

From New Year's Eve to Guy Fawkes Day as well as your team's victory in a rugby, cricket or soccer tournament, for many, a celebration is incomplete without a good fireworks display. But before lighting up those crackers, it's important to remember that it's not just a free-for-all, and there are laws that regulate the use of fireworks in South Africa. Non-compliance with the rules could result in a hefty fine or time behind bars.

The use of fireworks in South Africa is regulated by by-laws and the **Explosives Act, 1956 (as amended)**.

Each year, millions of fireworks are set off on the New Year's Eve and for other events. However, along with those fireworks comes an added danger, and as homeowners' association, it's your responsibility to ensure that your residents are safe during any festivities taking place on your property.

Every HOA is different. It is important that you are thoroughly up to date and clear on all regulations first, so then you know how to prepare others living in the community scheme. If your association allows fireworks (per its constitution or conduct rules), it is crucial that they are managed in a particular way to keep individuals and the

community safe. It is important to enforce the rules and emphasize caution.

NINE (09) IMPORTANT THINGS TO KNOW ABOUT FIREWORKS LAWS IN SOUTH AFRICA

1. Fireworks may not be set off in any public space. This includes in parks, on the pavement or the streets. Shopping malls, restaurants and clothing retailers are also off-limits.
2. Fireworks may not be sold by street vendors, hawkers or at any informal open-air facilities.
3. Anyone who wishes to sell fireworks must have a valid licence, which is issued by the Chief Inspector of Explosives.
4. It is illegal to detonate fireworks within 200 metres of any hospital, clinic, petrol station, old-age home, nursing home, or animal welfare organisation or institution.
5. No one under the age of 16 is allowed to purchase or set off fireworks.
6. It is unlawful for any person to point or direct a firework at any other person, animal, building or motor vehicle.
7. No person or organisation is allowed to present a fireworks display unless formally

authorised to do so by the Council (at least 14 days' notice). Authorisation is also required from the Civil Aviation Authority and the Chief Inspector of Explosives. A pyrotechnician and an SAPS explosives expert must be present at all times.

8. Fireworks may only be set off in designated areas between 7 pm and 10 pm on Guy Fawkes.
9. Failure to comply with any of the above could result in a hefty fine or even jail time.

WHAT ABOUT DECORATIONS?

The exterior parts of sectional title buildings are part of the common property of the scheme. There are therefore restrictions and limitations that affect how individual owners may use these areas.

Section 13(1)(d) and (e) of the STSMA states that:

*"An owner must –
(d) use and enjoy the common property in such a manner as not to interfere unreasonably with the use and enjoyment thereof by other owners or other persons lawfully on the premises;
(e) not use his or her section or exclusive use area, or permit it to be used, in a manner or for a purpose which may cause a nuisance to any occupier of a section."*

Prescribed Conduct Rule 4(1) requires that:

"The owner or occupier of a section must not, without the trustees' written consent, mark, paint, drive nails, screws or other objects into, or otherwise damage or deface a structure that forms part of the common property."

It is advisable that schemes adopt Conduct Rules that deal with holiday decorations.



EXCLUSIVE USE RIGHTS EXPLAINED

In community schemes, disputes over Exclusive Use Areas (EUA) of common spaces are all too rampant. Understanding the rules and processes for obtaining and managing these rights is crucial. By clarifying these aspects, we can reduce conflicts and ensure fair and harmonious use of shared spaces.

An exclusive use area means a part, or parts of the common property reserved for the exclusive use by the owner or owners of one or more sections. This may include garden area, parking area, garages, patio, storeroom, courtyard, and balcony. The rights to an exclusive use area (EUA) are conferred by the developer or a body corporate through management or conduct rules.

The duty to maintain common property rests with the trustees or body corporate, however, this responsibility may be split when a right to an exclusive use area is granted. Splitting this responsibility does not absolve the body corporate from ensuring proper use and maintenance of the EUA.

Amongst the functions entrusted to the body corporate are; to require the owners entitled to the right to the exclusive use of a part or parts of the common property, whether or not such right is registered or conferred by



rules, to make such additional contribution to the funds as is estimated necessary to defray the costs of rates and taxes, insurance and maintenance in respect of any such part or parts. The contribution could also include costs for the provision of electricity and water, unless in terms of the rules the owner concerned is responsible for such costs.

The body corporate has additional powers which it may, through a unanimous resolution by the owners, request the delineation and cession of exclusive use rights to particular owners, and also may, upon special resolution by owners, enter into a notarial deed of cancellation of an exclusive use right.

