

ADJUDICATION OF DISPUTES



Dispute resolution at CSOS

- One of the mandates of CSOS is providing speedy and cost effective dispute resolution between members residing in a community scheme or shared residential area;
- Before you can make an application to CSOS for dispute resolution, there must be a dispute as defined in terms of the CSOS Act;



The Dispute Application

- "**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;
- **38. Applications**
 - (1) Any person may make an application if such person is a party to or affected materially by a dispute.
 - (2) An application must be-
 - (a) made in the prescribed manner and as may be required by practice directives;
 - (b) lodged with an ombud; and
 - (c) accompanied by the prescribed application fee **(IT IS NOW FREE)**
 - (3) The application must include statements setting out-
 - (a) the relief sought by the applicant, which relief must be within the scope of one or more of the prayers for the relief contemplated in section 39;
 - (b) the name and address of each person the applicant considers to be affected materially by the application; and
 - (c) the grounds on which the relief is sought.



CSOS Jurisdiction

- The dispute must be related to a community scheme;
- The Applicant must have a material interest in the community scheme.
- A statement of case must be included.
- The Applicant must have exhausted internal remedies.
- The relief sought must fall within section 39 the CSOS Act;



Jurisdiction Cont...

- ❑ CSOS can only act within the confines of enabling legislation.
- ❑ Section 42 sets out the grounds for rejecting an application.
- ❑ CSOS lacks jurisdiction where the Applicant no longer has a material interest in the scheme.
- ❑ If the dispute is already before another the courts or another forum.
- ❑ The Applicant has failed to provide further information when requested to do so; or failed to show that they have exhausted all internal remedies.
- ❑ The Court in ***Evergreen Investment (Pty) Ltd v Messerschmidt 2019 (3) SA 481 (GP)*** quoting from the ***Road Accident Appeal Tribunal v Gouws 2018 (3) SA 413 (SCA)*** stated that:

“Repositories of power can only exercise such power as had been conferred upon them by law. This a description of legality.”



4. PRAYERS FOR RELIEF

- Financial issues;
- Behavioural issues;
- Governance issues;
- Meeting related issues;
- Management services issues;
- Work pertaining to private and common areas;
- General and other issues
 - access to information
 - or as determined by the Chief Ombud



5. FINANCIAL ISSUES

- ❑ Financial issues relates to - contributions towards levies, insurance, incorrect or unreasonable levies, audits and rental attachment.
- ❑ A community scheme cannot perform its functions and duties in the absence of funds from unit owners.
- ❑ In the **Body Corporate of Central Park v Makhalemele Mosa A30664/2021 [6 December 2021]**
- ❑ The essence of the case relates to levies. The BC successfully appealed against a judgement and order of the Magistrates Court to dismiss an application for default judgement.
- ❑ The Court stated that: “The right to claim payment for levies or other contributions vests on passing of a resolution by the trustees and become due and payable by an owner of the unit in the sectional title scheme in each consecutive month.”
- ❑ Homeowners must please try and pay their levies and/or make an arrangement to pay.



6. BEHAVIOURAL ISSUES

- (a) Behavior/default
- (b) Animal nuisance
- (c) Animal kept contrary to scheme governance documentation
- (d) Removal of all articles placed or attached to common/private areas



6. GOVERNANCE & MEETINGS

- (a) New scheme governance = approve
- (b) Approve and record new scheme governance provision
- (c) Scheme governance provision invalid – approve & record a new scheme governance provision to remove invalid provision
- (d) Scheme governance provision unreasonable as it infringes with the rights of the owner;



7. MANAGEMENT SERVICES

- ❑ **Management services** – requiring managing agents to comply with the terms of the contract or a confirmation of the termination of the managing agent contract.
- ❑ **Prescribed Management Rule 27(7)** — “If the body corporate terminates its contract with an employee or a managing agent, that person **must within 10 days deliver to the body corporate all records** referred to in this rule that are in the person's possession or under the person's control.”
- ❑ **Prescribed Management Rule (PMR) 28(6)** — “A management agreement for any managing agent must comply with the requirements as set out in the regulations.”



