

PRACTICE DIRECTIVE ON DISPUTE RESOLUTION

No: 2

2017

COMMUNITY SCHEMES OMBUD SERVICE

COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011 (ACT NO. 9 OF 2011)

I, the undersigned, Seeng Catherine, acting in terms of section 36 of the Community Schemes Ombud Service Act, 2011 (Act No 9 of 2011), do hereby issue a Practice Directive on the Waiver of Levies and Fees. The Practice Directive is set out hereunder: -

CHIEF OMBUD

ADV SEENG LETELE

DATE:

PART SEVEN- URGENT MATTERS

33. Urgent Matters

PART EIGHT - APPEAL PROCESS

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36. Dispute resolution process and confidentiality

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retains the discretion to make decisions about the case management of individual dispute resolution applications as provided under Chapter 3, 4 and 5 of the Act.

- 2.2 The Practice Directive give more information about the implementation of the dispute resolution in terms of the Community Schemes Ombud Service Act and does not replace the Act or the ability of the Chief Ombud to decide what is required for a particular dispute.

3. LEGISLATIVE FRAMEWORK

This Practice Directive is governed by the following pieces of legislations

NO	ACT	APPLICABLE PROVISION
1	Constitution of the Republic of South Africa.	The rights as enshrined in the Bill of Rights.
2	Community Schemes Ombud Service Act No. 9 of 2011	In its entirety
3	Sectional Titles Schemes Management Act No. 8 of 2011	In its entirety
4	Housing Development Schemes for Retired Persons Act No. 65 of 1988	In its entirety
5	Share Block Control Act No. 59 of 1980	In its entirety
6	Co-operatives Act No. 14 of 2005	In its entirety
7	Promotion of Administrative Justice Act No.3 of 2000	In its entirety.
9	Protection of Personal Information Act No. 4 of 2013	The Act provides for the protection of personal information processed by public and private bodies.
10	Magistrate's Court Act, 1944 (Act No. 32 of 1944)	In its entirety
11	Superior Court Act, 2013 (Act 10 of 2013)	In its entirety

- 5.9 Where the Applicant is a community scheme, a copy of a resolution by the Executive Committee of the scheme must be attached to the application authorising the lodgement of the application.
- 5.10 The application form must be signed by the applicant, unless the application form is signed by an applicant's authorised representative, which must be indicated in the form.

6. COMMUNICATION WITH APPLICANTS

- 6.1 CSOS will communicate directly with an applicant unless that applicant has authorised a representative and will use the contact details supplied on the application form unless an applicant advises otherwise.
- 6.2 Where there are multiple applicants for an application, the applicants must nominate one person to act as the applicants' point of contact with the CSOS. The nominated contact will be responsible for relaying any relevant notice, information or request from the CSOS to each of the named applicants.
- 6.3 The CSOS retains discretion to contact a party directly regarding an application, or to decline to communicate to a representative, where, in the CSOS is of the view that the urgency of the circumstances requires the party to be contacted directly in order to either be notified of, or requested to provide, information relevant to the dispute; the representative has failed to provide information about an application in response to a request by the CSOS or an adjudicator; or for another reason, it would be inappropriate to communicate through the nominated representative.

7. RELIEF SOUGHT

- 7.1 The applicant must provide a short statement of what outcome they believe would resolve the matter. Generally, the outcome should clearly identify the action that the applicant wants the respondent to take, or to cease, in order to resolve the dispute. In essence, the application must include the relief sought by the applicant, which relief must be within the scope of one or more of the prayers for the relief contemplated in section 39; the name and address of each person the applicant considers to be affected materially by the application; and the grounds on which the relief is sought.
- 7.2 Information included in the application assists the conciliator, adjudicator, the respondent and any affected party to understand what the applicant is seeking and the reasons why the application has been made.

PART THREE - ADMINISTRATION OF APPLICATION

11. REGISTRATION AND ASSESSMENT OF DISPUTE

- 11.1 As soon as an application is received by the CSOS, a new file will be opened and allocated a unique file reference number.
- 11.1 The application will be assessed by the Ombud or a delegate. Generally, a case officer will act as a delegate of the CSOS in determining whether the application complies with the legislative requirements. In particular, the case officer will assess whether the dispute falls within the jurisdiction of the CSOS.
- 11.2 Where necessary, the case officer will contact the applicant to request clarification of the application or additional information or documentation to satisfy the requirements of the CSOS Act, more particularly information as envisaged by section 40 of the CSOS Act.

12. REJECTION OF APPLICATION

- 12.1 The Ombud or his delegate may reject an application that fails to comply with the requirements of the CSOS Act or this Practice Directive.
- 12.2 If the Ombud decides to reject an application, the Ombud will inform the applicant in writing of the reasons for the rejection.
- 12.3 In addition to the grounds set in section 42 of the CSOS Act, relating to grounds for rejection of application, the dispute can be rejected in the event that the dispute is part of, or closely related to the existing proceedings in a court and if the applicant does not pay the prescribed fee within 5 days of receipt of a letter requesting the applicant to pay the fee and such applicant has not been granted a waiver of fees.