An owner who has been granted an exclusive use of a part of common property does not

only enjoy usage but becomes subject to certain obligations. The owner must permit any person authorised in writing by the body corporate, during reasonable hours and on notice (except in case of emergency) to enter exclusive use area for the purposes of inspection, maintenance, repairs, renewing pipes, wires, cables and ducts existing in the section. The duty to maintain and repair may also rest with the owner, who might be required to carry out all work that may be ordered by any competent authority in respect of the exclusive use area and pay all charges, expenses and assessments that may be payable as a result.

The standard of repair and maintenance must be generally good and accord with acceptable standards of cleanliness and neatness. The use and enjoyment of the



EUA has limitations also, such use must not cause nuisance, interfere unreasonably with the use and enjoyment thereof by other owners or other persons lawfully on the premises.

In the even an owner entitled to, and EUA fails to keep it in a proper state of cleanliness and maintenance, the body corporate may issue a written demand. If despite a written demand by the body corporate, a member refuses or fails to undertake required repair and maintenance, and such failure threatens the stability of the common property, the safety of the building or otherwise materially prejudices the interests of the body corporate, its members or the occupiers of sections generally, the body corporate must remedy the member's failure and recover the reasonable cost of doing so from that member. Where circumstances are regarded

as an emergency, the body corporate is not required to issue a written demand or notice to the to the member concerned.

The body corporate must be notified of changes in ownership, occupancy or mortgage of a unit with EUA right, this requirement also encompasses changes regarding the purpose for which a section or exclusive use area is intended to be used. Changes in usage require consent of all owners.

The owners' responsibilities extend to a tenant and lord relationship, in that the landlord is required to take all reasonable steps to ensure compliance with the conduct rules in force in terms of section 10(2)(b) of the Sectional Titles Scheme Management Act; by any tenant or other occupant of any section or exclusive use area, including the owner's employees, guests,

visitors and family members.

The right to an EUA remains a regulated or rule bound relationship between the schemes' administrators and the concerned owner, and the relationship often take a knock where the owner acts outside the confines of an EAU. This may occur when an owner effects improvements to their EUA without the body corporate's permission. This does not only temper with the agreement but also has an unjustifiable effect to the common property. The following are examples of transgressions of the agreement by the owner, unauthorized installations and enclosures, for example an enclosure of a balcony.

The result of these transgression do not only give to cancellation of the right of use but may also lead to strained relations in a scheme.

SPECIAL LEVIES: WHO PAYS PAST DEBTS?



When purchasing a unit in a complex, understanding the financial obligations tied to special levies is crucial. A common question arises: If I buy into a complex today, who is responsible for repaying special levy debts from previous years?

Understanding the responsibilities associated with special levies is essential for both buyers and sellers in a property complex. Generally, the liability falls on the owner at the time the levy is raised. However, negotiations and clear agreements can help manage the financial burden during property transactions. By conducting thorough due diligence and including specific clauses in the sale agreement, buyers can avoid unexpected financial obligations and

ensure a smooth transition of ownership.

Special levies, though sometimes a source of anxiety, are essential for maintaining and improving the quality of living within a complex. They are additional charges imposed on property owners to cover unexpected expenses or significant projects that fall outside the regular budget. These can include major repairs, upgrades, or emergency expenses that cannot be postponed until the next financial year. Unlike regular levies, which are predictable and budgeted for annually, special levies are often unforeseen and can cause financial strain on property owners.

There are mainly two types of

levies paid by the owners to the body corporate in a sectional title scheme arrangement: the normal levy and the special levy. The normal levy is based on the body corporate’s annual budget and is raised at the annual general meeting (AGM). In contrast, the special levy is raised at the discretion of the trustees for necessary, urgent, and unbudgeted expenses.

SPECIAL LEVY LIABILITY IF A UNIT IS SOLD

Section 3 (3) of the Sectional Title Schemes Management Act 8 of 2011 (STSMA) provides that upon change of ownership of a unit, the successor in title becomes liable for the pro-rata payment of special levies from the date of change in ownership (i.e., the date of transfer).

Although the STSMA is silent about lump-sum payments, in such cases, the seller is liable for the payment of the special levy if they were the registered owner at the time the resolution was passed. This provision can be adjusted by mutual agreement, wherein one of the parties can be exclusively liable for the full amount of the outstanding levies.

Unfortunately for some buyers, a special levy may be raised immediately after the transfer of the unit, but the buyer will still be liable to pay it. This can be a contentious issue if the special levy is imposed after the unit is sold but before the transfer or immediately after the transfer of the unit. If the seller is aware that future special levies will be

billed but fails to disclose this, it will be considered a “latent defect.” Even where there is a voetstoets clause, the seller will not be protected in instances of fraudulent misrepresentation. Each case will be treated on its own merits.

