



23 June 2020

COMMUNITY SCHEMES OMBUD SERVICE

AMENDMENT TO PRACTICE DIRECTIVE ON DISPUTE RESOLUTION, 2019

AND

CLARITY ON BODY CORPORATE AND TRUSTEE MEETINGS DURING LEVEL 3 LOCKDOWN

1. In keeping with its mandate, the CSOS announces the reconvening with the conciliation and adjudication of dispute resolution in community schemes with effect from 1 June 2020, which procedures were temporarily suspended as a result of the Government Lockdown under the Regulations published in terms of the Disaster Management Act, No.57 of 2002.
2. However, these procedures now take place without the need for the parties to meet face to face in view of the COVID-19 threat facing the country.
3. The aforesaid is a necessary effort to minimise the risk of exposure and requires the collective effort and co-operation by the employees of the CSOS, community schemes at large and applicants for dispute resolution services.
4. The CSOS adheres to COVID-19 restrictions at the workplace and to this end certain CSOS employees attend the office and others continue to provide services remotely.
5. The CSOS's method of operation during this time, minimises the risk of exposure and ensures the continuity of the CSOS services. The re-opening of various sectors of the economy determines the regulatory support and administrative services CSOS will provide and this will be balanced with the need to maintain the necessary precautionary health and safety measures.
6. This Practice Directive provides certain timeframes or a number of days for filing certain documents and/or responses by the parties, namely 14 days for the Section 43 Notice to

Affected Persons, directed to the respondent and 10 days for section 44 notice to Inspect the Respondent's Submission and provide a Written Response, directed to the applicant. Considering the requirement to dispose of disputes within a certain timeframe, certain amendments will be effected to the Practice Directive on Dispute Resolutions, 2019. These amendments will not prejudice the parties nor unduly burden them. Therefore, the amendments made are: -

Paragraph 14. 1 of the Practice Directive, namely 14 days for the Section 43 Notice to Affected Persons, directed to the respondent, to read –

*A response may then be submitted to the Ombud within **seven (7) days.***

Paragraph 14.2 of the Practice Directive, namely for the Section 44 Notice to Inspect the Respondent's Submission or to provide Written Response, directed to the applicant, to read-

*Once the Ombud has received a response from the respondent, the Ombud will allow the applicant **five (5) days** to inspect the submission or to provide any written response relating to the issues raised in the submission.*

7. Procedure for the conduct of Conciliations:

- 7.1 No face-to-face Conciliations will be conducted;
- 7.2 Conciliations will be conducted telephonically or virtually only. Parties in a dispute are requested to have sufficient data, bandwidth, battery-life or connectivity for the duration of the Conciliation;
- 7.3 The Conciliator will connect the parties to the conciliation on a conference call;
- 7.4 The Conciliator will record the proceedings and inform parties accordingly;
- 7.5 The Conciliator will explain the process to the parties and inform them of their rights and obligations;
- 7.6 If the parties reach a settlement, the Conciliator will draft a settlement agreement and read the entire agreement to the parties;
- 7.7 The parties will be asked to confirm the content of the agreement;

- 7.8 The Conciliator will subsequently send a copy of the pre-read settlement agreement to both parties for their records and the recording confirming the settlement agreement will be deemed to be the Settlement Agreement;
- 7.9 Where possible the Conciliator will request that all parties sign the agreement on the space provided and return a signed copy only by email for the CSOS file;
- 7.10 The CSOS Conciliation file will be finalised and closed;
- 7.11 In an event that the parties do not agree on a settlement in the matter, the Conciliator will issue a certificate of non-resolution incorporating a referral to adjudication and request for payment of the adjudication fee, and the matter will be referred for adjudication upon confirmation of payment.
- 7.12 Failure to make the required payment in 7.11 above within 5 days, the matter will be closed.

