Introducing the CSOS Dispute Resolution Module



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CSOS
Community Schemes Ombud Service

Affordable Reliable Justice

LEGISLATIVE PROVISIONS



1. WHO IS CSOS?

- A **National Public Entity** established in terms of the CSOS Act;
- It has a key function of regulating the conduct of parties within community schemes;
- An institution of the National Department of Human Settlements;
- It is governed by a Board of Directors who is appointed by the Minister;

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2. 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;
- Promote and monitor **good governance** of community schemes;

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3. CSOS PRACTISE DIRECTIVES

- Payment of CSOS Levies & Fees
- Waiver of CSOS Levies & Fees
- Scheme Governance Documentation (Rules)
- Alternative Dispute Resolution
- Special & Unanimous Resolution

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4. DUTIES OF THE SCHEME UNDER THE CSOS ACT & REG

- Duty to Register – **ALL SCHEMES** – Sec 59(a)(iii) & Reg 18(8);
- Duty to lodge Scheme Governance Documentation - **BC** – Reg 16;
- Duty to pay a Levy and a Fee – Levy Calculator – Reg 11;
- Obligation to Maintain the Fidelity Insurance – Reg 15;
- Obligation to lodge Annual Return (Audited Financial Statement) – Sec 59(a) CSOS Act ;



5. WHAT IS A COMMUNITY SCHEME?

- 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**

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6. TYPES OF COMMUNITY SCHEMES

1. **Sectional titles development schemes**

   It can be described as apartment blocks, townhouses, flats as well as retirement villages. This part is called a section, ST will **ALWAYS** have shared facilities such as, stairways, pool, roofs, lifts, foyers and perhaps gardens, driveways etc. The shared facilities are called the common property. Each owner co-owns the common property in relation to their PQ. The section together with the common property is called a unit, which is registered into your name in the deeds office. ST can be residential, commercial or retail or a combination of this.

2. **Share block companies**

   It is a conventional piece of land developed and registered in the name of the company i.e. Boulders Share Block Company. A person who "buys" into a share block is called a share holder and receives a share certificate and enters into a use agreement and there is a shared use of the facilities. A person who receives a share certificate does **not own** any parts of the buildings or infrastructure the company owns it.

7. TYPES OF COMMUNITY SCHEMES

3. Home or property owners associations

It can be described as security estates, game farms, golf estates and cluster where there is separate individual properties. There is two types of HOA i.e. NPC and Common law associations. There is currently **no legislation specifically** governing HOA and the governance documentation of the HOA is seen as their legislation.

The Companies Act No 71 of 2008 will apply to NPC pertaining to conducting meetings and the fiduciary duties of directors. Common law associations will mostly be governed by their constitution. An example of a POA is Century City in Cape Town where there is an umbrella association and then you will find the MHOA.

8. TYPES OF COMMUNITY SCHEMES

4. **Housing schemes for retired persons**

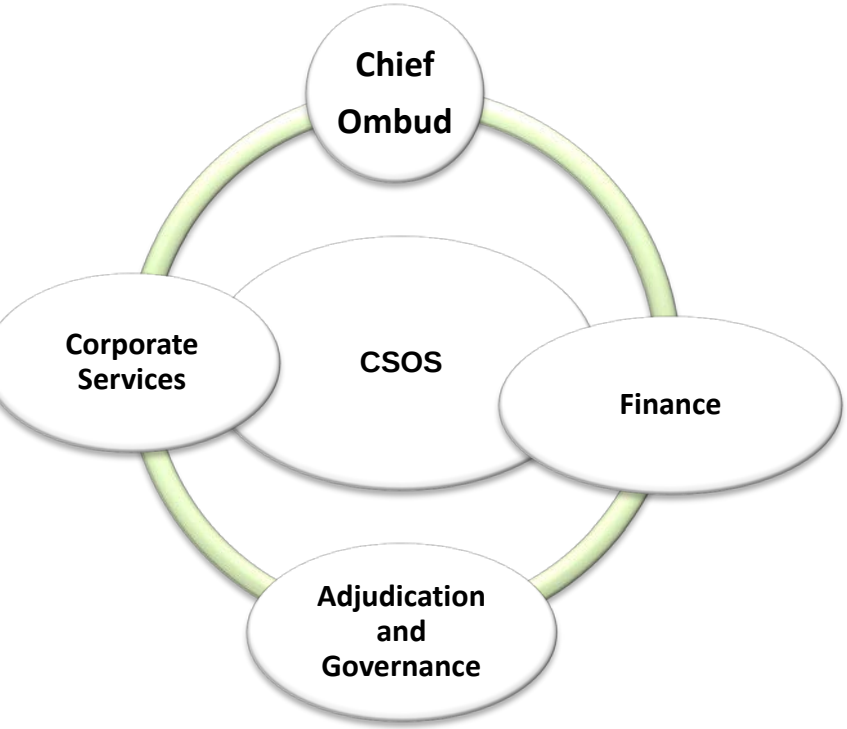
   Usually people over the age of 50 will reside in such schemes. It can be **ANY** type of community scheme including life rights. The legislation is the Housing Development Schemes for Retired Persons Act No 65 of 1988 protects the interest of retired persons.

