

# CSOS TRAINING

## Presented by:

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CSOS
Community Schemes Ombud Service

*Affordable Reliable Justice*


SMOKE WEED
EVERYDAY

# CASE LAW

- ***G Prince v Minister of Justice and Constitutional Development & Others case number: CCT108/17***
  - *In the case of an **adult**, the substance is **cannabis** and he or she uses it or is in possession thereof in private for his or her **personal consumption** in private or in a **private place**.*

- **Definitions as per the CSOS Act:**
  - **Private area** means any area in a community scheme set aside for private occupation or ownership, excluding any common area **(EUA)**



# WHAT DOES THE STSM ACT & PMR SAY?

## ❑ STSM ACT

**Duties of owners**

**13**. (1) An owner **must—**

***(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.

# USE OF SECTION AND COMMON PROPERTY

- **PMR**

**30(b)The body corporate must take all reasonable steps** to ensure that a member or any other occupier of a section or exclusive use area does not—

I. use a section or exclusive use area so as to cause a nuisance,

*II.* *(c)* contravene the provisions of any —

III. (i) law or by-law relating to the use of a section or an exclusive use area;

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# Behavior of occupiers and visitors in sections and CP

## ❑PMR

- **7(3)** The owner or occupier of a section must take reasonable steps to ensure that the owner or occupier's visitors **do not behave in a way** likely to interfere with the **peaceful enjoyment** of another section or another person's peaceful enjoyment of the common property.
- (4)The owner or occupier of a section is obliged to **comply with these conduct rules**.

# SMOKING IT UP IN YOUR UNIT

- Conduct Rules may be amended by the members of the Scheme to include the provision of dagga;
- You may **ONLY** use dagga in your section;
- You may **ONLY** grow dagga for your own personal use within your section;
- You may **NOT** cause a nuisance or interfere with anyone else whilst you are using dagga in your section (you might have to close your windows and doors when smoking)
- You may **NOT** use dagga on the common property;


APPEAL

# TO APPEAL OR NOT TO APPEAL…

***Stenersen Tulleken Administrators cc v Linton Park BC, CSOS Adjudicator & CSOS (amicus curiae) case number: A3034/2018***

- **Two factors had to be determined:**

1. Which category of appeals s 57 of the CSOS Act falls into;
2. Which process should be followed when launching such an appeal;

# APPEAL CONSIDERATION

- The appeal court is limited in only considering whether the adjudicator:

1. Applied the correct law;
2. Interpreted the correct law;
3. Properly applied the Law to the facts;

The conclusion drawn on the evidence **CANNOT** be reconsidered for appeal;

# APPEAL CONSIDERATION

- CSOS (amicus curiae) raised a concern relating to the **costly expense** of ensuring that all adjudication hearings are recorded so that they may be transcribed for the purpose of forming part of the appeal record.

- The court agreed with CSOS and as a result CSOS no longer has to provide a record of the proceedings **(transcript);**

# APPEAL AS PER CSOS ACT

- The court is limited to the record and the adjudicators order and reasons. The court will basically only determine whether the decision was **right or wrong** on the material it has before it;

# WHEN TO LODGE AN APPEAL?

- May lodge an **appeal** in the High Court within **30 days**;
- The appeal should be brought by notice of motion supported by affidavit(s), which should be served on the respondent parties by the sheriff;
- Both the Adjudicator and the CSOS should be cited as a respondent;
- The CSOS will serve a **Notice to Abide** and the Record of Proceedings on all the parties;
- If the, the adjudicator's order has been registered at the Court, the enforcement notice will be removed from the courts records;

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WHA-EVA - I'LL DO WHAT I WANT!

# SHORT TERM LETTING IS IT REASONABLE?

## Section 25(1) Constitution:

- May not infringe on a person's property rights, **HOWEVER** there may be limitations on the property rights.

