

Affordable Reliable Justice

CEO'S FOREWORD

It is with great pleasure that I present to you the Community Schemes Ombud Service (CSOS). What started off as an idea and an unwavering resolve by government to provide an affordable dispute resolution mechanism for parties to a community scheme, has evolved into a fully-fledged public entity with its own mandate in terms of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011).

Prior to the establishment of the CSOS, the regulatory framework for the community schemes sector was largely fragmented and there was no regulatory body to deal with complaints and disputes or to oversee the overall compliance and governance of community schemes. The only legal avenue available to address disputes (in the past) was through the courts, a process that is both costly and complex. Government, through the Department of Human Settlements, identified the need to establish an independent statutory body in the form of the CSOS who could provide a dispute resolution service in a less formal, less costly and more efficient manner.



Themba Mthethwa



I believe ours is an important mandate. The search for employment opportunities and the trend towards city living has contributed to the density growth of big cities. More and more home owners, particularly new entrants to the property market, are choosing community schemes as a viable tenure option. This tenure option provides shared benefits in terms of security, the pooling of expenses and responsibilities however they also present their own challenges.

The CSOS was established to regulate the conduct of parties within community schemes and to ensure their good governance. Our vision is to establish a world class dispute resolution service. I believe we can get there through successful partnerships with our shareholder, industry and parties to a community scheme. This is our inaugural publication that narrates our mandate, our service and the team behind our service. I invite you to partner with us in the establishment of an efficient, independent, transparent, innovative, ethical and fair regulatory body.



OVERVIEW

The Community Schemes Ombud Service (CSOS) was established in terms of the Community Schemes Ombud Service Act, 2011 (Act 9 of 2011) to regulate the conduct of parties within community schemes and to ensure their good governance.

The CSOS provides an alternative, independent and impartial service for the resolution of unresolved disputes in community schemes. This method of dispute resolution is outside of the courts. It is a preferable method as it is more cost effective and a speedier way of resolving disputes.

OUR MANDATE

- To develop and provide a dispute resolution service in terms of the Act.
- To provide training for Conciliators, Adjudicators and other Employees of the Service.
- To Regulate, Monitor and Control the quality of all Sectional Title Schemes governance documentation and such other scheme governance documentation as may be determined by the Minister.
- To take custody of, preserve and provide access electronically or by other means to Sectional Title Schemes governance documentation and such other Scheme governance documents as may be determined by the Minister.
- To manage the Sectional Titles Management Act as provided by the relevant Act.



To establish a world-class dispute resolution service within community schemes.



VISION



MISSION

To facilitate and maintain a world-class dispute resolution service, to promote good governance of community schemes by providing education and training to all relevant stakeholders.



VALUES

Service Excellence, Independence, Transparency, Integrity, Innovation, Fairness



WHAT IS A COMMUNITY SCHEME?

In terms of the Act the term “community scheme” means 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:

- a sectional titles development scheme
- a share block company
- a home or property owners association
- a housing scheme for retired persons
- a housing co-operative as contemplated in the South African Co-operatives Act, 2005 (Act 14 of 2005)



WHAT IS ALTERNATIVE DISPUTE RESOLUTION?



The term Alternative Dispute Resolution is defined as any method of resolving disputes outside of the courts. The CSOS resolves disputes through conciliation and adjudication:

Conciliation refers to the process where the parties use the services of an independent conciliator to be appointed by the Ombud to assist the parties to arrive at a mutually agreeable solution.

Adjudication refers to the process where an independent adjudicator, appointed by the Ombud, or selected by both parties from the list provided by the Ombud, determines how the dispute is to be resolved and makes a binding decision or order.



OUR GUIDING PRINCIPLES TO DISPUTE RESOLUTION ?

The CSOS upholds the principle of cooperation in its dispute resolution service and conducts its service in a manner that protects the rights of affected parties. Furthermore the provision of its services is conducted with the following principles in mind.

Accessibility - The CSOS endeavours to make its service accessible to all parties in a community scheme.

Confidentiality - All applications are treated with confidentiality.

Efficiency - Applications are handled efficiently and in a way that is proportionate and appropriate to the matter in dispute.

Fairness - The CSOS believes all parties are equal and will resolve matters fairly, ensuring that due process is observed at all times.

Impartiality - Our conciliators and adjudicators are independent, neutral and deal with matters without prejudice.

Transparency - Parties to a dispute are entitled to know how the dispute will be handled and will be notified of the outcome thereof.

