

CSOS PRESENTATION

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**Unconstitutional Rules often
found in Community
Schemes Rules**



Are my rules within my Community 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.

DOMESTIC STAFF

Case law - Singh and Another v Mount Edgecombe Country Club Estate Management Association

- **The domestic worker rule was challenged within the Estate.**
- This rule restricts the hours of employment of domestic employees and/or restrict the rights of such domestic employees to cross the public road network
- The applicant complains that domestic workers may not walk around freely and that residents are routinely fined for 'misdemeanors'
- According to the rules, domestic workers may only walk through the estate when the bus from the entrance to the homes of their employers is unavailable. If they are found transgressing this rule, homeowners become liable for a fine.
- ❑ In the judgment, the Kwazulu-Natal High Court correctly declared that these so-called "domestic rules" are unreasonable and unlawful.

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.
- ❑ Scheme can however request that only Estate Agents registered with them can conduct business within the estate.

Question: What if the Estate Agent refuses to be registered?.....

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.

Quality Assuring of all scheme governance documentation

All scheme governance documentation must be quality assured by the CSOS!

Section 4: (1) The Service must—

c) regulate, monitor, and control the quality of all sectional titles scheme governance documentation and such other scheme governance documentation

(2) In performing its functions the Service—

(a) must promote good governance of community schemes;

Simply submit the following documentation

- Form B1 (HOA, Share Block Companies, Retirement Villages) OR**
- FORM B (Sectional Titles)**
- Rules (Articles of Association, MOI or Constitution, Management or Conduct Rules)**
- Resolution (signed by Scheme Executives)**
- Minutes of the Meeting (Signed by Scheme Executives / Conveyancer)**

Administrative Process of Submitting Rules to the CSOS

- **Submit to:**
 - hoagovernance@csos.org.za (HOA)
 - governance@csos.org.za (Share Blocks, Retirement Villages)
 - sectionaltitle@csos.org.za (ST)
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- Allocation is done on Mondays to SGO
 - Existing Rules – 30 days
 - New developments – 1 week

REMEMBER: 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.**
- ❑ **CPD: Rules is on our website.**

This is all free of charge!

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CERTIFICATE

SECTIONAL TITLE SCHEMES MANAGEMENT ACT, 2011 (ACT 8 OF 2011)
 CERTIFICATE IN TERMS OF SECTION 10 (5) (c)

For office use:

Scheme Registration Number: CSOS/GovDocs/19/GP/002121

1. I, the undersigned, Boyce Mkhize, in my capacity as the Chief Ombud, acting in terms of section 10 (5) (c), of the Sectional Titles Schemes Management Act, 2011 (Act No 9 of 2011), hereby certify that: -
2. At a meeting held on the 15th of July 2020, the scheme ratified a special resolution approving the amendments of conduct rules.
3. The amendments to the Conduct Rules in terms of section 10(5)(a), of the Sectional Titles Schemes Management Act, 2011 (Act No. 8 of 2011) have been approved.
4. The Conduct Rules are for the regulation and management of the following Community Scheme:

VILLA ROSSA

THANK YOU

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