

LAW MATTERS

RESOLVING DISPUTES IN
COMMUNITY SCHEMES

SPONSORED COLUMN

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MANY owners of units in community schemes, be they residential estates, sectional title, retirement or shareblock schemes, would have noticed a new line-item in their levy statement for the Community Schemes Ombud Service sometimes referred to as 'the CSOS' (the "Ombud").

This additional amount is imposed in terms of the Community Schemes Ombud Service Act 9 of 2011 (the "CSOS Act"). The CSOS Act created the Ombud to provide occupiers of units in community schemes a cost-effective and easily accessible mechanism to deal with disputes, either between themselves or between an individual occupier and the administrators of the scheme. In addition to creating the dispute resolution mechanism, the CSOS Act also provides a regulatory framework that generally attempts to regulate community schemes in order to promote good governance in all community schemes in South Africa.

The services of the Ombud are funded by individual unit owners through their levy contribution.

The administrators of the community schemes, being the trustees, directors or management committee members, are obliged to collect the funds and pay them over to the Ombud. The amount payable by any owner is determined by the amount they normally pay in ordinary levy contributions. Owners will pay to the Ombud 2% of any amount over R500 which they would ordinarily pay in levy contributions, however, the amount payable to the Ombud by any owner is capped at a maximum of R40 per month.

There are generally three steps required to deal with disputes through the Ombud.

1. Occupiers are first required to follow any internal procedures established in terms of the community scheme's rules, and attempt to resolve the dispute. If, in the opinion of any party to the dispute, the internal process did not yield a satisfactory result, the aggrieved party can approach the Ombud and apply to have the dispute resolved by the Ombud.
2. Once in receipt of an application, the Ombud will attempt to resolve the dispute through conciliation. A R50 fee is payable to refer a dispute to conciliation. Conciliation is a process by which an independent party (a mediator, appointed by the Ombud) is instructed to engage with the parties to try and achieve an amicable solution to the dispute.
3. If, in the opinion of either party to the dispute, the conciliation process did not yield a satisfactory result, the aggrieved party can request the matter be referred to adjudication. The Ombud will appoint an adjudicator who will hear the matter and make a decision that is binding and, when enforced, has the force and effect of an order of court. Adjudicators appointed will be former judges, magistrates or other professional adjudicators who are sufficiently skilled to deal with the dispute. An additional fee of R100 is payable to refer a matter to adjudication.

The total service fee payable to have a dispute resolved by the Ombud is R150. This makes the Ombud a very cost-effective mechanism to deal with disputes when compared to more traditional methods. Occupiers in community schemes are encouraged to make use of it. As a general rule, the Ombud will only allow formal legal representation during the dispute resolution in exceptional circumstances, where the adjudicator and all the parties to the dispute consent, or if the adjudicator determines that the issues warrant the use of legal representatives.

When applying to the Ombud you need to ensure that you frame your application correctly in terms of the CSOS Act and it is suggested that potential applicants obtain legal advice before lodging a dispute with the Ombud. The Ombud can also be contacted directly for guidance in this regard. Its details are available online.

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