

Homeowners' Associations (HOA's)



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!!**

WHAT IS A HOMEOWNERS' ASSOCIATION?

- ❑ The HOA is a shared living scheme just as a Body Corporate is, however, the legislation, rules and governing body is different from a Body Corporate.
- ❑ It may comprise of apartments, individual houses, townhouses, etc. In a Homeowners Association, you own the building and the land it's built on, known as an erf.
- ❑ In a Homeowners Association, the association is formed to manage and maintain common roads, communal areas and general security.
- ❑ It is a self-governing organization.
- ❑ Homeowners collectively pay levies to maintain the HOA. The levy you pay to the Homeowners Association is used to cover the management and maintenance costs incurred.
- ❑ Run by a board of directors who are generally unpaid homeowners who are elected to oversees the HOA's management.

WHAT LEGISLATION IS APPLICABLE?

- ❑ HOA' s are **not** governed by the STSMA & the Regulations.
- ❑ If the HOA is established as a Common Law Association, then the HOA's Constitution & Rules apply.
- ❑ If the HOA is established as a NPC, its Memorandum of Incorporation (MOI) and the Companies Act (2008 & 2011) applies.
- ❑ The duties of a Homeowners Association will depend on whether it is governed in terms of a Memorandum of Incorporation or a Constitution
- ❑ But they are governed by the CSOSA & the Regulations.

FLEXIBILITY OF THE COMPANY ACT 2008?

Section 66

(2) The board of a company must comprise—

(a) in the case of a private company, or a personal liability company, at least one director; or

(b) in the case of a public company, or a non-profit company, at least three directors.

(3) A company's Memorandum of Incorporation may specify a higher number in substitution for the minimum number of directors required by subsection (2).

FLEXIBILITY CONTINUED...

- **Meeting quorum and adjournment**
- 64. (1) Subject to subsections (2) to (8)—
 - (a) a shareholders meeting may not begin until sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised in respect of at least one matter to be decided at the meeting; and
 - (b) a matter to be decided at the meeting may not begin to be considered unless sufficient persons are present at the meeting to exercise, in aggregate, at least 25% of all of the voting rights that are entitled to be exercised on that matter at the time the matter is called on the agenda.
- (2) A company's Memorandum of Incorporation may specify a lower or higher percentage in place of the 25% required in either or both of subsection (1)(a) or (b).

WHAT IS A MIXED-USE DEVELOPMENT?

- ❑ homeowners associations; retail and commercial outlets as well as housing developments for retired persons.
- ❑ Examples:
 - Melrose Arch in Gauteng
 - The Rubik in Cape Town
 - The Pearls in Umhlanga

WHAT ARE THE BENEFITS?

- ❑ The benefits of buying in a new mixed-use development appeal to those interested in modern design, energy efficiency, high security, and a quality lifestyle.
- ❑ You can live there, shop there, and work there, no commuting time, not being stuck in traffic and have state of the art security.
- ❑ There can be different types of amenities on offer within a mixed-use development, such as a gym, a health center, restaurants, a supermarket the list can go on and on.

MASTER ASSOCIATION

- ❑ Overarching Managing Body called a Masters Association with MOI and Rules.
- ❑ Subsidiary schemes can be either registered as sectional title or an HOA.
- ❑ The Master Association is responsible for maintenance and repair of the infrastructure and serves all the subsidiary schemes in the development.
- ❑ Subsidiary schemes = cater for common property within its boundary.
- ❑ Master agreement - compliance in general – architectural, landscaping, use.

DAY TO DAY MANAGEMENT

- ❑ Each scheme manages itself, i.e., has a Board of Directors and Trustees.
- ❑ Delegation of management functions.
- ❑ Governance documents of all the schemes must comply with the overarching or master document.
- ❑ Conditions of Title – that the scheme must be a member of the Master Association.

LEVIES?

Subsidiary schemes

- Levy their members to cover their own costs and scheme make their own contributions to the running costs of the overarching body for instance the roads and guardhouse

Regulations on the STSM Point 6 Rules

- (4) If the schedule referred to in section 11(3) b of the Sectional Titles Act contains a condition restricting transfer of a unit without the consent of an association whose constitution stipulates

that-

- (a) All members of the body corporate and of the development scheme of which the unit forms part, must be members of that association and;
- (b) The functions and powers of the body corporate must be assigned to that association; the developer may, when submitting an application for the opening of a sectional title register, substitute any management rule that appears in Annexure 1.

Regulations on the STSM continues...

- (5) If at the commencement of the Act the members of a body corporate are all members of an association whose constitution binds its members to assign the functions and powers of the body corporate to that association, the management rules contained in Annexure 1 do not apply.

Subsidiary Schemes being built in phases

- In phased sectional title schemes: a separate sectional title plan is required for each phase (please note that you only need to register the schemes once with the CSOS!)
- REMEMBER that no new BC comes into existence when built in phases you only require a new plan every time there is a new phase.
- Same for HOA built in phases.

COMMON PROPERTY?

REMEMBER:

- THE Subsidiary schemes are only responsible for the common areas within their developments, but not the common areas outside them.
- Each subsidiary will make decisions on their own affairs and levies must be charged accordingly.
- EACH subsidiary must make contributions to the master association costs for maintenance and repairs outside their respective common areas.

DOWNSIDE?

- ❑ What we often find is that there is quite a lot of cross-subsidization when it comes to these types of developments!
- ❑ **EXAMPLE:** There is a gym in the building and the gym membership is levied onto members' statement of account whether they use the gym or not. Whether you use the gym once a week or year!
- ❑ The same can be said if there is a restaurant on the premises and the owners would also subsidize it – so they would pay R 800.00 per month, whether they like it or not, and that would entitle them to 20% off a meal twice a month, or the likes of.

THANK
YOU

