

23 JUNE 2020

TO: COMMUNITY SCHEMES / SCHEME EXECUTIVES / MANAGING AGENTS / ATTORNEYS

FREQUENTLY ASKED QUESTIONS BY MEMBERS OF COMMUNITY SCHEMES.

A. GENERAL QUESTIONS

1. Who may be elected as a Trustees?

Anybody can be elected as a trustee, unless they are employed by the managing agent or by the body corporate, in which case the person may not be a Trustee. There is however an exception, if the person is an employee of the managing agent or the body corporate and he owns a unit in the scheme, then he can be a trustee as well. Please peruse prescribed management rule 6 of the Sectional Titles Schemes Management Act.

2. If 1 person owns all the units in the scheme, is a body corporate formed and must it be registered with the CSOS?

When another person other than the developer becomes an owner of a unit in the scheme, a body corporate is established for that scheme and it must be registered with the CSOS. Please peruse prescribed management Rule 2 of the Sectional Titles Schemes Management Act.

3. Who appoints the Managing Agent and the Employees of a body corporate?

The scheme executives as the executive organ of the body corporate. Please peruse section 4 and prescribed management rule 9(d) of the Sectional Titles Schemes Management Act.

4. Does a chairperson have more powers than the rest of the Trustees?

Only in the instance where there is an equal number of trustees and at a Trustee meeting there is a tied vote (e.g. *There are 6 Trustees including the Chairperson, 3 votes in favour of a proposed motion and 3 vote against*), then the Chairperson has what is known as a "casting" or deciding vote. However, if there are only 2 Trustees, the Chairperson does not have a casting vote, since the Trustees can only act to co-

opt further Trustees or to call a meeting to elect Trustees. The chairperson, therefore, has no more powers than the rest of the trustees. Please see prescribed management rule 14 of the Sectional Titles Schemes Management Act.

5. What is the Managing Agents responsibility towards unit-owners?

A Service Level Agreement or management agreement is signed between the Agent and the client (being the community scheme), which sets out the duties and responsibilities of the Agent. There is no legislation which deals with the specific duties and responsibilities of an Agent. If the Managing Agent is a registered Estate Agent, then he/it falls under the rules and regulations of the Estate Agency Affairs Board and the Property Practitioners Act.

6. Why am I not allowed to voice my opinion on any matter at an Annual General Meeting?

Bear in mind that at an Annual Meeting there is a required list of items which must be discussed on the agenda, and owners or their representatives are welcome to engage on the particular topic which is up for discussion. An AGM is generally not the platform to discuss *any subject under the sun*, and discussions affecting an individual owner alone are normally not in the interests of other members of the Scheme. The same can be said of Special Meetings where the agenda is set down to discuss a particular subject or subjects. Rather set up a suitable date and time whereat you can discuss your concerns with Managing Agent or the Trustees. Please see prescribed management rule 17 of the Sectional Titles Schemes Management Act.

7. Can the Trustees lodge an application for dispute resolution with the CSOS if summons has already been issued against a levy defaulter?

Section 42 of the CSOS Act states that an Ombud must reject an application if a summons has already been issued against a levy defaulter for the recovery of levies. When a potential Applicant (i.e. the body corporate in this instance) approaches the CSOS to institute dispute resolution proceedings against a levy defaulter for the collection of outstanding levies, we advise the Trustees ***to first withdraw legal proceedings against the recalcitrant unit-owner***, and then hand the matter over to the CSOS. If the Trustees refuse, then the CSOS cannot take the matter on. The reason for this is that action against a Defendant/Respondent cannot be taken in different forums. The person instituting the action must choose the legal forum in which the legal action is instituted against the Defendant /Respondent and stick to that forum. You have the right to choose either the Court or the CSOS as the legal forum in which to institute and pursue the action, but not both. This is a fundamental principle of the South African Law.

8. Can I vote if I only own a utility section?

Yes, you can. Please peruse prescribed management rule 15 of the Sectional Titles Schemes Act.

9. I want de-register the scheme with CSOS as the sectional titles scheme is being demolished or I erroneously registered, however, I have a conventional property? What documents do I need to do so?**Bodies Corporate:**

- The Court Order in terms of which it was ordered that the body corporate be de-registered; *alternatively*
- The unanimous resolution in terms of which it was decided to deem the building destroyed; *and*
- The Conveyancing documents in terms of which the scheme has been removed from the sectional title register; *OR*
- An official confirmation from the Deeds Registrar confirming that the scheme has been de-registered and removed from the sectional title register.

Homeowners Associations:

- The special resolution as per the MOI; and
- Confirmation from the CIPC that the HOA has been deregistered.

10. Must a managing agent have a Fidelity Fund Certificate?

Yes, it is a criminal offence if a Managing Agent conducts business as such without a Fidelity Fund Certificate in terms of the Estate Agency Affairs Act. Please liaise with the Estate Agents Affairs Board regarding this matter.

