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The CSOS Dispute Resolution Process in a Nutshell

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Introduction

Are you a living in a Sectional Title Scheme, Home Owners Association, Share Block or any other type of Community Living set up? Then you will understand the many advantages of living in a scheme of this nature. These so called 'Community Schemes' are believed to offer security benefits and are becoming the newest phenomenon in South Africa with some schemes even having their own day-cares and shopping centres, taking convenience at home to a whole new level.

However, 'Community Schemes' are not free from challenges. Often home owners living within these communities are plagued with managing conflicting personalities, dealing with disagreements on various shared interests and not to mention the occasional levy dispute, lack of privacy and blatant disregard for the 'Community Schemes' rules.

What gave rise to the development of a Community Schemes Ombud Service?

The Community Schemes Ombud Service (herein "CSOS") is a regulatory body which was developed to assist with and resolve 'Community Scheme' related problems. This dispute resolution forum was established owing to severe pressure being placed on the Department of Rural Development and Land Reform ('the DRDLR'), which body generally dealt with complaints relating to Community Schemes.

The DRDLR's success in dealing with these complaints was short lived as the lack of attention given to these matters slowly began to dismantle the entire operation. There was thus a call for reform and a need for the founding of a dispute resolution body to be established which would adjudicate on 'Community Scheme' related disputes and thus CSOS came into being.



Is CSOS available to me?

According to Chapter One of the Community Schemes Ombud Service Act (herein ‘CSOSA’), it defines Community Scheme as ‘any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to sectional titles development scheme, a share block company, a home or property owner’s association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing co-operative as contemplated in the South African Co-Operatives Act’¹. So, ask yourself, do you happen to fall within one or more of the above mentioned? If so, then rest assured CSOSA applies to you.

What is the function of CSOS?

As previously stated, the rationale behind CSOS was to create a mechanism which could assist with disputes that are ‘Community Scheme’ related. CSOS however, also has a regulatory function, and it acts almost like a ‘watch-dog’ as it assesses the quality of all Community Schemes’ governance documentation, takes custody of, preserves and provides public access (electronically) to Community Scheme governance documentation and offers training for conciliators, adjudicators and other employees of the service.

How does one lodge a dispute?

With regards to lodging a dispute, Section 38 (1) of CSOSA states that ‘any person may make an application if such a person is a party to or affected materially by the dispute in question’. A ‘person’ includes the likes of an association, partnership, trust, corporation, private or public entity and such person’s representatives, successors and assignees. After completing that inquiry, the next step would be to lodge a formal application (“Dispute Resolution Form”) as per Section 38 (2) (a) which is required to be lodged in the prescribed manner as set out in the practice directives, which is thereafter lodged with an ombud and accompanied by payment of the relevant application fee. Applications can be submitted electronically by submitting them via e-mail, hand delivery or alternatively registered post. Each specific jurisdiction has its own e-mail address where applications can be submitted to and such information is readily available on the CSOS website.

It is common practice that people experiencing difficulties in Community Schemes seek the assistance of an experienced legal practitioner who can advise and assist them from the start (application phase) to finish (either conciliation or adjudication) with CSOS disputes. For the layperson dealing with legal disputes, even with a

¹ Community Schemes Ombud Service Act 9 of 2011.



less formal body/forum like CSOS, it can be a challenging experience. Legal practitioners are often better versed in the legislation governing the matter (which would include the CSOS practice directives). It must be noted that even though the process of submitting the dispute and/or responding to the dispute is simplified by the CSOS procedure, you will only “win” at CSOS if you are “right on the law” in the first place. There are also technicalities involved in some aspects of the CSOS process, which include knowing how to frame or set out your relief, because not every dispute can be resolved by CSOS.

The next stage, after the dispute is registered, is to conduct an assessment of the matter at hand to determine the validity of the claim. During this assessment CSOS thoroughly assesses applications which it deems sound and rejects applications which:

- fall outside its express jurisdiction;
- where an applicant fails to exhaust all internal conflict mechanisms first;
- where an applicant fails to furnish additional information upon request from CSOS timeously or within 14 days;
- where the matter is better suited for a different forum (i.e. court or tribunal); and
- where one’s application for waiver of adjudication fees is denied.

