

DISPUTE RESOLUTION - URGENT APPLICATIONS



PRACTICE DIRECTIVE: URGENT APPLICATION - INTRODUCTION

- CMOs are the first point of contact for any application.
- The presentation will centre around:
 - (i) Who can lodge an urgent application;*
 - (ii) What constitutes an urgent application;*
 - (ii) What are the turn around times;*
 - (iii) What are the required documents.*



PRACTICE DIRECTIVE: URGENT APPLICATION

Locus standi / Capacity:

- Who can lodge an URGENT APPLICATION at the CSOS?
 - An owner / occupier/ resident.
- Who can an URGENT APPLICATION be lodged against at the CSOS?
 - The association (ie. BC; HOA; S/Block etc) – but not against a Managing Agent, not a Municipality or not another owner/ member. However, there are instances where there is correlation.



CONT...PRACTICE DIRECTIVE: URGENT APPLICATION

- **What documents are required?**
 - **Application form** – clear alleged breach and relevant relief (*i.e. service connection*);
 - **Exhaustion of internal remedies** – written confirmation/ notice of termination or limitation of services; [The fact that the applicant has failed to take appropriate or necessary action to address an issue over time does not necessarily create emergency circumstances].
 - Updated levy statements;
 - Medical report confirming a link between the health risk and the cause of action;
 - Scheme Governance documentation – management and conduct rules; Constitution and MOIs;
 - Third Party or Service provider Contracts;
 - And any other relevant information (i.e. screenshots of WhatsApp messages).



CONT...PRACTICE DIRECTIVE: URGENT APPLICATION

- Grounds for an URGENT APPLICATION i.t.o para 15.151:
 - **Immediate** and serious health or safety risk – e.g. sewerage leakage; black mould; exposure to live electrical cables etc;
 - **Deprivation or restriction** of essential services, not limited to disconnection of water, electricity and/or gas without a court order;
 - **Access** to the scheme/ the unit / the common area by unit owners or occupiers.



CONT...PRACTICE DIRECTIVE: URGENT APPLICATION

- **Procedure on URGENT APPLICATIONS:**
 - An assessment will be done on a basis of urgency and jurisdiction within **24 hours** of CSOS receiving the application by the CMO.
 - If application is urgent, then the section 43 notice will be sent to the respondent.
 - The respondent will be required to reply to the section 43 notice within **24 hours**.
 - Upon receipt of the respondent's reply to the section 43 notice, the same response must be forwarded to the applicant in terms of section 44.



CONT...PRACTICE DIRECTIVE: URGENT APPLICATION

- **CONT...Procedure on URGENT APPLICATIONS:**

- The applicant will be expected to respond to the section 44 notice within **24 hours** - confirming whether he/she wishes to proceed with the adjudication order.
- *NB: The Ombud has a discretion to permit, or limit, or refuse a request for extension to the submission or the response period where such a request of time or extension has not demonstrated acceptable grounds.*

***** It is important to note that where reference is made to the Ombud, it is a delegated authority given to the CMOs*****

- When CMO receives the section 44 confirmation, ie. wishing to proceed with the adjudication (outlining the grounds to proceed), the matter shall be referred to adjudication in terms of section 48 of the CSOS Act.



CONT...PRACTICE DIRECTIVE: URGENT APPLICATION

- **CONT...Procedure on URGENT APPLICATIONS (ADJUDICATION):**
 - The matter will not be allocated for Final Written Submissions, however if the adjudicator wants to execute their section 51 investigative powers, they may.
 - The Adjudicator shall issue an order within **48 hours**.



CONT...PRACTICE DIRECTIVE: URGENT APPLICATION

- **Costs order against the applicant:**

- Generally, the parties to a dispute resolution application are required to meet their own cost.
- However, if an Adjudicator dismisses an application on the grounds that it is **frivolous, vexatious, misconceived or without substance**, the Adjudicator may, in terms of section 53(2)(a) of the CSOS Act, make a cost order against the applicant in favour of the respondent.
- If it is later found that the matter was not urgent, the Adjudicator may issue a cost order against the applicant in favour of the respondent, or any active participant affected materially by the application.
- The costs awarded shall not exceed the sum of R5 000.00 as determined from time to time.



Thank you

