

## CIRCULAR

No: 1

2018

### SECTIONAL TITLES SCHEMES MANAGEMENT ACT, 2011 (ACT 8 OF 2011)

### LODGMET OF SECTIONAL TITLES SCHEMES RULES IN TERMS OF THE STSMA

#### 1 OBJECTIVES OF THE CIRCULAR

- 2.1 The objective of this Circular is to provide operational guidelines and clarity on procedure and content requirements for the lodgment of rules with CSOS for approval.
- 2.2 The Circular is not intended to amend, replace, override or supersede the Act and STSMA.

#### 2 LEGISLATIVE FRAMEWORK

- 2.1 Community Schemes Ombud Service Act
- 2.2 Competition Act
- 2.3 Constitution of the Republic of South Africa
- 2.4 Housing Development Schemes for Retired Persons Act
- 2.5 Promotion of Administrative Justice Act
- 2.2 Sectional Titles Schemes Management Act
- 2.6 Sectional Titles Act



### **3 SCOPE OF APPLICATION**

The Policy applies to the following persons: -

- 4.1 Community Schemes as defined in CSOS Act;
- 4.2 CSOS.

### **4 LODGMENT OF SECTIONAL TITLES SCHEMES RULES**

Section 4 of the Act mandates the CSOS to regulate, monitor and control the quality of schemes governance documentation on all sectional titles schemes. To comply with the requirement of section 4 of the Act, sectional titles schemes are required to lodge their rules with CSOS for approval in terms of section 10(5) of the STSMA in the following procedure:

#### **4.1 New Schemes**

5.1.1 When lodging the rules with CSOS, sectional titles schemes are required to submit the following documents before CSOS can issue approval certificate contemplated terms of section 10 of the STSMA:

- a) Prescribed Form B, duly signed;
- b) Approved Sectional Plan;
- b) Consolidated Rules; and
- c) Conveyancer Certificate if annexure 1 and 2 of the STSMA

Regulations are adopted, confirming such adoption of the rules.

#### **4.2 Established Schemes**

An application to lodge sectional title scheme rules to the CSOS must be accompanied by the following documents:

- 4.2.1 Prescribed Form B duly signed by two Trustees and Managing Agent, where applicable;
- 4.2.2 Consolidated rules;
- 4.2.3 Minutes of the general meeting; and
- 4.2.4 Resolution adopting the rules:
  - a) Unanimous resolution for management rules; or
  - b) A special resolution in respect of conduct rules.

### **5. QUALITY ASSURANCE**

#### **5.1 Administration of Application**

5.1.1 Each scheme will be allocated with a unique reference number upon receipt of notification to amend the rules. This reference number is different from the scheme's registration number and will appear on section 10 approval certificate.

5.1.2 CSOS will conduct quality assurance on the schemes governance documentation received and recommend any amendments, if necessary. There will be no need for the body corporate to table the amendments suggested by CSOS in any governance structure for approval. The suggested amendments must be effected and the corrected documentation be submitted to CSOS for final quality assurance before approval.

## **5.2 Quality Assurance**

5.2.1 The schemes governance documentation will be quality assured against the provisions of the STSMA and the Regulations, CSOS Act, the Constitution of the Republic of South Africa, Municipal by-laws, Case Law and any other relevant or applicable legislation

5.2.2 Quality Assurance is designed to improve the Constitutionality, legality, just and fairness of the provisions of scheme governance documents. Should any provision of the Governance Document be found to be in conflict with applicable legislation, it will be rendered invalid and must be severed from the document.

5.2.3 The language for the drafting of the documents must be plain and understandable by members. The use of derogatory or discriminatory words must be avoided. In addition to checking the language used, CSOS will also check the spelling errors and the layout of the document.

5.2.4 All Governance Documentation must be subjected to a process of periodic review to ensure that the information contained in the document is still correct, accurately reflects the current practices and any changes to legislation

5.2.5 Minor amendments that are not material changes to the documentation can be requested through and made by Executive Governance, Compliance and Enforcement

at any time. The minor amendment can be spelling or numbering error. These amendments do not require any approval by the Body Corporate.

