

# Promoting good governance of community schemes

THE Community Schemes Ombud Service Act, 9 of 2011 was passed by Parliament in 2011. It will come into force on a date to be determined by the President once the Regulations have been published.

The Act will potentially bring about a change in the manner in which community schemes are managed in South Africa. Community Schemes are developments where there is shared responsibility among the owners for parts of the land and buildings.

They include sectional title schemes, share block schemes, home or property owners associations, housing schemes for retirees and housing co-operatives.

The Act establishes the Community Schemes Ombud Service (CSOS) and introduces provisions governing the management of Community Schemes.

The purpose of the Act is to provide a national dispute resolution

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service for community schemes; train conciliators, adjudicators and other employees of CSOS; take custody of, control quality of and provide public access to all sectional title scheme governance documentation and any other such documentation determined by the Minister.

It should also promote good governance of community schemes and monitor that governance; provide education, information, documentation and services to raise awareness of owners, occupiers, executive committees and others who have rights and obligations in community schemes.

It is envisaged all foundation

documents of community schemes, including rules, will have to be lodged with CSOS.

Currently rules for sectional title schemes are filed in the Deeds Office. The Memorandum of Incorporation for Associations that are incorporated as companies are filed with the Companies and Intellectual Property Commission. But constitutions of Associations that are not incorporated as companies and rules for associations and share block schemes are not required to be filed in any publicly accessible place.

The Act prescribes various procedures for the adjudication of specific disputes, including disputes regarding financial issues, behavioural issues, scheme governance, meetings, management services and maintenance and improvement works. A dispute is defined in the Act as a dispute regarding the administration of a

community scheme between persons who have a material interest in the scheme, where one party is the association, an owner or an occupier. Any person may make an application to the CSOS for the resolution of a dispute if they are a party to a dispute. Legal representation will not be permitted unless the adjudicator and all other parties to the dispute agree or the adjudicator decides it would be unreasonable to expect the applicant to deal with the application without legal representation.

An order by the adjudicator will have the effect of an order of either the magistrate's court or the High Court, depending on the value of the award. The parties may appeal the order to the High Court but only on a point of law and they must do so within 30 days of the order being granted. The parties may also apply for a stay of the order pending the appeal.

The CSOS will be funded partly by State funding, partly by fees charged for the services it provides and partly by levies raised against all schemes. Every Community Scheme will be required to pay an annual fee and submit copies of their annual financial statements to the CSOS.

Some view the Act as a welcome regulation of the governance and management of community schemes and the introduction of affordable dispute resolution.

Others view it as an intrusion on the private affairs of the Community Schemes.

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