Think about:

1. Security (number of people going in and out)
2. Noise
3. Activity
4. Using shared or common facilities;

# SHORT TERM LETTING

- Short term letting is not defined in the STSM Act;
- Weigh-up individual owners rights against Scheme as a whole;
- May amend rules to benefit all owners;
- Conduct Rules **MAY** not prescribe who may reside in unit, **HOWEVER** may prescribe the period of occupation;
- Airbnb is commercial and in contravention of conduct rules;
- When buying into a Scheme there are RULES and it may be amended by the majority;

# CASE LAW IN JHB

- ***The Body Corporate of the Paddock v SA Nicholl, case number: JHB 29534/18***

- The applicant (BC) sought a final interdict from the respondent (owner) from leasing out her unit shorter than the prescribed **6 months** as per the Conduct Rules, for commercial use / resort facilities or a bed and breakfast and to provide a lease agreement to the trustees between herself and her future tenants;
- Judgment **in favour of BC** and final interdict granted that she must stop leasing out her unit on a short term basis and provide a copy of the lease agreement;

# CASE LAW IN CAPE TOWN

- ***Wianelle Briers and Davit Mowbry v White Sands HOA 50/WC/17***

- HOA Rules stated that unit may not be let out for a period shorter than **3 months**, however respondent said that they are not running a business, as letting out a property does not constitute a business, **HOWEVER** the Court says it is in fact a business;
- Court should not interfere with the majority of members in deciding on Rules, **UNLESS** it is illegal or unfair and resolution will not be practical;

# TOURISM ACT

- Currently only the City of Cape Town has By Laws pertaining to bed and breakfast establishments;

- **Short term home rentals will now be legislated under the Tourism Act** – who will oversee the regulation of the Airbnb platform and will specify thresholds on the **number of nights** guests can stay, or even **how much can be earned**, there will be giving oversight regarding **zoning** and Airbnb location;

- This **amendment has been occasioned by concerns** of the Hotel and Bed & Breakfast industries, whose business has been severely affected by the impressive growth of the short term rental platforms;

- In respect of Sectional Title, schemes will have to align their rules accordingly once the **Regulations in the Tourism Act are promulgated**;


IF YOU OBEY
ALL THE RULES,
YOU MISS
ALL THE FUN
KATHERINE HEPBURN

# PRESCRIBED MANAGEMENT RULE 25

## ❑ PMR

- **25(5)** The body corporate **must not** debit a member's account with any amount that is not a contribution or a charge levied in terms of the Act or these rules without the member's consent or the authority of a judgment or order by a judge, adjudicator or arbitrator.

- If there is NO penalty & offences clause in the Rules you may not fine the member!

# THE PENALTY FOR LIVING IN A COMMUNITY SCHEME!

| FIRST TRANSGRESSION NOTICE | SECOND TRANSGRESSION NOTICE |
|---|---|
| In writing to member or occupier | In writing to member or occupier |
| Explain transgression (offence) | Explain transgression (offence) – relates to same offence as first offence |
| Advise to stop | Advise to stop |
| Give timeframe | Give timeframe |
| Member or occupier may dispute offence | Member or occupier may dispute offence |
| Meet with trustees | Meet with trustees |
| No fine may be imposed | Fine may be imposed |

# FINES

- You **MAY NOT** impose a fine without following the steps above;
- The fine **SHALL NOT** be equal to or double to the monthly levy;
- Each and every member or occupier has the **RIGHT** to be heard;
- It is undesirable for the trustees to **DECIDE** on the rand value of the fine;

# INTERNAL DISPUTE RESOLUTION MECHANISM

- Conduct Rules should refer to an **internal dispute resolution mechanism** for transgressions;
- The meeting should ideally be held **in person** by the alleged transgressor and all the trustees;
- There must be a **time limit** set for when the meeting will be convened;
- **Minutes** must be kept of this meeting;
- If the matter cannot be resolved internally, the CSOS will be the next stop;
- Please amend Rules not to reflect that a private arbitration can be held.

# CSOS FROM 2015 - 2019

- Registered Community Schemes 27 577
- Dispute Resolution Applications 12 220
- Finalised Conciliations 2 679
- Finalised Adjudications 2 200

(Other matters finalized - withdrawals, non-jurisdiction rejections, Non-submission of particulars or settled by parties)

- BC Rules quality assured 3 819
- Compliance certificates issued 2 187
- **Staff Compliment**
- Permanent 99
- Temps 9
- Interns 6

# THANK YOU

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