5. **Housing co-operatives**

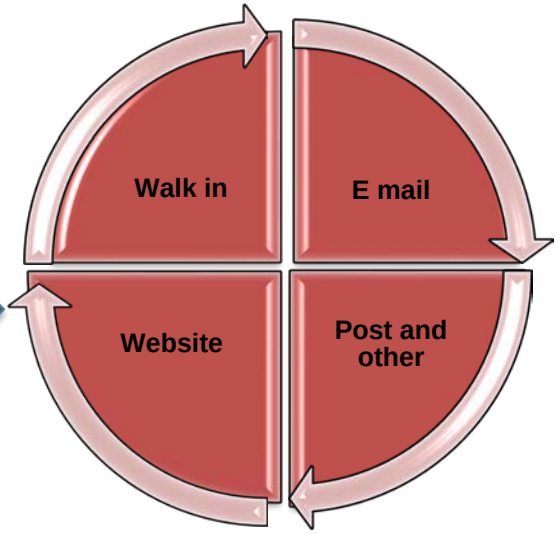
   It is an entity of usually 5 or more people who all live together and work the land and sell the proceeds of the land. An example would be Kleinfontein in Pretoria. This entity will provide housing and land to the members. The members do not own the land. It is governed by the Co-operatives Act 14 of 2005.