If, however the scheme you are living in does not have any internal dispute mechanisms, then in such instance’s applicants are encouraged to approach CSOS directly. Once the validity of your claim is established and verified the application will be set down for Conciliation in terms of Section 47 of CSOSA and notice will be served on the relevant parties to the dispute within 14 working days.

At the Conciliation stage, negotiations take place by way of a hearing or conciliation session. At this phase, all affected persons/entities should attend the hearing to state their case, provided they are permitted in the hearing. The hearing is chaired by a CSOS appointed conciliator and his/her role apart from facilitating the proceedings is to assist disputing parties to reach a settlement or some sort of mutual consensus. Should this be improbable, the conciliator will in such an instance issue a Notice of Non-Resolution and the matter will be referred to Adjudication.

The last and final step in the CSOS process is the Adjudication phase. It is at this phase where additional investigations are conducted prior to any hearing taking place. During these investigations further documentation may be requested or put forward, and this can include the likes of photos, sworn affidavits and even site inspections can be conducted where necessary. Similarly, as in the Conciliation phase, there is a



CSOS appointed adjudicator who will head the proceedings however, he/she will, after careful consideration of the evidence presented, make an order which is binding on all parties. Prior to the hearing, it is imperative that the applicant pay the prescribed fee for the process, as in instances where this is not attended to the referral will not be actioned.

How to enforce CSOS Orders

All orders handed down by CSOS have the same effect as that of a High Court or Magistrates Court order (Section 56 of CSOSA allows for the aforementioned courts to enforce the orders as if they were handed down in that specific court respectively). However, orders which relate to specific performance may only be enforced in the High court, these are orders that have no monetary value or cannot be quantified. Moreover, difficulties often arise when a party defaults and there is a need to enforce the CSOS order. Thus, when determining what court to approach to have the CSOS order enforced, general practice is to look at the area in which the Community Scheme is located, the nature of the relief sought and/or granted and the quantum (monetary value) as certain courts have a “monetary cap” which they rarely exceed. Moreover, courts are usually reluctant to enforce orders which fall outside their jurisdiction. Henceforth, it is important, if not crucial, to be

mindful of the above factors which give the court approached the requisite jurisdiction or authority to enforce the claim or order.

Here you would be well advised to appoint an attorney to attend to the enforcement procedure. In order to enforce a CSOS order a warrant of execution² (“the warrant”) needs to be drafted by an attorney, the warrant then needs to be issued by the appropriate court and taken to the sheriff for service on the defaulting party. Although the procedure seems fairly simple many of the courts are unfamiliar with CSOSA and unfamiliar with the CSOS process and thus reluctant to issue warrants, this then leads to further delays in enforcing CSOS orders.

Advantages and Disadvantages of using CSOS as a dispute resolution mechanism?

The advantage of using CSOS is that it is (normally) more cost effective. CSOS orders are usually handed down timeously and you may be able to avoid incurring exorbitant legal fees as many matters are settled amicably at the conciliation phase, thus avoiding the need to incur costly litigation bills.

The drawback is however, that the CSOS process is so relatively new and courts are often uncertain on how to give effect to CSOS orders. You might also find that if you are pitted against

² A warrant of execution against movable property is a legal process issued once judgement has been obtained against a

debtor. Under the judgement, the sheriff can attach movable goods and remove them to a place of storage until the assets can be sold at a public auction (sale in execution).



an experienced CSOS practitioner (such as a managing agent, who works with CSOS regularly) that you are on the 'back foot' at the hearings, because they will have more knowledge and experience than you if you are not represented by an attorney. This is where the expertise of a property lawyer will come to your aid as they are specifically trained and understand the relevant legislation and are thus able to assist in actioning CSOS disputes and enforcing CSOS orders.



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