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**PRACTICE DIRECTIVE ON WAIVER OF LEVIES AND FEES**

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No: 3

2017

**COMMUNITY SCHEMES OMBUD SERVICE**

**COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011 (ACT NO. 9 OF 2011)**

I, the undersigned, Seeng Catherine Letele, acting in terms of section 36 of the Community Schemes Ombud Service Act, 2011 (Act No 9 of 2011), do hereby issue a Practice Directive on the Waiver of Levies and Fees. The Practice Directive is set out hereunder: -

A handwritten signature in black ink, appearing to read 'Seeng Catherine Letele', is written over a horizontal line.

**CHIEF OMBUD**

**ADV SEENG CATHERINE LETELE**

**DATE:** 01 December 2017.

## TABLE OF CONTENTS

### PART ONE – DEFINITION AND INTRODUCTION

1. DEFINITIONS
2. INTRODUCTION
3. APPLICABLE LEGISLATION
4. OBJECTIVE OF THE DIRECTIVE
5. SCOPE OF APPLICATION

### PART TWO – WAIVER CATEGORY

6. CATEGORY OF PERSON GRANTED WAIVER

### PART THREE – ADMINISTRATION AND APPLICATION

7. PROCEDURE FOR APPLYING FOR DISCOUNT OR WAIVER
  - 7.1 Completing the prescribed Waiver Form
  - 7.2 Submission of application
  - 7.3 Assessment of application – Means Test
8. GROUNDS FOR REFUSAL
9. WITHDRAWAL OR TERMINATION OF WAIVER
10. REMEDIES
11. CONFIDENTIALITY AND PRIVACY
12. UPDATE AND REVIEW OF THE DIRECTIVE
13. DATE OF COMMENCEMENT



## 1. DEFINITIONS

In this Practice Directive, any word or expression to which a meaning has been assigned by the Act and Regulations shall bear the same meaning assigned to it in the Act or Regulations, and unless the context indicates otherwise;

Expression which denotes one gender includes the other gender and neuter as applicable, a natural person includes a juristic person and vice versa, the singular includes the plural and vice versa and the following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings: -

TERM	DEFINITION
"Act"	Community Schemes Ombud Service Act, 2011 (Act No 9 of 2011) and include any Regulations made in terms of the Act; the CSOS Act will bear the corresponding meaning;
"Adjudication Fee"	means, a fee payable as envisage by section 49 of the Act;
"Application Fee"	means a fee envisaged in section 38 (2) (c) of the Act;
"Assets"	means tangible or intangible assets that a person owns or have in possession;
"Assisted Living"	means that a retired person requires little assistance and still mobile;
"Confidential Confidentiality Information"	/ means the information that is personal or private, and should not be publicly disclosed;
"Criteria"	means the factors used to decide whether the Applicant qualifies for discount or waiver considering the Applicant's financial position;
"CSOS"	means the Community Schemes Ombud Service;
"Discount"	means the amount or percentage deducted from the normal fee or levy payable;
"Frail care"	means that a retired person requires held with basic activities, like bathing, eating, toileting and may or may not be bedridden;
"Household"	means, a group of people who live together for at least 4 nights a week, and who share meals and resources;



<b>"Indigent/Indigent person"</b>	means person or Schemes which qualifies for discount or waivers under CSOS' means test;
<b>"Levy"</b>	means a fee payable to CSOS as envisaged by section 29 (1) (b) of the Act;
<b>"Liabilities"</b>	means what you must pay others, e.g. your debts;
<b>"Means test"</b>	means the CSOS' test to decide if someone is indigent or can afford to pay the Application fee, the Adjudication fee and fees payable to CSOS for the use of the service;
<b>"Mid care"</b>	bears the same meaning as Assisted Living;
<b>"Net assets"</b>	means the Assets less a person's liabilities;
<b>"Net monthly income"</b>	means an Income from all sources after deductions for paying tax, including things such as salary, allowances, pensions and dividends;
<b>"Pension"</b>	means regular payment made by the state or any other pension fund registered as a pension fund in terms of the Pensions Funds Act, 1956 (Act 24 of 1956) and which has been approved as a pension fund, retirement annuity fund or provident fund in terms of the Income Tax Act, 1962 (Act 58 of 1962);
<b>"Pensioner"</b>	Means any person who is entitled to receive a pension;
<b>"Personal information"</b>	means information about an identifiable individual, including, but not limited to, information relating to race, gender, sex, pregnancy, marital status, national, ethnic or social origin, colour, sexual orientation, age, physical or mental health, well-being, disability, religion, conscience, belief, culture, language and birth of the individual;
<b>"Physically resident"</b>	means currently living in South Africa;
<b>"Retired person"</b>	means a person who is 50 years of age or older;
<b>"SASSA Grant"</b>	Means the grant issued by the South African Social Service Agency;
<b>"Schemes"</b>	means the community schemes as defined in the Act;
<b>"Schemes Executive Committee"</b>	means the executive body of a community scheme, including but not limited to the trustees of a sectional title body corporate, the board of directors of a share block company and the management association of any housing scheme for retired persons;