13. PAYMENT OF PRESCRIBED FEE

- 13.1 The prescribed fee must be paid before the application can be referred to the Conciliator.
- 13.2 A letter will be forwarded to the applicant acknowledging receipt of the application and requesting the applicant to pay the prescribed application fee paid (if applicable). This letter includes the file reference number which must be included by the applicant in all communication with the CSOS about the application, the banking details and email where the proof of payment must be emailed.

PART FOUR - CONCILIATION OF DISPUTES

16. REFERRAL TO CONCILIATION

- 16.1 Once the Ombud has decided that the matter should be referred to conciliation, the application is referred to a conciliator who will attempt to conciliate on the matter.
- 16.2 If the parties reach agreement at conciliation on any of the issues in dispute, the parties can choose to sign a written agreement documenting the terms of their agreement. It should also be noted that parties can also negotiate a settlement leading up to a scheduled conciliation session.
- 16.3 In the event that the parties agree to sign the settlement agreement, the settlement agreement will be made an adjudication order.
- 16.4 If the parties cannot reach an agreement, the Conciliator may issue a non-resolution certificate. A copy of this certificate should be retained as it must be lodged with any future adjudication application about the same dispute.
- 16.5 Once the conciliation process has concluded, the conciliator has no further involvement in the dispute or any subsequent adjudication application about the dispute.

17. NOTICE OF CONCILIATION

- 17.1 The CSOS will notify parties in writing of the time and date of a conciliation session. The Conciliator will give 14 working day notice of Conciliation.
- 17.2 Parties may request a more suitable time but should be aware that a re-scheduled session will depend on the availability of the conciliator and the other parties to the dispute. It must be noted that conciliation must be conducted as quickly as possible.
- 17.3 The conciliator will contact each of the parties prior to the conciliation session. The conciliator may seek further information from the parties to assist the conciliator's understanding of the dispute and how each of the parties would like the dispute to be resolved.
- 17.4 Conciliation may take up to 3 hours and parties are requested to set aside this time for a possible resolution.
- 17.5 Parties must represent themselves in the conciliation session and actively contribute towards discussions to resolve the dispute. Parties seeking to be legally represented at conciliation should take note of the provisions of section 52 of the CSOS Act and the CSOS Regulations.

not a party to the dispute to attend, the conciliator may impose conditions or limitations on the person's attendance and involvement in the conciliation session.

- 19.3 The community scheme may be represented at the conciliation hearing by the managing agent, the trustee or director of the community scheme.
- 19.4 The nature of conciliation is non-adversarial, and provides an environment which encourages parties to openly talk to one another and work together to resolve their dispute. As such, legal representation is not permitted in conciliation.
- 19.5 Once the conciliator has ended the conciliation process, the conciliator has no further legislative role in relation to the dispute. Unless one of the above conditions applies, the conciliator is unable to enter into any discussion about what was said or done in conciliation with any person.
- 19.6 The evidence of anything said or done about a dispute in conciliation is inadmissible in an adjudication process or another legal proceeding. This is meant to encourage an open flow of information between the parties and assist resolving the dispute in a way that satisfies the parties.
- 19.7 To allow free flow of information, recording of the session not allowed, as such, all recording devices must be switched off.
- 19.8 If one of the party does not attend the conciliation of the date set for conciliation, the conciliator will regard the matter as not resolved and will issue a non-resolution certificate.

20. CONCILIATOR CONDUCT

The conduct of the Conciliator will be dealt with in terms of the Code of Conduct Attached to this Practice Directive as Annexure "A".

PART FIVE – ADJUDICATION OF DISPUTES

21. MATTER THAT MAY BE REFERRED DIRECTLY TO ADJUDICATION

- 21.1 Generally, all applicants must attempt to resolve the dispute through conciliation with the CSOS conciliator before the matter can be referred for adjudication.
- 21.2 The Ombud may refer an application directly to adjudication if the Ombud considers the dispute not appropriate for conciliation. This Practice Directive set out some of the factors which the Ombud may take into account in deciding whether a dispute is not appropriate for conciliation and this list is not exhaustive.

application does not of itself mean the fee will be waived and the Chief Ombud may request the applicant to provide further evidence of financial hardship. The criteria as set in the waiver directive will be considered in determining whether the waiver application should be approved or not.

23. INVESTIGATION

The Adjudicator has power to conduct investigation as envisaged in section 50 and section 51 of the CSOS Act.

24. NOTICE OF ADJUDICATION

- a. A notice of set down will be emailed to the parties using the email address provided by the parties during the conciliation process.
- b. In addition to the email as indicated above, an SMS will be sent to the parties facilities
- c. The IT confirmation that the email was sent to the dedicated email of a party will be conclusive evidence that the notice was served on the parties.

