CSOS PRESENTATION RULES AND THE CONSTITUTION OF SOUTH AFRICA

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Community Schemes Ombud Service



CSOS MANDATE



CSOS LEGISLATIVE MANDATE

SECTION 4 OF CSOS ACT

- Develop and provide an **alternative dispute resolution service** for community schemes that is cost effective.
- Provide **training & general education** on rights and obligations in community schemes- conciliators, adjudicators, trustees, owners, occupiers. Managing agents and any other person the CSOS deem necessary.
- Take over and **quality control**, provide public access to all sectional titles and other community scheme governance documentation such as **HOA –not prescriptive though….**
- Promote and monitor **good governance** of community schemes.

WHAT IS A COMMUNITY SCHEME?



WHAT TYPE OF SCHEMES FALLS WITHIN CSOS MANDATE?

- In terms of Section 1 of CSOS Act, the term “community scheme” refers to any scheme or arrangement where there is shared use of and responsibility for parts of land and buildings, including but not limited to:
  - Sectional titles development schemes
  - Share block companies
  - Home or property owners' associations
  - Housing schemes for retired persons
  - Housing co-operatives
- **REMEMBER: ALL schemes MUST be registered with the CSOS!!**

Undesirable Rules often found in Community Schemes Rules



Is my rules within my scheme in line with the Constitution of RSA?

- Our Constitution is woven through the very fabric of our daily lives, and this is so clearly seen in the Rules of Community Schemes all around the country!
- It is inevitable though, that some schemes will try to register Rules that do not pass Constitutional muster, and at the CSOS, we still see this from time to time.
- The presentation aims to provide you, our reader, with a clear guideline of what is undesirable, non-compliant and UN-constitutional. Obviously, this list is not exhaustive.
- Please note that these rules apply to ALL community schemes.

DOMESTIC STAFF

‘’Domestic staff members are not allowed to receive visitors, not allowed to talk to one another on common property or walk around the community scheme without a name tag or pass, or in the instance that directors may refuse a domestic worker entry to the common property”.

Is this rule fair?

NO!

Section 23 of the Constitution of the Republic of South Africa states that ‘’everyone has the right to FAIR labour practices’…

- **LEGISLATION: These rules are clearly discriminatory and contrary to the Constitution of the Republic of South Africa.**

SLAUGHTERING OF ANIMALS

- **RULE: The slaughtering of animals for cultural or religious purposes are prohibited.**

Is this rule fair?

No!!

Section 31 of the Bill of Rights states that anyone can practice their religious or cultural believe and Community Schemes are NOT excluded when doing so!

LEGISLATION: This type of rule cannot be prohibited in terms of the Constitution of the Republic of South Africa. Conditions for slaughter may, however, there is conditions imposed that MUST be adhered to!!

Conditions….

- At least two (2) weeks written notice of the intended religious or cultural event requiring such ritual slaughter shall be given to the trustees for approval
- The date and time of the proposed slaughtering
- The type of animal to be slaughtered
- The name and qualification of the person registered by the relevant authority to perform the religious or cultural slaughtering

Conditions continue…

- Confirmation that the animal will be brought onto the premises immediately prior to the ritual or cultural slaughtering, and that all remains of the animal will be removed immediately from the premises after the act of ritual or cultural slaughtering.
- A notice from the local authority must accompany the notice confirming that all by-laws with regards to the ritual or cultural slaughter have been/will be complied with.
- A certificate from the Society for the Prevention of Cruelty towards Animals (SPCA) must accompany the above notice confirming that an official from the SPCA will be present at the proposed event to ensure that the animal to be slaughtered will not endure unnecessary pain and suffering during such slaughter.
- Notice must be given to all adjacent units of the date and time of the proposed slaughter and proof of the receipt of such notice by the owner/tenant responsible for the unit must be timeously submitted to the trustees.
- Failure to comply with the requirements set out above will entitle the Homeowners Association to prevent the act of ritual or cultural slaughtering from taking place on the premises or penalising the owner with a fine (important to add a fine provision in the HOA scheme governance documentation….).

Estate Agents

- **RULE: Only a certain agent may let or sell a unit in the scheme.**

- **LEGISLATION: This rule imposes an unreasonable limitation on the rights of an owner in the scheme to market, sell and let his or her unit through an estate agent of his or her choice, and the CSOS will certainly not register a rule of this nature.**

Rules cont..

The above are but a *few* examples of Rules that will not pass Constitutional muster and will thus be struck out by the CSOS and sent back to the Executive Committee for the Rules to be amended.

The important questions to ask yourself before submitting draft Rules to CSOS for registration are the following:

- **- is the proposed rule reasonable?**
- **- does it apply equally to all owners and occupiers?**
- **- does it unreasonably discriminate against persons or classes of persons?**
- **- does it have a legitimate purpose?**

Should the proposed rule meet the aforesaid criterion, it *should* pass Constitutional muster.

VALUE ADDED SERVICE



Quality Assuring of all scheme governance documentation

As a value-added service to our HOA, Life Rights, Share blocks and Housing Cooperatives communities the CSOS offers a FREE quality assuring of all HOA documentation whether it is an NPC or a Common Law Association.

Simply submit the following documentation

- ❑ **Form B1 (especially for HOA)**
- ❑ **Rules (Articles of Association, MOI or Constitution)**
- ❑ **Resolution (signed by Directors)**
- ❑ **Minutes of the Meeting (Signed by Directors)**

Submit to: hoagovernance@csos.org.za / governance@csos.org.za

It will be quality assured within 30 days!

Providing Template MOI

- The CSOS will provide NPC upon request with a template MOI and an information leaflet on the provisions of the Companies Act applicable to NPC HOA.

- The CSOS provides training, education and awareness on all aspects of the Companies Act and CSOS Legislation.

This is all free of charge!

NB! COMPLIANCE AND ENFORCEMENT

- A UNANIMOUS RESOLUTION is required to amend management rules of a ST.
- A SPECIAL RESOLUTION is required to amend the conduct rules of a ST.
- The board of trustees must send the approved rules by the members to the CSOS within 10 days after a meeting, this is after the resolution has been passed.
- RULES are not enforceable if the CSOS did not issue a section 10 compliance certificate – if not, only the PMR and PCR will apply!
- IF it has not been lodged at the Deeds Office – then it's not enforceable! Its law!!
- Please ensure that your community scheme is registered with the CSOS!! It is the law!!
- PAY YOUR LEVIES!!!!

THANK YOU

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