Value for Money - The CSOS dispute resolution service is economical and efficient in order to give parties the best possible value for money.

TYPES OF DISPUTES IN COMMUNITY SCHEMES

In terms of section 39 of the Act, the CSOS is mandated to deal with the following category of disputes that arise in community schemes:

- Financial issues
- Behavioral issues
- Governance issues
- Meetings
- Management services
- Private areas and common areas
- General and other Issues



APPLICATIONS

ELIGIBLE APPLICATIONS

In terms of section 38 of the CSOS Act, any person in a community scheme may make an application to the CSOS if such a person is a party to or is materially affected by a dispute.

Before approaching the CSOS, applicants must first lodge a formal written complaint with the body corporate of sectional title or community scheme concerned and exhaust their internal dispute resolution mechanisms. If the complaint remains unresolved, parties to a community scheme may then make an application to the CSOS for conciliation and adjudication.

Where there is no internal dispute resolution mechanism in a community scheme, applicants are entitled to approach the CSOS directly.

LODGING AN APPLICATION

The first step of the dispute resolution process includes the receipt, registration and acknowledgement of a new application. Applications may be lodged in person at a regional CSOS office, online through the CSOS website, by email on complaints@csos.org.za or fax on (010) 590 6154 and post.

All new applications must be captured on the Application for Dispute Resolution Form. The Application for Dispute Resolution Form must be completed in full and all relevant information pertaining to the dispute must be recorded accurately to eliminate any ambiguity.



TIME LIMITS ON CERTAIN APPLICATIONS

Applications to the CSOS must be lodged within 60 days of the incident or application of the decision of an association or executive committee of a community scheme to be declared void.

In the event of a late application, the Ombud may on good cause shown, condone the late application. In such instances an applicant must complete the Application for Condonation for Late Submission Standard Form and thereafter lodge the complaint with the Ombud



ASSESSMENTS

Once registered, the application will be assessed to determine validity.

There are grounds for which an application may be rejected by the CSOS, for example:

- The matter falls outside of the jurisdiction of the CSOS
- Failure to exhaust the internal disputes mechanism processes that exist within a particular community scheme
- Failure by the applicant to comply with the 14 day written request for further information
- Another competent authority such as a court of law and/or tribunal can best deal with the matter
- Application for waiver of adjudication fees is denied.

Once it has been established that an application is valid and that the dispute is capable of being amicably resolved, the application will be set down for conciliation.



CONCILIATION



At the conciliation stage, applications are categorised into:

- **Informal** - quick telephone conciliation
- **Formal** - conciliation hearing

All affected parties are required to participate in a conciliation hearing. A conciliation hearing is chaired by a CSOS Conciliator who is there to assist the parties in finding a resolution. If the matter is not resolved, the conciliator will issue a Notice of Non-Resolution and Referral to Adjudication.

INVESTIGATION AND ADJUDICATION

All matters that are referred for adjudication will be subject to a thorough investigation prior to presentation at the adjudication hearing.

The investigation process may include inter alia:

- requests for additional information and/or documentation
- requests for sworn statements or affidavits
- analysis of photo evidence
- conducting inspections in loco as per section 51 of the Act
- the review of all relevant and applicable legislative and other prescripts.

At the adjudication hearing the Adjudicator will consider all the evidence presented and will hand down a determination which is binding on all parties to the dispute.

Adjudicator orders are enforceable in the Magistrate Court or High Court depending on the quantum or nature of relief granted in the determination.