Although the benefits of sectional title living are undoubted, purchasers in sectional title schemes must be adequately informed to avoid unpleasant surprises. They must find out whether there are any current special levies or whether there are likely to be any in the future.

PRACTICAL STEPS FOR BUYERS

For prospective buyers, it is essential to conduct thorough due diligence before purchasing a unit in a complex. Here are some practical steps to follow:

- 1. Request Financial Statements:** Obtain the latest financial statements from the body corporate to understand the financial health of the complex and any outstanding special levies.
- 2. Review Meeting Minutes:** Ask for the minutes of recent annual general meetings and special general meetings to check for any discussions or resolutions regarding special levies.
- 3. Consult with the Body Corporate:** Speak directly with the body corporate or managing agent to confirm any outstanding levies and the payment status.
- 4. Include Levy Clauses in the Sale Agreement:** Ensure that the sale agreement includes clear clauses regarding the responsibility for any outstanding special levies.

SEASON'S GREETINGS

The Community Schemes Ombud Service (CSOS) wishes to inform all stakeholders that our offices will be closed for the festive season from **Friday, 20th December 2024, at 11:00 am.** We will resume operations on **Monday, 6th January 2025, at 08:00 am.**

For any urgent matters during this period, please contact the Provincial Ombuds:

- **Gauteng, Limpopo, and North West:** Mr. Abram Masilo at 066 302 9517
- **KwaZulu-Natal, Free State, and Mpumalanga:** Mr. Mervin Dorasamy at 063 684 7740
- **Western Cape, Eastern Cape, and Northern Cape:** Ms. Maletsatsi Wotini at 066 302 9492

We extend our warmest season’s greetings to all our stakeholders. May your festive season be filled with joy, peace, and prosperity. We are deeply grateful for your continued support and partnership throughout the year. We look forward to serving you in the new year.

RECEIVED AN ORDER FROM THE CSOS: WHAT IS THE NEXT STEP?



Navigating the aftermath of receiving an order from the CSOS can be daunting. Whether it's a directive to resolve a dispute or implement a decision, understanding your next steps is crucial.

The Community Scheme Ombud Service (CSOS), an entity of the Dept of Human Settlements is the regulator of community schemes. CSOS provides a dispute resolution service to its stakeholders. At CSOS, orders are made by Adjudicators.

For you to enforce the adjudication order which is in your favour, you must receive an Enforcement Notice together with the original or certified Adjudication Order from the relevant CSOS office.

The CSOS Adjudicator must investigate an

application made for dispute resolution in terms of section 38 & 39 of the CSOS Act to decide whether it would be appropriate to make an order. The adjudicator must make an order granting or refusing each part of the relief sought by the applicant. An order may require a person to act, or refrain from acting, in a specified way. The order may contain such ancillary and ensuing provisions as the adjudicator considers necessary or appropriate. The order must set the time-

- (a) when the order takes effect; or
- (b) within which the order must be complied with.

An adjudicator's order, may in terms of section 56 of the CSOS Act, be enforced in the Magistrates

Court or the High Court as if it were a judgment handed down by that Court. An adjudication order for specific performance, can only be enforced in the High Court. An adjudication order for specific performance, relates to an order that has no quantum or monetary value.

The adjudication order will have an implementation date. In the event that the party against whom the order has been issued has not complied with the adjudication order, the person in whose favour the order is issued must approach CSOS.

STEPS TO TAKE...

The person in whose favour the order was issued must file with the Clerk of the Magistrates Court or Registrar of the High Court the following documentation:

- (a) a copy of the adjudicator's order certified by the Ombud as a true copy, if the original cannot be located;
- (b) any relevant form/s required by the Magistrates Court or the High Court to be completed;
- (c) the court order to be endorsed by Clerk of the Magistrates Court or Registrar of the High Court.

Once the Clerk of the Magistrates Court or Registrar of the High Court has issued the order and allocated a case number, the party may submit the order to the Sheriff of Court for further execution. CSOS will not be involved in this process and the party will bear the costs related to the execution of the order.

An application for enforcement lodged with the Magistrates Court or High Court is not an appeal or a re-hearing of the merits of the original application.

If an adjudicator's order is for the payment of an amount of money or any other relief which is within the jurisdiction of a magistrate's court, the order must be enforced as if it were a judgment of such Court and a clerk of such a Court must, on lodgement of a copy of the order, register it as an order in such Court.

Example: Payment or reimbursement in the sum of R70 000 for repairs. A Magistrate's Court shall have no jurisdiction in matters in which is sought specific performance without an alternative of payment of damages.