<b>“Waive/Waiver”</b>	means an agreement wherein CSOS will waive its right to claim payment from the Applicant;
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## **2. INTRODUCTION**

- 2.1 Section 29(1) (b) and (c) of the Act, authorises the Minister to make Regulations setting out Schemes and person which may be entitled to discount or waivers of fees respectively.
- 2.2 The Minister has under Community Scheme Ombud Service Regulation on Levies and Fees, 2016, published the criteria for determining the persons and Schemes which qualifies for discount or waivers.

## **3. APPLICABLE LEGISLATION**

- 3.1 Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011)
- 3.2 Sectional Titles Schemes Management Act, (2011) Act No. 8 of 2011)
- 3.3 Constitution of the Republic of South Africa
- 3.4 Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

## **4. OBJECTIVES OF THE DIRECTIVE**

- 4.1 The objective of the Practice Directive is to set out the procedure to be followed for the Schemes and persons who qualifies for discount or waiver to apply or access the discount and waiver as envisaged by the Act.
- 4.2 The Practice Directive further sets the criteria that CSOS employees must apply in considering the application for discount or waiver.

## **5. SCOPE OF APPLICATION**

- 5.1 The Directive applies to the following persons: -
  - 5.1.1 Applicant under this Policy;
  - 5.1.2 Community Schemes Executive Committee as defined by the Act; and
  - 5.1.3 CSOS.

## **6. CATEGORY OF PERSONS GRANTED WAIVER**

## **6.1 Who qualifies for discount or waiver**

6.1.1 The Minister has in terms of section 29(1) (c) of the Act, prescribed that the following category of persons qualify for waiver of levies and fees: -

(a) Individual units within a community scheme for which the monthly levies not exceeding R500.00 are charged by the Scheme are effectively granted a 100% percentage waiver of the CSOS levies.

(b) Any person or category of persons whose monthly net household (gross income less PAYE) income is below R5 500 are entitled to a 100% waiver of application and adjudication fees.

6.1.2 The following group of persons have been identified as category of person who qualifies for 100% of waiver of fee and levies:

6.1.2.1 Any person receiving the SASSA grant;

6.1.2.2 Any person residing within scheme for retired persons, who is in Frail Care;

6.1.2.3 Any person residing within scheme for retired persons, who is in Assisted Living / Mid Care Living.

6.1.3 It is not necessary for the category of persons listed in 6.1.1 and 6.1.3, to apply for waiver to CSOS.

6.1.4 The Schemes Executive Committee must keep copies of the unit's owners' SASSA cards on a file. For those individuals who are in the Frail Care or Assisted Living / Mid Care Living, a list must be developed approved by the Schemes Executive Committee of such persons. For the owners who receive less than R5 500. 00, a copy of the proof of income must be retained in the file. CSOS reserves the right to Audit the schemes books of account and information relating to the above, to ensure proper implementation of the Directive and the Act.

6.1.5 The Scheme must, when submitting a levy schedule to CSOS, indicate that the unit owner is a SASSA Grant recipient or that the unit owner falls in a category of persons residing within Frail Care or Assisted Living / Mid Care Living, or that a person is receiving an income of less than R5 500.00.

