



CIRCULAR ON AMENDMENT OF RULES IN TERMS OF THE STSMA

Revision history

This section records the change history of this document

Revision #	Date of Release	Author (s)	Summary of Changes
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Approvals

The undersigned have approved the release of version 3 of CSOS' Practice Directive on the Amendment to Circular on Lodgment of Sectional Titles Schemes Rules in terms of the STSMA

Name	Designation	Signature	Date
Ms. Ndivhuo Rabuli	Acting Chief Ombud		01 August 2019

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CIRCULAR

No: 1

2019

SECTIONAL TITLES SCHEMES MANAGEMENT ACT, 2011 (ACT 8 OF 2011)

CIRCULAR ON THE AMENDMENT OF RULES IN TERMS OF THE STSMA

1. DEFINITION

In this Circular, any word or expression to which a meaning has been assigned by the STSMA and Regulations under the STSMA shall bear the same meaning assigned to it in the STSMA or Regulations made in terms of the STSMA, and unless the context indicates otherwise —

Term	Definition
“Act”	means the Community Schemes Ombud Service Act (2011) Act No 11 of 2011 and includes any Regulations made in terms of the Act;
“Circular”	Means a Notice issued in terms of the Sectional Titles Schemes Management Act;
“CSOS”	means the Community Schemes Ombud Service;
“Ombud”	means the Chief Ombud and/or regional Ombud appointed in terms of the CSOS Act;
“STSMA”	Means Sectional Titles Schemes Management Act;

2. OBJECTIVES OF THE CIRCULAR

- 2.1 The objective of this Circular is to provide operational guidelines and clarity on procedure and content requirements for the lodgment of rules with CSOS for approval.
- 2.2 The Circular is not intended to amend, replace, override or supersede the CSOS Act or STSMA.



3. LEGISLATIVE FRAMEWORK

- 3.1 Community Schemes Ombud Service Act
- 3.2 Competition Act
- 3.3 Constitution of the Republic of South Africa
- 3.4 Housing Development Schemes for Retired Persons Act
- 3.5 Promotion of Administrative Justice Act
- 3.2 Sectional Titles Schemes Management Act
- 3.6 Sectional Titles Act

4. SCOPE OF APPLICATION

- 4.1 The Circular applies to the following persons: -
 - 4.1.1 Community Schemes as defined in CSOS Act;
 - 4.1.2 CSOS.

5. ADMINISTRATIVE PROCEDURE

- 5.1 The community schemes must complete the application for Amendment of Rules Form (Form B)
- 5.2 Form B can be downloaded from the CSOS website at: www.csos.org.za. Alternatively, the form can be obtained from any CSOS offices.
- 5.3 The completed Form can be submitted to CSOS either by post, email or hand delivery to any of CSOS Regional Offices. The email address is sectionaltitles@csos.org.za. Other contact details can be downloaded from the CSOS website.

5.4 The Applicant bears the onus of ensuring that all relevant information has been submitted to 'make their case', in other words, to ensure their application form is correctly completed and meets legislative requirements.

6. APPLICATION REQUIREMENTS

6.1 NEW COMMUNITY SCHEMES

6.1.1 In terms of section 11 of the Sectional Titles Act, when a developer seeks approval from the Registrar of Deeds for the opening of the sectional title register, such approval must be accompanied by a certificate issued in terms of section 10 of the STSMA, approving the rules that will apply to the community scheme.

6.1.2 The application for approval of rules in terms of section 10 must be accompanied by the following documents: -

- a) Prescribed Form B (Notice of Amendment Rules), duly signed by the developer or the conveyancer;
- b) Approved Sectional Plan;
- c) Consolidated Rules; and
- d) Conveyancer Certificate, if annexure 1 and 2 of the STSMA Regulations are adopted, confirming such adoption.

6.2 EXISTING COMMUNITY SCHEMES

6.2.1 An application for approval of the amendment of scheme rules must be accompanied by the following documents:

- a) Prescribed Form B (duly signed by two Trustees and Managing Agent, where applicable);
- b) Consolidated rules;
- c) Minutes of the general meeting wherein the Rules were tabled for approval by the body corporate;

- d) Unanimous resolution for management rules; or
- e) Special resolution in respect of conduct rules.

7. PROCEDURAL REQUIREMENTS

- 7.1. CSOS will conduct quality assurance on the schemes governance documentation received and recommend any amendments, if necessary.
- 7.2 The scheme must inform the body corporate members of the recommended amendment either via email or affixing the amendment rules on the notice boards of the body corporate.
- 7.3 Once the body corporate has made the necessary amendments, the rules can be submitted to CSOS for final quality assurance before approval.

8 QUALITY ASSURANCE

- 8.1 The schemes governance documentation will be quality assured against the provisions of the STSMA and the Regulations, CSOS Act, the Constitution of the Republic of South Africa, Municipal by-laws, Case Law and any other relevant or applicable legislation
- 8.2 Quality Assurance is designed to improve the Constitutionality, legality, just and fairness of the provisions of scheme governance documents. Should any provision of the Governance Document be found to be in conflict with applicable legislation, it will be rendered invalid and must be severed from the document.
- 8.3 The language for the drafting of the documents must be plain and understandable by members. The use of derogatory or discriminatory words must be avoided. In addition to checking the language used, CSOS will also check the spelling errors and the layout of the document.
- 8.4 All community schemes governance documentation must be subjected to a process of annual review at the Annual General Meetings to ensure that the information contained in the document is still correct, accurately reflects the current practices and any changes to legislation
- 8.5 Minor amendments that are not material changes to the documentation can be requested through and made by Executive Governance, Compliance and Enforcement at any time. The minor

amendment can be spelling or numbering error. These amendments do not require any approval by the Body Corporate.