If an adjudicator's order is for the payment of an amount of money or any other relief which is **beyond the jurisdiction of the magistrate's court**, the order may be enforced as if it were a judgment of the High Court, and a registrar of such a Court must, on lodgement of a copy of the order, register it as an order in such Court.

Example: Payment of outstanding levies of R340 000 (Regional civil court) or an adjudication order which requires a person to act, or refrain from acting, in a specified way (High Court-specific performance).

The current **money claim limits** of the courts are as follows:

Magistrates Court: R200 000

Regional Civil Courts: R400 000

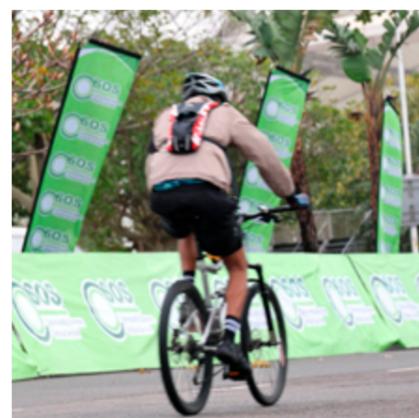
High court: R400 000 and above

(Subject to any court decision on the monetary jurisdiction of the courts or amendment of the rules – obtain legal advice)

Jurisdiction means the power or ability which a court has to hear and determine an issue between parties brought before it.

Parties may consent in writing to the jurisdiction of a District Court or Regional Court to hear matters which would otherwise be beyond the court's respective jurisdiction.

AMASHOVA 2024 IN PICTURES



CASE CLOSED



A CASE OF MISMANAGEMENT AND MISCOMMUNICATION

In a recent adjudication by the Community Schemes Ombud Service (CSOS), the importance of clear communication and effective management within community schemes was highlighted, along with the limitations of CSOS in adjudicating certain types of disputes, particularly those involving contractual amendments and financial claims outside its jurisdiction.

The case involved the GH Body Corporate and their managing agent, TG. The dispute, brought forward by a member of the Board of Trustees, Sharon Fisher, highlighted significant issues in the management of maintenance and repair services within the community scheme.

Sharon Fisher, a trustee of GH Body Corporate,

reported a leak in the waste pipe stack of the GH complex in November 2023. TG, the managing agent, presented a quote from Luyolo Plumbing for the repair. However, this quote was for a different leak that had already been addressed by another contractor, leading to confusion and miscommunication.

When Luyolo Plumbing attended the site based on the incorrect quote, they found that the reported leak had already been repaired. This resulted in wasted time and resources, including the cost of hiring a lift to access the plumbing stack. Consequently, Luyolo Plumbing issued a cancellation invoice of R12,708.65 due to the mismanagement by TG.

Sharon argued that TG's negligence led to this unnecessary expense and sought to have the managing agent bear the cost. She contended that TG failed to effectively manage the situation,

resulting in financial implications for the body corporate.

Sharon lodged three separate disputes with CSOS, each seeking similar relief but with slight variations in the details. The disputes were filed on 4 May 2023, 25 June 2023, and 18 July 2023, respectively. TG contended that these disputes were opportunistic and outside the jurisdiction of CSOS.

Adjudicator Lindiwe Bulu reviewed the submissions and evidence from both parties. The key findings included:

- The relief sought by Sharon, including the cancellation fee and amendments to the management contract, fell outside the jurisdiction of CSOS.
- Sharon's multiple submissions, despite minor differences, essentially sought the same relief against the managing agent.
- TG was no longer responsible for the management of the body corporate, further complicating Sharon's claims.

In evaluating the evidence, the adjudicator considered the relevance, credibility, and reliability of the submissions. The general rule is that only relevant evidence should be considered, and the degree of proof required is a balance of probabilities.

The adjudicator found that the relief sought by Sharon, including the cancellation fee and amendments to the management contract, fell outside the jurisdiction of CSOS. The application was dismissed under section 53(1) of the CSOS Act, with no order as to costs. A reminder to community schemes and managing agents alike to ensure that all maintenance and repair issues are handled with utmost clarity and efficiency. Proper communication and management practices can prevent unnecessary disputes and financial burdens.

***Names changed for privacy**

Comply with the law

Register your residential complex with CSOS

NOW!



CONTACT US!



- 1 CENTURION:** Berkley Office Park, 8 Bauhinia Street, Highveld Techno Park, Centurion
- 2 DURBAN:** 7TH Floor Aquasky Towers, 275 Anton Lembede Street, Durban
- 3 POLOKWANE:** Standard Bank Square, 49 Hans Van Rensburg St, Polokwane
- 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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