



# THE CSOS AS A FORUM OF FIRST INSTANCE IN COMMUNITY SCHEME DISPUTES

Presented by:

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# What is *THE CSOS*?

- ❑ A National Public Entity established in terms of the CSOS Act, No. 9 of 2011, being an entity of the Department of Human Settlements, Water and Sanitation.
- ❑ It has the key function of regulating the conduct of parties within community schemes;
- ❑ It is governed by a Board of Directors who is appointed by the Minister.

## ***THE CSOS MANDATE IS: . . .***

- **To regulate, monitor and quality assure scheme governance documentation;**
- **To provide training for conciliators, adjudicators and other employees of the CSOS;**
- **To take custody of, preserve and provide public access electronically or by other means to scheme governance documentation;**
- **To develop and provide a dispute resolution service;**
- **To provide stakeholder training, consumer education and awareness for property owners, occupiers and other stakeholders**
- **To ensure that the organisation is managed in an efficient and sustainable manner.**

## WHO can declare a dispute at the CSOS?

- ❑ **“dispute”** means a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly;

**AND**

- ❑ **“community scheme”** means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional titles development scheme, a share block company, a home or property owner’s association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing co- South African Co-operatives Act, 2005 (Act No. 14 of 2005) and **“scheme”** has the same meaning

# What are the Grounds of Relief that you may seek?

## **NB: THESE ARE LIMITED TO THE GROUNDS AS SET OUT IN SECTION 39 OF THE CSOS ACT !**

*\* But section 39(7)(b) makes provision for very limited grounds that are not set out in the CSOS Act. \**

- **Section 39 divides the grounds of relief into 7 categories:**

- FINANCIAL
- BEHAVIOURAL
- SCHEME GOVERNANCE
- MEETINGS
- MANAGEMENT SERVICES
- WORKS PERTAINING TO PRIVATE AND COMMON AREAS
- GENERAL AND OTHER ISSUES

**... And these categories are divided into further sub-categories . . . .**

# IF YOU HAVE A DISPUTE WITH YOUR COMMUNITY SCHEME, CAN YOU APPROACH THE COURT, OR MUST YOU GO TO THE CSOS FIRST?

*Coral Island Body Corporate v Hoge* ) (22991/2017) [2019] ZAWCHC 58; 2019 (5) SA 158 (WCC) (23 May 2019)



## **Facts:**

- Case arose because the Applicant had made minor alterations to her section;
- She failed to obtain the Trustees permission (*which the rules required*), and some of the piping was visible in the underground pipe and was white plastic;
- The Trustees preferred copper piping;
- There was also the issue of the Applicant's garage, which formed part of her section, and which she had changed the use of, which the Trustees maintained was contrary to section 13(1)(g) of the STSMA.

## **THE COURT HELD THAT:**

## *Which is also the crux of the matter . . .*

“It requires little insight to appreciate that those recommendable policy considerations would be liable to be undermined if the courts were indiscriminately to entertain and dispose of matters that should have been brought under the Ombud Act”



**NEXT CASE:**

# Heathrow Property Holdings NO 33 CC & Other v Manhattan Place Body Corporate & Others ((7235/2017) 2022 (1) SA 211 (WCC) (1 JUNE 2021)

## Facts:

In this case the owners of units in a Body Corporate approached the High Court in the Western Cape as a forum of first instance challenging a Conduct Rule of a Body Corporate, which they deemed unfair, relating to the imposition of fines.

## Decision

Relying on the Coral Island judgment, and other SCA and Constitutional Court judgments, the Court held that: *“where disputes pertaining to community schemes such as sectional title schemes fall within the ambit and purview of the CSOS Act, **they are in the first instance to be referred to the Ombud in accordance with the conciliative and adjudicatory processes established by the Act**, and a Court is not only entitled to decline to entertain such matters as a forum of first instance, but may, in fact, be obliged to do so, save in exceptional circumstances, . . . Convenience will not constitute an exceptional circumstance.”*

**My Emphasis**

# Wingate Body Corporate v Pamba and Another (33185/2021) [2022]

## ZAGPPHC 46 (21 January 2022)

### Facts:

The Body Corporate sought access to the Respondent's carport area for plumbing service providers to replace aged water pipes running underneath the carport due to burst water pipes, but the Respondents denied the Body Corporate access. Additionally, the Body Corporate Insurers threatened repudiation of the scheme's insurance claims. The Body Corporate applied to Court to stop the Respondents from interfering in the business operations of the BC and interfering in its contractual relationship with its contractors.

The Respondents took the point that the relief sought by the body corporate fell within the purview and ambit of orders the Community Schemes Ombud Services ('CSOS'), whose adjudicators are statutorily empowered to make decisions in disputes concerning the administration of a sectional title development scheme. They contended that the body corporate ought to have approached the CSOS as the primary forum and that the failure to do so rendered its approach to the court premature and was accordingly fatal to the proceedings.

### Decision:

The body corporate was established as provided for in the ('the STSMA'). Section 3(1)(o) of the STSMA makes it mandatory for a body corporate to be registered with the CSOS. The CSOS, in turn, prescribes the rules, regulations and procedures for the regulation, management, administration, use and enjoyment of sections and the common property. The body corporate was consequently mandatorily subject to the rules, regulations and procedures prescribed in the Community Schemes Ombud Services Act 9 of 2011 ('the CSOS Act') and the STSMA



## THE ADVANTAGES OF APPROACHING THE CSOS IF YOU HAVE A DISPUTE:

- ❑ *There is no cost involved;*
- ❑ *There is no need for legal representation (unless the parties, as well as the Adjudicator agrees to legal representation!);*
- ❑ *The process is inquisitorial rather than adversarial;*
- ❑ *The conciliators and adjudicators are legally qualified and experienced;*
- ❑ *The process IS expeditious.*

# RIGHT OF APPEAL!

- If an Applicant, scheme or affected person to the application is dissatisfied with an Adjudicator's order, he/she can appeal the order to the High Court.
- The appeal can only be on a question of law and not on a question of fact.
- The appeal has to be lodged within **30 days after the date of delivery of the adjudicator's order.**
- The appeal can be defended, and the person who defends the appeal can apply to the High Court to stay the operation of the order appealed. Staying the operation of the order means an initial ruling by a court to stop or suspend the proceedings.
- The process of appeal is governed by Rule 49 of the Uniform Rules of the High Court and Chapter 7: Civil Appeals New Procedure (Pages 30-32) of the Practice Manual of the Gauteng Local Division of the High Court of South Africa (October 2018).

*THANK YOU and*  
*HAVE A RESTFUL*  
*WEEKEND!*