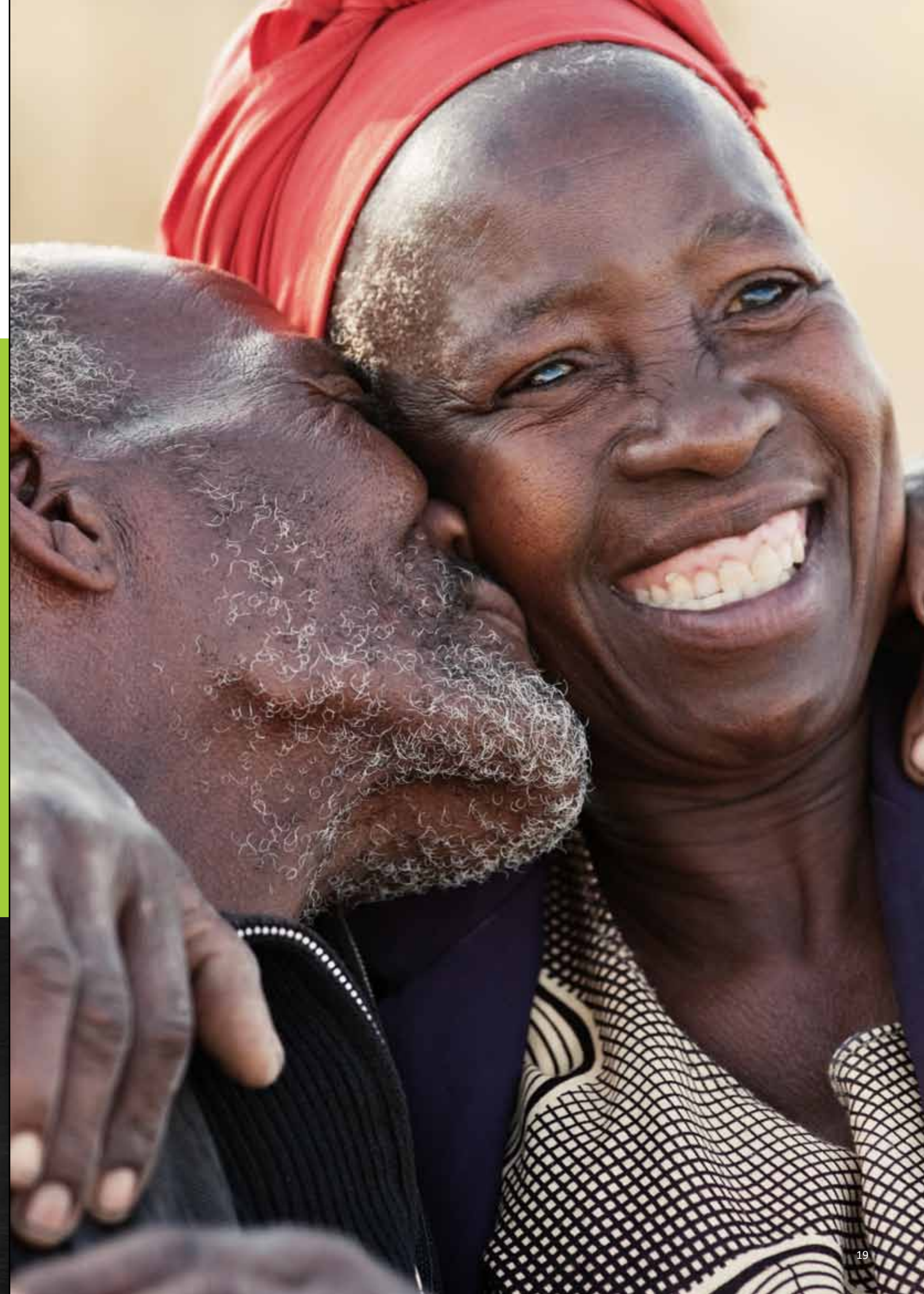


SCENARIOS

Mr Z requested CSOS's intervention on a matter regarding security. He alleges that the motor gate in one unit was replaced with a new one during December 2014. One of the owners notified the managing agents that there was no anti-lift brackets on the gate thereby making it vulnerable to break-ins. Another mail was written to the management agents during January 2015 and the owners spoke directly to the Chairman to complain that the security was not being attended to. Early February 2015 the gate was lifted off its tracks and one of the apartments was broken into. In lifting the gate off its tracks the motor got damaged and needed replacement that incurred an additional cost of almost R10 000. On 16 March 2015 the gate has not been fixed and a few owners that requested a meeting with the Trustees are still waiting to hear from them. He enquired whether the additional cost be claimed from the Managing Agent.

Ms X alleged the following "at a recent AGM for my complex a decision was reached (apparently) to charge each unit in my complex a flat rate for effluent. We have three sizes of units in our complex 3 bedroom (large - 190 m²), 2 bedroom and 1 bedroom units (56 m²)". Ms X says that she lives in a 1 bedroom unit yet she is required to pay the same levy as a unit measuring 3 times the size of her own. In an attempt to resolve this matter, Ms X allegedly contacted the responsible managing agent but was informed that the municipality also charges a flat rate, which she disputes as the bills from the municipality are in accordance with the size of the unit. Ms X obtained a legal opinion which supports her view and forwarded it to the managing agent to no avail. She believes the smaller units were prejudiced by this decision and fear that this practice will continue as the majority of Trustees live in larger units and now the smaller ones are effectively cross subsidising the larger ones.

we are here
to help



THE CSOS FOUNDING EMPLOYEES



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