8. Procedure for the conduct of Adjudications:

- 8.1 No face-to-face Adjudications will be conducted.
- 8.2 Adjudications will be conducted based on papers filed by the parties and further written submissions, documents and information (including evidence in the form of affidavits and photos) as requested by the appointed Adjudicator;
- 8.3 The Adjudicator may at his or her discretion conduct the adjudication telephonically or virtually. Parties in a dispute are requested to have sufficient data, bandwidth, battery-life or connectivity for the duration of the Conciliation;
- 8.4 Once the Adjudicator receives the adjudication file, he or she will notify the parties that he is in receipt of the matter and request confirmation from the parties that they are in receipt of the other parties' submissions;
- 8.5 All parties will and must be copied in on all correspondence at *all* times;
- 8.6 The following will be considered by the Adjudicator:
- Application for Dispute Resolution/Statement of Claim, which is to be submitted by the Applicant – comprehensively setting out the nature of the dispute;
 - all evidence, including photos
 - Setting out the relief sought in terms of section 39 of the CSOS Act.
 - any submission from the applicant to the respondent's reply.
 - Answer to Application for Dispute Resolution, submitted by the Respondent,

- refuting the Applicant's claim OR admitting the Applicant's claim;
- evidence refuting the Applicant's claim
- setting out the relief required by the Respondent.

*(All submissions must be in plain English, and there is no need to attempt to use legal jargon, which is completely unnecessary – if an Adjudicator does not understand anything, he or she will email both parties and ask for clarity – **the CSOS reiterates the requirement for fairness and a transparent process**)*

- 8.7 Based on the above submissions and due to the COVID-19 circumstances, the Adjudicator will request for further final submissions or written argument by either party within 5 (five) working days, before he or she will deliberate and publish the Adjudication Order.
- 8.8 Should a party fail to timeously make a written submission to the CSOS and the other party regarding a matter, as requested by the Adjudicator, he or she will be automatically barred from making the said submission thereafter save with the specific consent of the Adjudicator.
- 8.9 The parties are prohibited, on their own accord, from communicating with the Adjudicator other than for the reasons mentioned above.
- 8.10 This manner of adjudication is provided for in terms of section 50 and 51 of the CSOS Act, No. 9 of 2011, and this Directive must be read in conjunction with Practice Directive, 2019
9. The CSOS aims to deal with all conciliation and adjudications matters as quickly as possible, and with as little formality and technicality as provided for in the CSOS Act, No. 9 of 2011, but in a fair manner, hence the request for any written submissions, documents, information & evidence.
10. Take note of the Department of Health advice and directives on the coronavirus outbreak.



health

Department:
Health
REPUBLIC OF SOUTH AFRICA

For FAQ's on the coronavirus outbreak

<http://www.health.gov.za/index.php/component/phocadownload/category/607>

CORONA VIRUS OUTBREAK 24-HOUR HOTLINE NUMBER: 0800 029 999.

11. Procedure for the conducting of *General and Trustee Meetings* during Level 3 Lockdown

11.1. No face-to-face meetings, whether in respect of general meetings or trustees meetings, are permitted in terms of the Level 3 Regulations published in terms of the Disaster Management Act, however virtual meetings (employing virtual platforms such as Zoom, Microsoft Teams or Skype) can be utilized as specified by the STSMA, or votes can be taken in writing by members in respect of resolutions (also known as 'round robin' resolutions).

(NB: In view of the Lockdown, the CSOS will not apply penalties for schemes that may not be able to submit governance documentation within 3 months of an AGM as required by the Act and Regulations).

11.2. The CSOS acknowledges that there are situations where persons may not have access to electronic media, or that they may not be conversant with such technology, e.g. in the case of elderly persons living in retirement schemes. Whilst scheme executives cannot act contrary to the Level 3 Regulations, provided that the number of trustees is sufficiently limited and that all necessary precautions are taken to mitigate health risks *(such as pre-meeting health assessments are conducted (incl. temperature checks), as well as the sanitization of surfaces before and after the meeting, masks are worn throughout the meeting, social distancing is observed, and 1 person only takes minutes and types up the minutes)* such a meeting can take place.

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ACTING CHIEF OMBUD