OPERATIONAL STRUCTURE

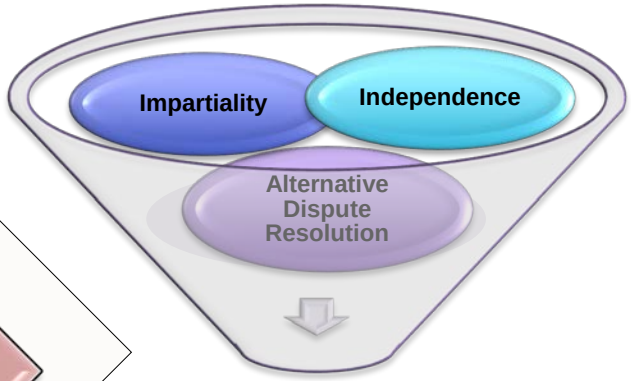




CSOS Act



A and G Unit Operations

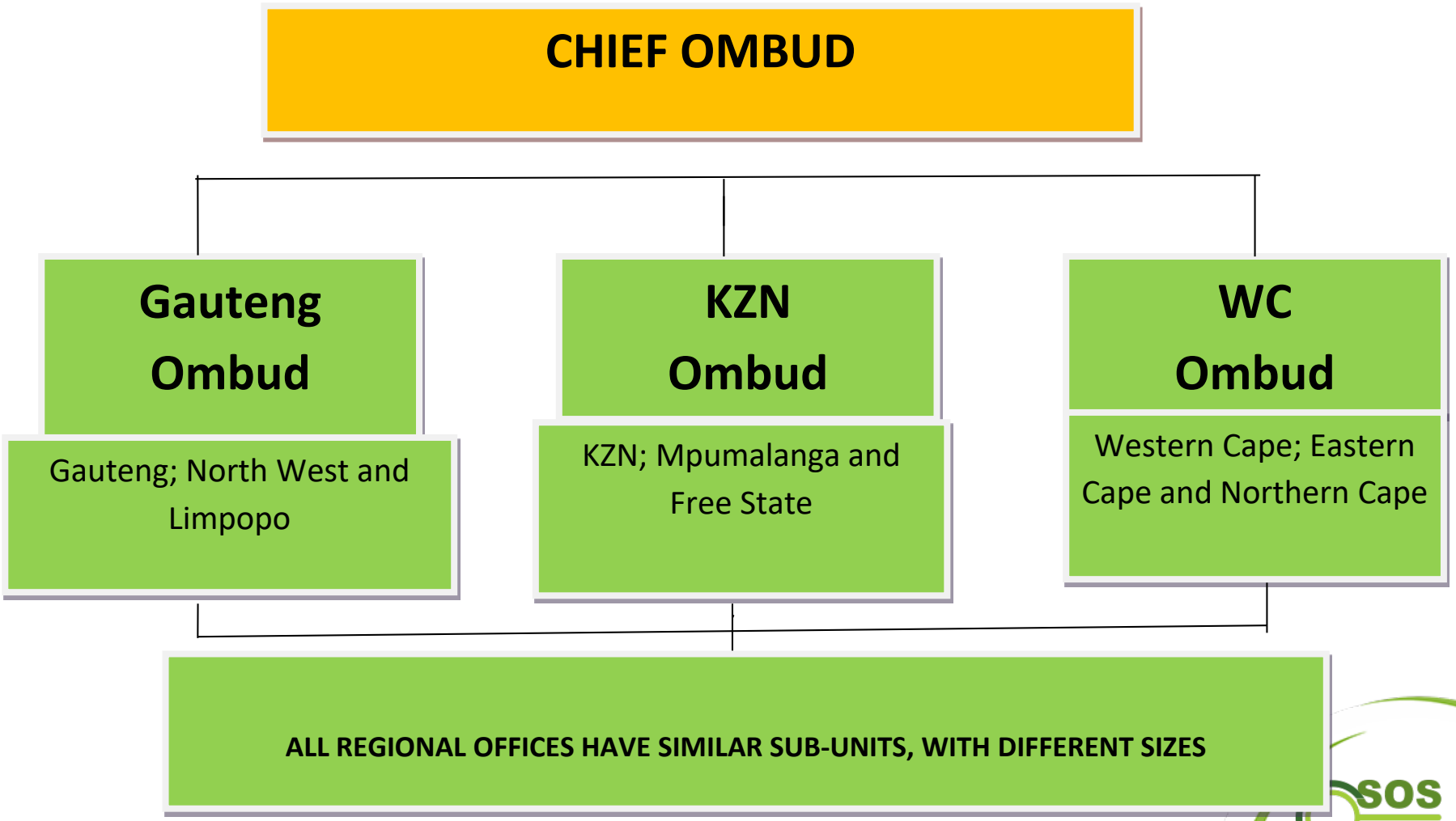


Take On → Assessment → Conciliation → Investigation and Adjudication

Provincial Offices

Operational Efficiency

9. REGIONAL OPERATIONS



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DISPUTE RESOLUTION
CSOS ACT



10. APPLICATION FOR DISPUTE RESOLUTION

❑ ELIGIBLE APPLICANTS

- **Section 38** outlines the application process.
- Any person who is a party or affected by a "dispute" may approach CSOS.
- A "dispute" is defined as:-

  - a dispute that relates to the administration of a community scheme

  -between persons who have a material interest in that scheme and

  -where at least one of the disputing parties is the:-

  (i) association that is managing the scheme;

  (ii) an occupier; or

  (iii) owner **(not a potential buyer or when property is sold)**

  (iv) bondholder



11. WHO MAY LODGE A DISPUTE?

- **Any person that is materially affected or a party to a dispute. A person will include:**

1. An association;
2. Members;
3. Occupiers;
4. Developers;
5. Partnership;
6. Trust;
7. Corporation;
8. Private or public entity;
9. **OR** such persons representative, successors and assignees; **(not a deceased estate)**

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12. APPLICATION FOR DISPUTE RESOLUTION

❑ LODGING A COMPLAINT

- The **first step** of the dispute resolution process includes the receipt, registration and acknowledgement of a new application;
- Applications may be lodged in person at a regional CSOS office, online through the CSOS website, by email or post. The form can be **downloaded** from the CSOS website at www.csos.org.za/applicationform. Alternatively, the form can be **obtained from any CSOS offices;**
- 1. GP, LIM, NW – gp-complaints@csos.org.za;
- 2. KZN, FS, MP – kzn-complaints@csos.org.za;
- 3. WC, NC, EC – wc-complaints@csos.org.za;
- The Application for Dispute Resolution Form must be completed in full and all relevant information pertaining to the dispute must be recorded accurately to eliminate any ambiguity **– form only available in English;**
- The application form must be **signed by the applicant**, unless signed by an applicant's authorised representative. CSOS will communicate directly with an applicant unless there is authorised representative;

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13. APPLICATION FOR DISPUTE RESOLUTION