### **5.3 Approval of Rules**

- 5.3.1 Section 21 of the STSMA states that the rules prescribed under the Sectional Titles Act (Act No 95 of 1986, which has been amended by the STSMA) must continue to apply to new and existing schemes until the Minister of Human Settlements has made regulations prescribing management rules and conduct rules (which are now in place terms of the STSMA and Regulations).
- 5.3.2 The implication of section 21 is that old Prescribed Management Rule (Annexure 8 and 9) have been repealed and replaced by Annexure 1 and 2 of the STSMA Regulations 2016. However, any additions, substitution, amendments made to the old Annexure 8 and 9 will continue to apply until amended, substituted, added, amended or repealed on terms of section 10(2) of the STSMA. It must be noted that the additions, substitution, amendments to continue to apply, they must not be contrary to the provisions of the STMS and Annexure 1 and 2 of the STSMA Regulations.
- 5.3.3 Section 10(2) of the STSMA states that the management rules can be substituted, added, amended or repealed by the developer or by unanimous resolution of the body corporate. The conduct rules can be substituted, added, amended or repealed by the developer or special resolution of the body corporate.
- 5.3.4 The commencement of the substitution, addition, amendment, repeal of the rules comes into effect after the approval by the Chief Ombud (i.e. on the date of the issuing of a certificate as contemplated in section 10(5)(c) of the STSMA.
- 5.3.5 The substitution, addition, amendment or repeal of rules must be reconciled with the provisions of the prescribed management rules and conduct rules, STSMS, the Constitution of the Republic of South Africa, the Act, any other applicable legislations and relevant By Laws. The substitution, addition, amendment or repeal of rules will not be approved by the Chief Ombud, if the Chief Ombud believes it is not reasonable and appropriate for the scheme.

- 5.3.6 The CSOS will examine the proposed substitution, addition, amendment or repeal. In the event that, the proposed substitution, addition, amendment or repeal is unreasonable, inappropriate or contravenes other legislations, CSOS will suggest corrections and refer the rules back to the scheme for implementation.
- 5.3.7 In the event that the substitution, addition, amendment or repeal is reasonable, appropriate and complies with all legislations or the scheme has effected corrections recommended by CSOS, CSOS will issue approval certificate in terms of section 10(5)(c) of the STSMA.
- 5.3.8 The schemes are required to collect or make arrangements to collect their approval certificates from CSOS Head Office, 63 Wierda Road East, Wierda Valley, 1st Floor Building A, Sandton, Johannesburg, 2196 or as indicated from time to time.

## **6. AMENDMENT OF THE SECTIONAL TITLES ACT (ACT NO 95 OF 1986)**

- 6.1 The Sectional Title Act (act No 95 of 1986) (STA) has been amended in terms of section 20 of the STSMA. The implications of section 20 of the STSMA is that certain provisions of the STA have either been amended or repealed. The extent of the amendment is published as a schedule under the STSMA. Consequently, sections of the STA dealing with the rules have been repealed and CSOS will not approve rules still referring to the STA provisions that have been repealed.
- 6.2 Annexure 8 and 9 of the STA have also been repealed and replaced by Annexure 1 and 2 of the Regulations published in terms of the STSMA.

## **7. UNDESIRABLE RULES**

To ensure uniform application of the rules and compliance with all the regulatory requirement, CSOS has identified the following as undesirable rules and are relevant for quality assurance purposes:

- 7.1 Prohibition on slaughtering of animals for ritual purposes;
- 7.2 Disconnection of electricity or essential services for non-payment of levies;
- 7.3 Imposition of penalties without following due process;
- 7.4 Issuing of penalties equal or more than double the applicable monthly levy;

- 7.5 Termination of lease agreement by or at the instance of Trustees or eviction of tenants;
- 7.6 Use of specific, accredited or registered service providers;
- 7.7 Referral of disputes to Arbitration;
- 7.8 Speed limitation and issuing of fines in contravention with chapter IX of the National Traffic Road Act, 1996;
- 7.9 Interest rates that are in contravention of the National Credit Act, 2005 and its Regulations;
- 4.10 Any discriminatory rules against any person, particularly, domestic workers.

## **8. REQUEST FOR ACCESS**

### **8.1 Application for Access**

- 8.1.1 A request for access must be made in Form CS Z1 to CSOS and be forwarded electronically, by post or hand delivery to the physical address.
- 8.1.2 The request must contain sufficient particulars to enable CSOS to identify, the documentation requested, the identity of the requester and the scheme to which the record pertains.
- 8.1.3 The requester must indicate the address, e-mail where the information should be forwarded once the request is approved.
- 8.1.4 In making a decision whether access to the documentation should be provided, CSOS will take into account the provision of Promotion to Access to Information Act, 200 and the Protection of Personal Information Act, 2005, in determining the confidentiality of the information requested.

### **8.2 Payment of Access Fee**

- 8.2.1 The Documentation requested will only be released upon receipt of proof that the requester has paid the access fee has been paid.
- 8.2.2 The prescribed fee of R8, 00 per copy will be charged for any request to access the documentation.

8.2.3 CSOS will provide the requester with the total amount to be paid and all payment must be made by electronic transfer into CSOS Bank Account as indicated from time to time.

**9. DATE OF COMMENCEMENT**

This Circular No 1 of 2018, will commence on the date of signature hereof and will remain effective until amended, substituted, withdrawn or repealed.



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**ADV SEENG CATHERINE LETELE**  
**CHIEF OMBUD**

DATE: 01 August 2018