

APPLICATIONS ITO SEC 13(2) AND SEC 16 OF THE STSMA



Applications to Sec 13(2) of the STSMIA



S13(1)(g) and (2) of the STSMA

- Section 13(1)(g) – *“An owner must, when the purpose for which a section or exclusive use area is intended to be used is shown expressly or by implication on or by any registered sectional plan, not use nor permit such section or exclusive use area to be used for any other purpose: Provided that with the written consent of all owners such section or exclusive use area may be used for that purpose as consented to”.*
- 13 (2) – *“Any owner who is of the opinion that any refusal of consent of another owner in terms of the proviso to subsection (1)(g) is unfairly prejudicial, unjust or inequitable to him or her, may, within six weeks after the date of such refusal, make an application in terms of this subsection to an ombud”.*
 - This remedy is available only to schemes that are subject to the STSMA.
 - The application is made to a regional ombud, not the chief ombud.

Administrative Procedure

- Owners and registered schemes must submit a completed ST2 form annexed to the PD as annexure “D”.
- Managing agents, trustees and / or authorized representatives may also complete applications.
- The form must be submitted to CSOS either online, or hand-delivered to any of the CSOS regional or satellite offices.
- The applicant bears the onus of ensuring that all relevant information has been submitted and the form is correctly completed.
- The information submitted by the applicant shall not be classified as private and confidential, the applicant waives this right.

Application Requirements

- Within six weeks after the date of refusal of consent, and to the ombud (error in the PD, it refers to the Chief Ombud).
- Completed ST2 duly signed by the applicant
- Notification of the meeting and proof that all members received such notification
- Minutes of the general meeting
- Confirmation of votes in favour (in number and in value)
- List of those who voted against, and their reasons
- Motivation in support of the application
- Copy of proposed alteration with detailed and accurate drawing by an architect or draughtsman
- Copy of title deed
- Copy of sectional plan
- Any other supporting documents

Procedure

- SGO will validate the application
- Conduct quality assurance on the supporting documentation and request for further information where necessary
- Applicant to respond within 7 days, if no response is received a reminder will be sent and a further 7 days given. After 14 days of no response, the application will be closed.

Notice to Members of the BC

- Ito Sec 33 of the Constitution and PAJA, all interested and / or affected will be notified and be given an opportunity to be heard before a decision is made by the ombud
- Detailed notice of the nature and purpose of the application is sent to the interested and / or affected parties
- BC to ensure that the notice is circulated and provide proof thereof
- 10 business days to respond by the affected parties, plus a further 5 days extension upon request and good cause shown
- If no response received. SGO will make recommendations to the ombud – matter will be approved or rejected.
- Each application will be assessed on its own merits
- Assessment will not take more than 30 days from the date of receipt of correct information from the applicant.

Decision of the Ombud

- Should an interested or affected party not be satisfied with the Ombud's decision, they may take the matter on review in the HC.

Appointment and Reporting of Administrators to CSOS ito Sec 16 of the STSMA



Appointment and Reporting of Administrators to CSOS

- Applies to appointments to sec 16 of the STSMA
- Does not apply to HOAs or any other schemes not subject to the STSMA

Appointment

- Suitably qualified and independent person appointed to serve as an administrator by the BC
- A BC, a local municipality, a judgment creditor of the BC or any owner or other person having a registered real right in or over a unit may apply to a Magistrate's Court for the appointment of an administrator.
- CSOS may be requested by the court to recommend one from our panel.
- The court still has a discretion to appoint outside of the CSOS panel.

Appointment (Continues)

- Stakeholders may request and choose an administrator from the CSOS panel
- As the regulator of community schemes, CSOS must be notified of the appointment of an administrator and served with the application.
- The MC may appoint an administrator for a fixed period if it finds evidence of serious financial or administrative mismanagement and that there is reasonable probability that, if placed under administration, the BC will be able to meet its obligations and be managed in accordance with the requirements of the STSMA.
- Once the court order has been issued, the administrator has the duty to report to CSOS to sec 16(4) of the STSMA.

Removal and Extension of Appointment

- On application by the administrator or any person or body referred to in above, the Magistrate's Court may remove the administrator from office, replace them, extend their term of office or amend their terms of appointment, and may make an order for the payment of costs.
- CSOS does not have the authority to remove or extend the appointment of an administrator.

Panel of Administrators

- CSOS will establish and maintain a panel of administrators which the court may refer to when considering the appointment of an administrator.
- The administrator must submit quarterly reports to CSOS as directed by the relevant court order.
- To be included on the panel of administrators, a person must submit a formal application on CSOS Connect platform.
- Thorough background checks and verification of qualifications and experience will be done.
- When successful, an applicant will be placed on the panel and sign a Code of Conduct.

Thank you