- If an application is **not clear and legible**, whether typed or handwritten, the Applicant will be requested to submit a revised application that is clear and legible;

1. If the applicant has **different disputes** against multiple respondents, generally separate applications will be required (each accompanied by the prescribed fee);
2. If the application is from more than one applicant, and the dispute relates to **similar or related matters**, then the application can be submitted in the name of one applicant and the other applicants can be identified and listed in an annexure attached to the application form; (one application fee will be payable);
3. If the **same relief is claimed against multiple respondents** on several issues or disputes, one application can be submitted in one form. Each dispute and the relief claimed in respect of each dispute must be recorded in separate annexures and the annexures must be numbered; (one application fee will be payable);

14. APPLICATION FOR DISPUTE RESOLUTION

- Where the Applicant is a community scheme, a **copy of a resolution** by the Executive Committee of the scheme must be attached to the application authorising the lodgement of the application;

- If the relief sought relates to an order **declaring any decision** of an association or an executive committee to be void, and **60 (sixty) days** has lapsed since the decision was taken, the applicant must together with the application for dispute resolution apply for condonation for **late submission** of an application to the Ombud. The application for **condonation** must include reasons for the failure to submit the application within the prescribed time frame;

- All emails received by CSOS for dispute resolution will receive an **automated email** acknowledging receipt. The CSOS staff will not personally acknowledge the receipt of all correspondence to the CSOS;



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15. ADMINISTRATION OF APPLICATION

❑ REGISTRATION AND ASSESSMENT OF DISPUTE

- As soon as an application is received by the CSOS, a new file will be opened and allocated a **unique file reference number**;

❑ EXHAUST INTERNAL REMEDIES – Section 40(c);

❑ GROUNDS FOR REJECTION: Section 42

- Matter has already been dealt with Court, private arbitration, another forum;
- Applicant fails to provide further information/documents when requested to do so by CSOS;



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16. ADMINISTRATION OF APPLICATION

- **PAYMENT OF PRESCRIBED FEE**

- The prescribed fee **must be paid** before the application can be referred to the Conciliator;
- If the prescribed **fee for both Conciliation and Adjudication is not paid within 5 (five) working days**, the Ombud may reject the application;
- The prescribed fee for making an application is **not refundable**, regardless of whether the application is later withdrawn by the applicant; rejected by the Ombud; or unsuccessful;
- CSOS does **not receive cash onsite** and payment must be made via Electronic Funds Transfer into the CSOS bank account;
- The Chief Ombud may **waive the applicant from paying** the prescribed fee;



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17. ADMINISTRATION OF APPLICATION

- **Notice to Affected parties**
  - The application form and all attachments to the form will be served on the respondent or the association;

- **Timelines:**
  - **14 days** by which Respondents should respond by;
  - **10 days** for applicant to inspect submissions of respondent and respond by;
  - Extension will **ONLY** be granted in exceptional circumstances;

  - An applicant can request to **amend or withdraw** their application or provide additional information prior to the referral to conciliation;

18. TYPES OF DISPUTES

❑ SECTION 39 OF THE CSOS ACT- PRAYERS FOR RELIEF

CSOS is mandated to deal with the following category of disputes that arise in community schemes:

- **Financial issues** – e.g. incorrect or unreasonable levies
- **Behavioral issues** – e.g. noise, parking issues
- **Governance issues** – e.g. rules and regulations
- **Meetings** – in respect of the conduct of AGM's
- **Management services** - code of managing agents
- **Private areas and common areas** - e.g. repairs and maintenance
- **General and other Issues** – e.g. lack of access to information



19. TYPES OF DISPUTES

- **Financial issues -**
- The insurance amount is incorrect or not sufficient and that the amount needs to be increased or to take action under insurance policy;
- **Contributions has been incorrectly levied or is unreasonable and to adjust that contribution or for it to be paid in different way;**
- The association must audit the accounts for a certain period;
- **To pay or repay a contribution to the association;**
- That the tenant should pay in his or her rent directly into the associations accounts by way of rental attachment order;

- **Adjudication Orders:**
- Pay levies, levy financier companies, take out insurance, tenant must no longer pay owner but BC;

20. TYPES OF DISPUTES

- **Behavioral issues -**
  - That a particular behavior is constituting a **nuisance**; i.e. a person or an animal and that that person or his or her animal must refrain from being a nuisance;
  - A particular animal is not permitted in the community scheme and it must be removed;
  - That there is an **illegal structure** or articles attached to parts of the private or common property and it must be removed;