8. PRIVATE & COMMON AREAS

- (a) Body corporate/Association to do repairs & maintenance
- (b) Person to do repairs/reimburse a person for funds spent in repairs
- (c) Body corporate/Association does/does not do works in common area
- (d) Body corporate/Association to reject proposal on improvements to common areas as unreasonable, requiring association to agree or ratify proposal
- (e) Body corporate/Association to/not to dispose of specified property
- (f) Exclusive Use Rights (EUR)
- (g) Owners or occupiers to accept certain obligations in respect of a defined part of a common area



S39(7): General & Other issues

- (a) Access to information or documentation
- (b) Order by the Chief Ombud



Application Form

- The application must include a statement of case and must be signed;
- The relief sought must fall within section 39 the CSOS Act;
- The details of respondent must be included in the application; **please provide the correct email addresses and telephone numbers**
- If the application is brought by the managing agent, it must include a **resolution authorizing the managing agent to act on behalf the scheme**;
- Provide the grounds on which the relief is sought;




Application form cont...

- 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.
- The application form and any attachments may either be typed or handwritten. If typed, the font must be clear. Handwritten applications must be clear and legible.
- 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.
- The application form must be signed by the applicant, unless the application form is signed by an applicant's authorised representative, which must be indicated in the form.
- Where an applicant is represented, full particulars and contact details of the representative must be disclosed in the application form, including the capacity in which the representative acts (i.e. trustee, managing agent, etc.).



Application form- Page 1



CSOS
Community Schemes
Ombud Service
(Responsible for the entire country)

Completed forms must be emailed to
Gauteng, Limpopo and North West - gp-complaints@csos.org.za
KwaZulu-Natal, Free State and Mpumalanga - kn-complaints@csos.org.za
Western Cape, Eastern Cape and Northern Cape - wo-complaints@csos.org.za

APPLICATION FOR DISPUTE RESOLUTION FORM
Kindly complete the form in a legible manner and all pages must be completed.

DETAILS OF PERSON MAKING THIS APPLICATION:

Please fill in Block Letters

Full Name:

Surname:

ID Number:

Tel No: (home/work): Cell Phone:

Email:

Race: Age: Gender:

ADDRESS:

Name of Scheme: Unit No:

Street Name:

Suburb:

City:

Province: Postal Code:

POSTAL ADDRESS OF APPLICANT (IF DIFFERENT FROM ABOVE):

PO Box No: Suburb:

City:

Province: Postal Code:

THE APPLICATION PERTAINS TO WHICH TYPE OF COMMUNITY SCHEME LIVING:

Tick Applicable ✓

<input type="checkbox"/> Sectional Title Development	<input type="checkbox"/> Homeowners Association
<input type="checkbox"/> Housing Scheme for Retired Persons	<input type="checkbox"/> Share Block Company
<input type="checkbox"/> Housing Cooperative	<input type="checkbox"/> Other (please specify) <input type="text"/>

PERSON / ASSOCIATION MAKING THE APPLICATION (APPLICANT):

Tick Applicable ✓

<input type="checkbox"/> Owner	<input type="checkbox"/> Occupier	<input type="checkbox"/> Management Agent
<input type="checkbox"/> Board of Directors	<input type="checkbox"/> Sectional Title Trustees	<input type="checkbox"/> Management Association for Retired Persons
<input type="checkbox"/> Other (please specify) <input type="text"/>		

HAS LEGAL PROCEEDINGS BEEN INSTITUTED I.E. SUMMONS, ADMINISTRATION ORDER HEREIN:

Yes No Not sure

DETAILS OF PERSON(S) / COMMUNITY SCHEME YOU ARE MAKING THE APPLICATION AGAINST:

(If more than one person, please state details under additional information)

Details:

Address:

Tel No: (home/work):

Email:

THE CSOS APPLICATION FORM - For Dispute Resolution

Page 1 of 3

DETAILS OF APPLICATION/ALLEGED BREACH:

Please legibly set out all the facts which you consider to have bearing on this application, including dates, places and persons involved.

Blank area for providing details of the application or alleged breach.

EXHAUSTION OF INTERNAL REMEDIES:

What has been done to try to resolve this application? Please describe what you have done, who you have talked to and what they offered to do.

Blank area for describing internal remedies attempted.

RELIEF SOUGHT:

What remedy are you requesting? How do you want the problem to be solved?

Blank area for stating the relief sought.

Steps following lodging of an application

- 1. Application will be recorded and you will receive a unique reference number;
- 2. Assessment by CMO
- 3. Section 43 notice
- 4. Section 44 notice
- 5. Referral to Conciliation
- 6. Final written submissions
- 7. Adjudication

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The End

Thank you