9. LEGISLATIVE PROVISIONS

- 9.1 Section 21 of the STSMA states that the rules prescribed under the Sectional Titles Act (Act No 95 of 1986, which has been amended by the STSMA) must continue to apply to new and existing schemes until the Minister of Human Settlements has made regulations prescribing management rules and conduct rules (which are now in place terms of the STSMA and Regulations).
- 9.3 The implication of section 21 is that old Prescribed Management Rules (Annexure 8 and 9) have been repealed and replaced by Annexure 1 and 2 of the STSMA Regulations 2016. However, any additions, substitution, amendments made to the old Annexure 8 and 9 will continue to apply until amended, substituted, added, amended or repealed in terms of section 10(2) of the STSMA. It must be noted that the additions, substitution, and amendments continue to apply, they must not be contrary to the provisions of the STA and Annexure 1 and 2 of the STSMA Regulations.
- 9.4 Section 10(2) of the STSMA states that the management rules can be substituted, added, amended or repealed by the developer or by unanimous resolution of the body corporate. The conduct rules can be substituted, added, amended or repealed by the developer or special resolution of the body corporate.
- 9.5 The commencement of the substitution, addition, amendment, repeal of the rules comes into effect after the approval by the Chief Ombud (i.e. on the date of the issuing of a certificate as contemplated in section 10(5)(c) of the STSMA.
- 9.6 The substitution, addition, amendment or repeal of the rules must be reconciled with the provisions of the prescribed management and conduct rules, STSMA, the Constitution of the Republic of South Africa, the Act, any other applicable legislations and relevant By Laws. The substitution, addition, amendment or repeal of the rules will not be approved by the Chief Ombud, if the Chief Ombud believes it is not reasonable and appropriate for the scheme.
- 9.7 The CSOS will examine the proposed substitution, addition, amendment or repeal. In the event that, the proposed substitution, addition, amendment or repeal is unreasonable, inappropriate

or contravenes other legislations, CSOS will recommend corrections and refer the rules back to the scheme for implementation.

9.8 In the event that the substitution, addition, amendment or repeal is reasonable, appropriate and complies with all legislations or the scheme has effected corrections recommended by CSOS, CSOS will issue the approval certificate in terms of section 10(5)(c) of the STSMA.

9.9 The schemes are required to collect or make arrangements to collect their approval certificates from CSOS Head Office, 63 Wierda Road East, Wierda Valley, 1st Floor Building A, Sandton, Johannesburg, 2196 or as indicated from time to time.

10 AMENDMENT OF THE SECTIONAL TITLES ACT (ACT NO 95 OF 1986)

10.1 The Sectional Title Act (act No 95 of 1986) (STA) has been amended in terms of section 20 of the STSMA. The implications of section 20 of the STSMA is that certain provisions of the STA have either been amended or repealed. The extent of the amendment is published as a schedule under the STSMA. Consequently, sections of the STA dealing with the rules have been repealed and CSOS will not approve rules still referring to the STA provisions that have been repealed.

10.2 Annexure 8 and 9 of the STA have also been repealed and replaced by Annexure 1 and 2 of the Regulations published in terms of the STSMA.

11 UNDESIRABLE RULES

To ensure uniform application of the rules and compliance with all the regulatory requirement, CSOS has identified the following as undesirable rules and are relevant for quality assurance purposes, the list is attached to this Circular as an Annexure.

12. REQUEST FOR ACCESS

12.1 Application for Access

12.1.1 A request for access must be made in Form CS Z1 to CSOS and be forwarded electronically, by post or hand delivery to the physical address.

- 12.1.2 The request must contain sufficient particulars to enable CSOS to identify, the documentation requested, the identity of the requester and the scheme to which the record pertains.
- 12.1.3 The requester must indicate the address, e-mail where the information should be forwarded once the request is approved.
- 12.1.4 In making a decision whether access to the documentation should be provided, CSOS will take into account the provision of Promotion to Access to Information Act, 2000 and the Protection of Personal Information Act, 2005, in determining the confidentiality of the information requested.

12.2 PAYMENT OF ACCESS FEE

- 12.2.1 The Documentation requested will only be released upon proof of receipt that the requester has paid the access fee.
- 12.2.2 The prescribed fee of R8, 00 per copy will be charged for any request to access the documentation.
- 12.2.3 CSOS will provide the requester with the total amount to be paid and all payment must be made by electronic transfer into CSOS Bank Account as indicated from time to time.

13. REVIEW OF THE CIRCULAR

- 13.1 This Circular will be reviewed annually or as and when there is change in legislation or if a court decision amends or vary any of the provision contained herein.
- 13.2 The amended Circular will be published on the CSOS website.

14 REPEAL OF THE CIRCULAR

Circular 1 of 2018 is hereby repealed and replaced by this Circular.

15 COMMENCEMENT OF THE CIRCULAR

This Circular will commence on date of signature hereof and will remain in force until amended, substituted, withdrawn or repealed.

- END

ANNEXURE "A"

Below is the list of provisions of rules that must be severed from the community schemes rules and are regarded as non-compliant. This list is not exhaustive and include all prohibitions contained in the STSMA

1. Prohibition on slaughtering of animals for ritual purposes;
2. Disconnection of electricity or essential services for non-payment of levies;
3. Imposition of penalties without following due process;
4. Issuing of penalties equal or more than double the applicable monthly levy;
5. Termination of lease agreement by or at the instance of Trustees or eviction of tenants;
6. Use of specific, accredited or registered service providers;
7. Referral of disputes to Private Arbitration;
8. Interest rates that are in contravention of the National Credit Act, 2005 and its Regulations;
9. Any discriminatory rules against any person, particularly, domestic workers.