

# GOVERNANCE AND ENFORCEMENT



# INTRODUCTION

❑ CSOS is the regulatory authority for all community schemes in South Africa, a **Schedule 3A Public Entity** established in terms of the CSOS Act (No.9 of 2011).

❑ Functions: 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

❑ **“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

# REGISTRATION OF A COMMUNITY SCHEMES

- ❑ In terms of Regulation 18(3) of the CSOSA Regulations, all Schemes must be registered with the CSOS **within 30 days after the incorporation of the Scheme OR within 30 days of the coming into effect of the CSOS Regulations on the 7 October 2016**
- ❑ **Classification of schemes:**
  - New Schemes: < 1 year in existence: *(for manual registrations only)*  
[dennis.boshomane@csos.org.za](mailto:dennis.boshomane@csos.org.za)/ [dikeledi.ngoasheng@csos.org.za](mailto:dikeledi.ngoasheng@csos.org.za)/[pamela.baloyi@csos.org.za](mailto:pamela.baloyi@csos.org.za)
  - Existing Schemes: > 1 year in existence: [csosconnect.org.za](http://csosconnect.org.za)
- ❑ CSOS will register the Scheme provided that all the supporting documentation as indicated on the **CS1 form** (registration form)
- ❑ If there is outstanding/ incorrect information, registration application will be referred- back for correction
- ❑ If all the information is correct = six digit reference number + certificate
- ❑ There is no fee to register the Scheme with the CSOS
- ❑ For support email at [info@csos.org.za](mailto:info@csos.org.za) or [support@csosconnect.org.za](mailto:support@csosconnect.org.za) or call 0674117420



# LODGMENT OF RULES WITH CSOS

- ❑ Quality Assurance is designed to ensure that the schemes governance documentation applies fairly and equally to all members of community schemes
- ❑ In terms of section 11 of the Sectional Titles Act, when a developer seeks approval from the Registrar of Deeds for the *opening of sectional title register*, section 10 of the STSM Act approving the Rules is required
- ❑ **Documents required (*new community schemes*):**
  - Prescribed form B (Notice of Amendment of Rules) (Form B1 for other schemes) signed by developer / conveyancer
  - Approved Sectional Plan
  - Consolidated Rules
  - Conveyancer Certificate if Annexure 1& 2 of the STSMA Regulations are adopted, confirming such adoption
- ❑ Body Corporate must lodge with the Chief Ombud *all the proposed substitution, addition, amendment or repeal of existing rules*

# LODGMENT OF RULES WITH CSOS cont...

## Documents required (*existing community schemes*):

- Prescribed form B (Notice of Amendment of Rules) (Form B1 for other schemes) signed by 2 trustees/1 trustee & managing agent
- Signed minutes of the general meeting whereat the rules were tabled for approval by members of body corporate
- Unanimous Resolution – Management Rules
- Special Resolution – Conduct Rules

If there is outstanding information or recommendations to rules , they will be referred-back

If rules are reasonable and appropriate for the scheme, certificates will be issued:

➤ **section 10 certificates**

➤ **Section 4 certificates**

**No certificate will be issued if the scheme is not registered**

Within 7 days after receipt of certificate, BC members must be informed – e-mail/ affixing the rules on notice board

No certificate / no Deeds Office stamp – rules are unenforceable against the members

**For rules to be quality assured they must be submitted to [sectionalttitle@csos.org.za](mailto:sectionalttitle@csos.org.za) not at registration stage of the scheme .**

# SECTION 6(9) OF THE STSMA

- ❑ The Body Corporate or an owner who is unable to obtain a special or unanimous resolution may approach the Chief Ombud for relief.
- ❑ *A Special resolution means a resolution passed by at least 75% calculated both in value and in number of the votes of the members of a body corporate who are represented at a meeting or agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.*
- ❑ *A Unanimous resolution means a resolution passed unanimously by all members of the body corporate at a meeting at which :*
  - (i) At least 80% calculated both in value and in number, of the votes of all the members of a body corporate are present or represented and*
  - (ii) All the members who cast their votes do so in favor of the resolution **or***
- (b) Agreed to in writing by all the members of the body corporate.*
- ❑ No fees is payable for processing the application



# SECTION 6(9) APPLICATIONS: PRACTICE DIRECTIVE

- In terms of clause 8.6 of the practice directive in order for the Chief Ombud to consider a special resolution application, at least >50% of the members who are entitled to vote must have voted for the proposed resolution.
- While clause 8.5 provides that in order for the Chief Ombud to consider a unanimous resolution application, at least >75% of the members who are entitled to vote must have voted in favour of the proposed resolution.
- Application be made within 90 days after failure to obtain the required resolution.
- The proposed resolution must have been tabled before the owners at a meeting or via a round robin.(application to chief ombud should be the last resort)
- The notice period of the meeting should have been complied with
- Quorum requirements should have met (PMR19)
- It is essential to ensure that these minimum thresholds are met before an application is lodged.**

# FURTHER REQUIREMENTS PRIOR TO S6(9) APPLICATIONS

## Documents required (*existing community schemes*):

- Prescribed form ST1 signed by an applicant
  - Notification of the meeting & proof that all members received it (signatures)
  - Minutes of the general meeting – members attended/represented by proxy
  - Confirmation of votes – in favour – in number & in value
  - List of those who voted against with reasons
  - Motivation is support of the resolution
  - Any other supporting documentation
- 21 day notice to members of BC to respond to application and ensure transparency before making a decision – can be extended for 10 days
- Application can be approved OR rejected with reasons