- **Adjudication Orders:**
  - Snoring, intimacy, frogs, snakes, birds, loud music, removal of illegally erected structure;

21. TYPES OF DISPUTES

- **Governance issues –**
  - to let the scheme record new provision as approved by association;
  - To let the scheme approve and record new provision;
  - A scheme provision is invalid and must be removed;
  - That a scheme provision is unreasonable and must be removed or amended;

- **Adjudication Orders:**
  - Specific rule is not constitutional and must be removed, or conduct rule must be amended for fines;

22. TYPES OF DISPUTES

- **Meetings issues -**
- Association to call a general meeting;
- That the meeting was not validly convened or void or invalid;
- That a resolution failed at the general meeting due to unreasonable opposition under the circumstances;
- That a resolution passed at a meeting was void as it unreasonable interferes with a persons or occupiers rights;

- **Adjudication Orders:**
- Declaring meeting in/valid, must call an AGM;

23. TYPES OF DISPUTES

- **Management issues -**
  - That a managing agent MUST comply with the terms and conditions as set out in their contract with the scheme;
  - That the scheme does or does not have the right to terminate the managing agents appointment;

- **Adjudication Orders:**
  - Managing agents contract is cancelled invalidly;

24. TYPES OF DISPUTES

- **Private and common area issues -**
- **That the association MUST carry out repairs and works;**
- That a member or a party MUST carry out repairs and works;
- That the association must carry out repairs and works to the common property for the safety of owners;
- That the associations refusal for a party to carry out works to common property is unreasonable;
- That the association must acquire or not acquire property;
- That a member requires exclusive use rights subject to payment of an amount;
- That a member must accept obligations to a defined part of a common area;

- **Adjudication Order:**
- Repair damp / leaks; security; parking bays; EUA via Rules; pool;

25. TYPES OF DISPUTES

- **General & Other issues –**
- Member or occupier has wrongfully denied access to scheme; URGENT!!!;
- Member or occupier is refused documents;

- **Adjudication Order:**
- Access; obtain financials and or governance documentation;

DISPUTE RESOLUTION UNITS



26. DISPUTE RESOLUTION UNITS

- In take
- Preliminary
- Conciliators
- Compliance investigators
- Adjudicators

27. CONCILIATION OF DISPUTES

- **Referral to Conciliation**
- The CSOS will **notify** the parties in writing, by e-mail or by registered post of the time and date of a conciliation session. The Conciliator will give **14 (fourteen) working days' notice of Conciliation;**
- Parties may request a more suitable time but should be aware that a re-scheduled session will depend on the availability of the conciliator and the other parties to the dispute;
- Conciliation may take up to 3 hours and parties are requested to set aside this time for a possible resolution.
- Parties must represent themselves;
- The conciliator is to facilitate discussions and assist parties to resolve issues that they are unable to resolve themselves;

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28. CONCILIATION OF DISPUTES

- Conciliators **do not provide legal advice** or make a decision about who is right or who is wrong;
- Parties may submit relevant documents, plans or photographs that might assist in the resolving of dispute;
- A party cannot produce any additional information or evidence;
- The conciliator makes the final decision as to who is permitted to attend the conciliation session;
- The community scheme may be represented at the conciliation hearing by the managing agent, the trustee, the Executive Managing Agent, the Administrator;
- *If* the parties agree to sign the **settlement agreeme**nt, the settlement agreement may be made an adjudication order;



29. CONCILIATION OF DISPUTES

- If one of the parties **does not attend the conciliation** the conciliator will regard the matter as not resolved and will issue a non-resolution certificate;
- The conciliator will attempt to communicate with the absent party telephonically, by sms and/or e-mail to establish the reason for a party's absence and may, if deemed necessary, *under exceptional circumstances such as illness or death, set* a new date for conciliation;
- If the party that has failed to attend the conciliation is the Applicant in the proceedings, and there are no exceptional circumstances (illness or death) or the circumstances are not adequate to warrant a postponement, **then the matter shall be closed;**



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30. MATTERS REFERRED DIRECTLY TO ADJUDICATION

- **URGENCY** of certain matters;
- Return of BC records
- No functioning board of trustees / board of directors
- Involves numerous applicants and respondents
- If it relates to governance issues, meetings, termination of managing agent's contract

31. REFERRAL TO ADJUDICATION

- *If* the dispute has not been resolved through conciliation, the matter may be referred to adjudication;
- The matter will not be attended to until the prescribed fee has been paid;
- The Adjudicator has power to **conduct investigations** as envisaged in section 50 and section 51 of the CSOS Act;
- A notice of set down of the adjudication will be sent to the parties by email or registered post, by using the email and/or postal address provided by the parties during the conciliation process - ***Attendance Register;***