25. NON-ATTENDANCE BY PARTIES

In the event that any of the party to the dispute does not attend the adjudication hearing after been served with the notice of set-down, the adjudicator will proceed with adjudication process.

26. ADJUDICATION PROCESS / RULES FOR ADJUDICATION

- 26.1 The adjudicator is to be impartial and independent of the parties and shall inform the parties immediately of anything of which could affect his impartiality or independence.
- 26.2 The adjudicator shall not give advice to the parties or their representatives concerning any aspect of the Agreement in respect of which he has been appointed other than in accordance with these Rules.
- 26.3 The adjudicator may not be called as a witness by either party to give evidence concerning the matter referred or adjudicated by him or her.
- 26.4 The adjudicator shall enjoy the same privileges and immunities from liability as a Judge of the High Court and shall not be liable for any claims in respect of any act or omission in discharging his duties unless such act or omission is shown to have been in bad faith.
- 26.5 The adjudicator shall be bound by the provisions of the CSOS Act, the Dispute Resolution Model, and any other provision of relevant legislations.

28. ADJUDICATION ORDER

- 28.1 The adjudicator's written adjudication order shall:
- 28.1.1 Be delivered to the parties not later than 14 (fourteen) working days after date of final hearing by facsimile or e-mail;
- 28.1.2 Include reasons for the decisions.
- 28.2 The parties shall give immediate effect to any order issued by the adjudicator .
- 28.3 The adjudication order is binding on the parties unless and until such adjudication is overturned or varied in whole or in part by a High Court.

29. COST ORDER

- 29.1 The parties to a dispute resolution application are generally required to meet their own costs. This includes the application fee, the fee for inspecting or obtaining copies of any submission or reply, any personal costs incurred to attend a conciliation session, and any legal costs incurred in making or responding to an application. The adjudicator has no powers to award costs relating to the expenses.
- 29.2 If an adjudicator dismisses an application for adjudication because it is frivolous, vexatious, misconceived or without substance, the adjudicator may order costs against the applicant in favour of the respondent. The costs awarded must not be more than R5000,00.

30. ADJUDICATOR'S CONDUCT.

The conduct of the Adjudicator will be dealt with in terms of the Code of Conduct Attached to this Practice Directive as Annexure "A".

PART SIX – ENFORCEMENT OF ADJUDICATION ORDER

30 ENFORCEMENT OF ADJUDICATION ORDER

- 31.1 An adjudicator's order, may be enforced in the Magistrates Court or the High Court as if it were a judgment handed down by the court.
- 31.2 An adjudication order for specific performance, can only be enforced in the High Court. An adjudication order for specific performance, relates to an order that has not quantum or monetary value.
- 31.3 The adjudication will have specific date within which it must be complied with. In the event that the party against whom the order has been issued has not complies with the adjudication

- 32.6 Other parties to the application would not normally be invited to make submissions in respect of the proposed correction.
- 32.7 Unless otherwise stated in the order, an amendment order will have effect from the date that it is issued

PART SEVEN – URGENT MATTERS

33 URGENT MATTERS

- 33.1 Applicants can submit an application for the matter to be heard on an urgent basis.
- 33.2 The applicant must demonstrate that there is a current, genuine emergency requiring an urgent adjudication order. The urgency cannot be used to circumvent the normal conciliation and adjudication processes.
- 33.3 The grounds of the application should include details of whether:
- 33.3.1 there is an immediate and serious health or safety risk;
 - 33.3.2 essential services, no limited to; disconnection of water and electricity, access to the scheme by unit owners or occupiers.
- 33.4 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.
- 33.5 Where the Ombud reasonably considers that an application should be referred to an adjudicator immediately, because it relates to emergency circumstances.
- 33.6 The decision whether to treat the matter as urgent will depend on the nature and circumstances of the application.
- 33.7 While still ensuring procedural fairness to all parties, the Ombud may limit the period for the respondent and affected persons to make a submission, or for the applicant to reply to submissions;
- 33.8 The Ombud may limit or refuse an extension to the submission or reply period where such a request, or the proposed duration of the request.
- 33.9 If it later found that the matter was not urgent, the Adjudicator may issue a cost order against the applicant in favour of CSOS. The amount R5 000.

PART EIGHT - APPEAL PROCESS

34. WHEN TO LODGE AN APPEAL

A person who is not satisfied with the Adjudicator's order, may lodge an appeal in the High Court on the question of law.

37 UPDATE AND REVIEW OF THE PRACTICE DIRECTIVE

This Directive will be reviewed as and when there is change in legislation. This Directive will be published on the CSOS website after any amendment.

38 COMMENCEMENT OF PRACTICE DIRECTIVE

This Practice Directive 2 of 2017, will commence on date of signature hereof and will remain effective until amended, substituted, withdrawn or repealed.

- THE END -