## **7 PROCEDURE FOR APPLYING FOR DISCOUNT OR WAIVER**

7.1 STEP 1: Completing the prescribed waiver form



- (a) Any person who does not qualify in terms of the criteria mentioned in clause 6.1.1 or 6.1.2, above may lodge an application for discount and/or waiver for consideration by CSOS by filling a Form CS3A or CS3B depending on the Applicant.
- (b) The prescribed form is attached to this Directive and can be obtained from the CSOS website or from the Regional Ombud Office.
- (c) Complete the prescribed form in full, clearly indicating the details of the Applicant, the basis for application of discount or waiver, the income and liabilities and proof of the income and liabilities where necessary. If the application for waiver is submitted by the scheme on scheme level, the scheme must submit the Audited Financial Statement for the past three financial years.
- (d) If the application does not contain all the relevant information as indicated in (c), above, the application will not be considered and if the applicant does not furnish the required information within 10 days of request, the application will be regarded as rejected.
- (e) The form must be signed by the Applicant personally and if the Applicant is signing in a representative capacity, submit proof of capacity.

#### 7.2 STEP 2: Submission of application

- (a) The Applicant must submit the application form by email to [waivers@csos.org.za](mailto:waivers@csos.org.za) or hand delivering the application to any of CSOS Regional offices.

#### 7.3 STEP 3. Assessment of application – Means Test

- (a) The Chief Ombud or his delegate has the power to assess and decide whether to grant or refuse the discount or waiver.
- (b) In exercising this power, the Chief Ombud or his delegate will consider the objective of the Act and the personal circumstances of the Applicant, like whether the Applicant is coming from the 'child-headed' household or an indigent.
- (c) The Chief Ombud or his delegate will apply the means test by considering the income, expenditure, assets and liabilities of the Applicant;
- (d) The Chief Ombud or his delegate may verify the information and document submitted in the support of the application to satisfy themselves that the application meets the criteria set in this Directive and the Act.



- (e) The Chief Ombud or his delegate may request the Appellant to submit any additional information where necessary.
- (f) Once the Chief Ombud or his delegate has finalised conducting a means test, he can either grant a waiver or a discount or refuse the application.
- (g) The Chief Ombud or his delegate will communicate the decision whether to grant or refuse the application by providing the Applicant with the confirmation of discount or waiver or a refusal letter.
- (h) Where the application has not been granted the Chief Ombud or his delegate will furnish the Applicant with the written reasons for the refusal
- (i) The Chief Ombud or his delegate will provide a copy of the confirmation of discount or waiver to the Community Scheme Executive Committee where necessary;

## **8 GROUNDS FOR REFUSAL**

The Application for discount or waiver may be refused or withdrawn under the following circumstances: -

- (a) If the application does not meet the criteria set in the Act;
- (b) The applicant is not Indigent;
- (c) The applicant has the financial means to pay the levies or fees;
- (d) If the Applicant is not physically residing within the Republic of South Africa.

## **9 WITHDRAWAL OR TERMINATION OF WAIVER**

The discount or waiver will be terminated under the following circumstances:

- (a) In case of fraud;
- (b) The financial situation of the Applicant changes;
- (c) If an Applicant Files Vexatious or frivolous application;
- (d) Whether the Applicant abuses the Dispute Resolution process.

## **10 REMEDIES**

Any Applicant who is not satisfied with the decision of the Chief Ombud or his delegate for the refusal, withdrawal or termination of either discount or waiver, may lodge a review application in the High Court, in terms of the provisions of the Promotion of Administrative Justice Act 2000, (Act No. 3 of 2000)





**11 CONFIDENTIALITY AND PRIVACY**

11.1 CSOS employees have a legal obligation to keep all confidential and personal information of the Applicant confidential.

11.2 Any CSOS employee who discloses the information to any third party may be subject to appropriate disciplinary procedures as per CSOS Disciplinary Code and Procedure or any appropriate remedy available to CSOS by law. The provision of this clause will not apply where the disclosure is as a result of a Court Order, authorised by the Applicant or the disclosure is made to the Minister.

**12 UPDATE AND REVIEW OF THE DIRECTIVE**

This Practice Directive will be reviewed as and when there is change in legislation. This Practice Directive will be published on the CSOS website after any amendment.

**13 DATE OF COMMENCEMENT**

This Practice Directive 3 of 2017, will commence on date of signature hereof and will remain effective until amended, substituted, withdrawn or repealed.

- END -