32. REFERRAL TO ADJUDICATION

- An **SMS** may be sent to the parties using the cell number provided during the conciliation process;
- The electronic delivery notification or **"read receipt"** *or delivery notification*, confirmation that the email was sent to the dedicated email of a party will on production thereof be conclusive evidence that the notice was served on the party or proof ore registered post;
- Should the notice of set down land in a party's **Junkmail box**, it is the responsibility of that party to ensure that all boxes are checked;

33. RULES FOR ADJUDICATION

- The adjudicator **shall not give advice** to the parties or their representatives concerning any aspect of the Agreement;
- The adjudicator is to be **impartial and independent**;
- The adjudicator **may not be called as a witness by either party** to give evidence;
- The adjudicator **shall enjoy the same privileges and immunities from liability as a Judge of the High Court – Section 37 CSOS Act;**



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34. REFERRAL TO ADJUDICATION

- **A Party applying for the Adjudication Order to be varied or set aside can do so in the following circumstances: -**
- If a Party was ill or incapacitated and can produce a **medical certificate** issued by a medical practitioner;
- If the Adjudication Order contains an **omission** that will not materially alter the Adjudication Order;
- **If both Parties** consent to the setting aside of the Adjudication Order;
- If there is proof that the Notice of Set Down was **not served** properly or in time or not delivered properly to the other Party;

35. RULES OF ADJUDICATION

The **Adjudicator may**:

- If both parties or the applicant are not present for the hearing, then the Adjudicator may **dismiss** the application;
- If the respondent is not present for the hearing then the Adjudicator may determine the matter in the **absence of the respondent**, pursuant to the Applicant leading evidence in respect of the matter;
- Approve requests for **postponement** by either of the parties;

36. LEGAL REPRESENTATION AND ORDERS

- *As a rule*, parties are **not entitled to legal representation**. However, the Adjudicator has a discretion to allow legal representation;
- The adjudicator's written adjudication order shall be handed down within **14 (fourteen) working days;**
- The parties shall give immediate effect to any order issued by the adjudicator and are binding on the parties;
- The parties to a dispute resolution application are generally required to meet their own costs,
- If an adjudicator dismisses an application for adjudication because it is frivolous, vexatious, misconceived or without substance, the adjudicator may in terms of section 53(2) (a) order costs against the applicant in favour of the respondent. **The costs awarded must not be more than R5000,00;**

37. URGENT MATTERS

- The Applicant can submit an application for the matter to be heard on an **urgent basis;**
- The applicant must demonstrate that there is a current, genuine emergency requiring an urgent adjudication order. The urgency cannot be used to circumvent the normal conciliation and adjudication processes;
- The grounds of the application should include details of whether:
  - there is an immediate and serious **health or safety risk**;
  - deprivation of essential services, not limited to **disconnection** of water and electricity;
  - **access** to the scheme by unit owners or occupiers;



38. IMPLEMENTATION OF ADJUDICATION ORDERS

The following must be noted pertaining to the enforcement of Orders, namely:

- Adjudication Orders have an implementation due date;
- CSOS will provide a copy of the **Enforcement Notice** which must be presented to the Clerk of the Court or the Registrar with the summary of the Ruling; and copy of the Adjudication Order;
- Scheme/ member will approach the Clerk of the Court or the Registrar within the Scheme's Magisterial Jurisdiction alternatively the High Court;
- Once the Clerk of the Court or the Registrar has issued the Order, then the normal court process follow for the Execution of the Order via the Sheriff;

39. CSOS APPEAL PROCESS

❑When to lodge an Appeal

- ❑ May lodge an **appeal** in the High Court on the question of law 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;
- ❑ If the, the adjudicator's order has been registered as an order of court in terms of s 56 of the Act, notice of the proceedings must be lodged with the registrar or clerk of the court concerned; for the removing of the registration from the court's records;



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40. OMBUD ROLE IN ADJUDICATION ORDERS

- **Once a final order has been made CSOS has no further legislative role;**
- Adjudicators are independent decision-makers and not subject to direction of the Ombud in making their orders;
- The Ombud has no capacity to review an adjudicator's investigation, findings or order, or to direct an adjudicator to re-open or re-investigate an application;
- **UNLESS** the order is varied as provided in the Practise Directive;
- Parties seeking legal advice about the terms should seek legal advice;

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THANK YOU

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