# SECTION 13 (2) STSMA APPLICATIONS

## Documents required (*existing community schemes*):

- Prescribed form ST2 signed by an applicant
- Notification of the meeting & proof that all members received it (signatures)
- Minutes of the general meeting – members attended/represented by proxy
- Confirmation of votes – in favour – in number & in value
- List of those who voted against with reasons
- Motivation in support of the application
- Any other supporting documentation

21 day notice to members of BC to respond to application and ensure transparency before making a decision – can be extended for 10 days

Application can be approved OR rejected with reasons

# LEVIES AND ANNUAL RETURNS

- ❑ In terms of **Section 59 (a) of CSOS Act**, **every** community scheme **must** with effect from the commencement date of this Act, **in each calendar year** and at such times as may be prescribed:
  - ❑ **Pay to CSOS a levy** in an amount calculated as prescribed, *subject to such discounts or waivers* as may be prescribed
  - ❑ In terms of Regulation 11, levies are paid **quarterly**
  - ❑ Levy calculator on CSOS website (*limited to R40 per unit, per month*)
  - ❖ Payment of Levy:
    - EFT
    - ATM deposit
    - Credit card collection
    - Over the counter at the bank
  - ❑ **Reference must always be the CSOS registration number**
  - ❑ Proof of payment to be sent to **levypayment@csos.org.za**
  - ❑ Ensure payment is received within **30 days** of receipt of invoice OR when levy is due and payable to avoid interest ( Reg.13)

# LEVIES AND ANNUAL RETURNS cont...

- ❑ In terms of **Section 59 (b) of CSOS Act** and Regulation 18 (2) (a) **all** community schemes **must** file their annual returns with CSOS within 4 months after the end of community scheme's financial year
  
- ❑ Annual returns are filed in the prescribed form: CS2 form accompanied by:
  - copy of signed annual financial statements
  - Approved levy schedule
  - Approved AGM minutes
  - Approved Resolutions
  - Most recent governance documents(e.g. Constitution, Rules, MOI, Use of Agreement etc)
  
- ❑ If the scheme is found to be compliant, section 59 (b) (1) certificate will be issued
  
- ❑ If the scheme is found to be non- compliant, scheme will be advise to comply



# ENFORCEMENT



# ENFORCEMENT

- ❑ CSOS will work with schemes that are willing to comply but do not have the information to guide them. They will be engaged and provided with the direction required to return to the compliance status.
- ❑ Compliance does not end with **registration**, it continues with the submission of the **annual returns, the quality assurance of schemes governance documentation** and the **payment of the CSOS levies**
- ❑ There is a Practice Directive for compliance and enforcement which aims at:
  - providing information on the **procedures** for compliance and enforcement (*not supersedes the requirements of the CSOS Act*)
  - **maximize schemes' compliance with their duties**
  - Maintaining **"compliance culture"** amongst schemes

# ENFORCEMENT

❑ Matters of non-compliance are received in the following ways:

- **By application** – a member of the body corporate making a formal application, by completing the application form and it through to [Compliance@csos.org.za](mailto:Compliance@csos.org.za)
- **Referral** – any employee of the CSOS from different departments may notify us if any scheme they are dealing with is non-compliant
- **Quality assurance of our database** – registration database
- **Whistleblowing** – it can be anyone or managing agent who lets us know that the scheme is not compliant
- **External organizations**

❑ The CEI will assess and investigate non-compliance against **all** the following:

- Registration of the community scheme – *Reg 18(3)*
- Lodgement of rules - *Section 10*
- Non-payment of CSOS levies – *Reg 11*
- Submission of annual returns – *Sec 59 CSOS Act*
- *Other forms of non-compliances in terms of the legislation*



# ENFORCEMENT CONT...

- ❑ If the CEI finds that the community scheme does not comply:
  - Verification letter gives the scheme executives **7 days** to confirm non-compliance
  - compliance notice gives the scheme executives **30 days** to respond
  - If no response = compliance notice gives the trustees **14 days** to respond
  - If non-compliant but asked guidance = compliance plan in consultation with the scheme
  
- ❑ If non-compliance after 14 day notice = CEI close the matter and hand it over **to Legal department** for enforcement
- ❑ If non-adherence to compliance plan = Notice processes will commence.
  
- ❑ Proportionate enforcement action will be taken on the scheme as per **Section 34 of the CSOS Act:**
  - where a scheme is choosing to intentionally not comply
  - The scheme is aware of the non-compliance but still chooses to not comply

# RELEVANT INBOXES

- ❑ Amendment/ Adoption of rules - [sectionaltitle@csos.org.za](mailto:sectionaltitle@csos.org.za)
- ❑ Section 6 (9) Applications - [sectionaltitle@csos.org.za](mailto:sectionaltitle@csos.org.za)
- ❑ Registrations of Schemes - [csosconnect.org.za](http://csosconnect.org.za) (*for existing schemes only*)
- ❑ Submission of Annual Returns – [annualreturn@csos.org.za](mailto:annualreturn@csos.org.za)
- ❑ Payment of levies- [levypayment@csos.org.za](mailto:levypayment@csos.org.za)
- ❑ Levy queries – [levyqueries@csos.org.za](mailto:levyqueries@csos.org.za)
- ❑ Compliance - [compliance@csos.org.za](mailto:compliance@csos.org.za)
- ❑ General queries - [info@csos.org.za](mailto:info@csos.org.za)

# Thank you

