

## New laws for community housing schemes now in effect

Revisions to the laws governing community housing schemes became effective on Friday, 7 October 2016, and according to specialist sectional title attorney Marina Constas, homeowners and residents can expect some positive changes in the way that their developments are run.



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“Residents of community schemes falling under the banners of sectional title, homeowners’ association, share block, retirement village and housing co-operative will be faced with two new acts, the Sectional Title Schemes Management Act and the Community Schemes Ombud Service (CSOS) Act,” explains Constas who is a director of BBM Attorneys. Outlining the history of the new Acts, she reveals that they became effective on Friday, but they were promulgated in 2011, and actually first conceived 18 years ago. “These laws have been a long time coming, and they are critical, considering that South Africa has the fourth high concentration of community schemes in the world,” Constas stresses.

### Streamlined legislation

The new Sectional Titles Schemes Management Act is the result of the reworking of the Sectional Titles Act 95 of 1986, she reveals. “All the sections of this Act relating to the operational management of the scheme were removed and migrated to the new Sectional Titles Schemes Management Act, which is a more streamlined piece of legislation. It has 22 sections that are written simply, with less prescriptive language. The main changes that property stakeholders should be aware of are the necessity for every development and its trustees to create a reserve fund, the holding of a maximum of two proxies per person for meetings; the placing of a building under administration by the Magistrate’s Court instead of a High Court, and the preparation by the trustees of a written, ten-year repair, replacement and maintenance plan.”

Constas says that another interesting feature of the new Act is the conduct rules, which now permit guide dogs in sectional title complexes. “The trustees’ consent on this issue is now assumed,” she expands, and adds that the new Act also no longer has a towing provision for illegally parked cars.

In terms of how the new CSOS Act will affect community schemes, Constas says that a levy will now be payable by these schemes to the Community Schemes Ombud Service on a quarterly basis. It will be used to fund

the Ombud's office's provision of an effective, alternative dispute resolution process for owners and residents of community schemes, as well as for quality training of adjudicators and mediators and improve governance documentation. "The schemes will recover this levy from each owner on a monthly basis. The CSOS amount payable is based on the development's monthly levy approved at the AGM. The first R500 the levy is exempt. Any amount over and above the R500 will attract a CSOS tariff of 2%, capped at R40 per month."

Constas contends that the CSOS Act will improve neighbourly relations and boost the value of units in community housing developments.

### **Affordability of dispute resolution services**

The issue of the affordability of dispute resolution services was a key contributor to the establishment of the Community Schemes Ombud Service, she states. Elaborating on the dispute resolution process now offered, and the costs, she says that owners, tenants, bodies corporate, homeowners' associations, share blocks and retirement villages may bring their disputes to the Ombudsman's office. "The Ombud will decide whether the dispute must be dismissed, mediated or arbitrated. If the matter goes as far as arbitration, the arbitrator's award can be made as a Magistrates' or High Court order. It can be appealed on points of law. The fee for applying to the Ombud to resolve a dispute is just R50. Once it reaches adjudication, R10 is payable. If the adjudication is outsourced by CSOS, the private adjudicator will be bound by a daily fee prescribed by CSOS.

"The CSOS model is based on the principle of transformation," Constas adds. "The payment of the CSOS levies undoubtedly provides subsidisation to previously disadvantaged owners, who could not afford legal fees, and who were excluded from accessing justice. It is exceptionally heartening to see how the National Association of Managing Agents, trustees and industry stakeholders have embraced the consultative process, and the way forward for this exciting new era in the community living space," she concludes.

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