11. May I, as an owner, request the Trustees' details?

Yes, you may, in terms of the prescribed management rule 27 of the Sectional Titles Schemes Management Act.

12. May I install CCTV cameras outside my unit for protection?

Yes, you may, however you need to obtain the Trustees permission and you may not invade anybody else's privacy in the scheme.

13. Which part of the Act or Rules deals with insurance?

Section 3(1)(h)(i)(j) and (k) and PMR 23 of the Sectional titles Schemes Management Act.

14. How do Trustees vote at Trustees' meetings?

Always by show of hands - "*one trustee, one vote*", therefore never by value. Please peruse prescribed management rule 14 of the Sectional Titles Schemes Management Act.

15. How do you calculate PQ?

The size of your section in m² ÷ (*the sum of the total number of square metres of all the sections in the scheme*) x 100 = the participation quota (PQ) of your unit to 4 decimal places. This is the PQ of your unit, which must be the PQ as shown on the last page of the sectional plan for the scheme as registered at the Surveyor General's Office.

16. Can an owner vote at a General Meeting if there is a judgment or adjudication order against him?

No, he cannot vote at an AGM or SGM for an ordinary resolution, however, the PQ can be counted towards the quorum. The owner can vote for a special or unanimous resolution even if there is a judgment or adjudication order against him.

17. Must an owner first waive a meeting before a SKYPE / ZOOM / MICROSOFT TEAMS meeting can take place?

Holding an AGM via skype or any other electronic media does not mean that any member of the body corporate needs to waive the right to hold the meeting, it simply means that the meeting is held by utilising of electronic media as long as, in terms of prescribed management rule 10:

- "A body corporate may make arrangements for attendance at an annual or special general meeting by telephone or any other method, if the method—
- is accessible to all members and other persons entitled to attend the meeting;
- (b) permits all persons participating in the meeting to communicate with each other during the meeting; and
- (c) permits the chairperson to confirm, with reasonable certainty, the identity of the participants."

It is only if no meeting whatsoever is going to be held, that all members must waive the right to the meeting.

18. The scenario is as follows:

A sectional title scheme has already been developed and the body corporate has been formed. The developer of the scheme has entered into an agreement to purchase the vacant land next door. He wants to develop this land and create a different sectional title scheme, which he then wants to link to the already developed scheme. How can this be done?

The CSOS's advice would be to register an HOA, where the 2 Bodies Corporate would both be members. No cession would be involved. The bodies corporate would both have to pass unanimous resolutions and their Management Rules would have to reflect that they are members of the HOA and their members are bound by the MOI of the HOA– the Trustees would become Directors of the HOA, the Conduct Rules would become the Conduct Rules of the HOA (shared by the bodies corporate), the MOI would be worded appropriately because levies would become payable to the Bodies Corporate individually, and to the HOA. They could, e.g., share facilities, such as swimming pools and tennis courts.

19. Must a body corporate have public liability insurance?

Yes, a body corporate must take out public liability insurance in terms of Legislation for R 10 Million or more, this is for any third party (outsider) who may be injured whilst on the common property. Please refer to prescribed management rule 23(6) of the Sectional Titles Schemes Management Act.

20. Must a body corporate take out property owners' liability?

Please look at the disclaimer on the property of body corporate i.e. park at own risk etc. If, for example, the lifts fall, and the person gets injured, look at repair and maintenance plan.

21. May I claim for consequential damages?

Rather use the terminology "resultant damages". Both the body corporate as well as each member must mitigate their risk when it comes to resultant damages, however, if it was found, after an investigation, that the body corporate was, for instance, negligent in fixing the leaking roof, then you as a unit owner may claim from the body corporate resultant damages as well.

22. Can a manager, also be defined as a managing agent?

Yes, they can in terms of the CSOS Legislation.

B. REGISTRATION OF COMMUNITY SCHEMES

23. What is the registration process?

The Schemes can download the CSI form from CSOS website or fill in the form online. The form together with attachments can be sent to registration2@csos.org.za.

24. What will happen if the Scheme does not want to register with CSOS?

In terms of the CSOS Act, all schemes must register. Non-compliance measures will be instituted against schemes who fail to register with the CSOS.

25. Will there be a fee payable to register a community scheme?

There is no registration fee.

26. The CS1 form requires the details of the Managing Agent to be attached – is that the Certificate of Incorporation or the EAAB Fidelity Certificate, or what document is being referred to?

The Fidelity Certificate from EAAB can be attached as proof of registration.

27. Who must sign the declaration on form CS1?

The declaration is from the person who is authorised to sign on behalf of the scheme. This could be a managing agent, chairperson of the Trustees or Chairperson of the Board of Directors. The authorisation must be by way of resolution.

28. On the CS1 registration form in section 8 – you ask for a copy of the certificate of establishment?

The copy which was issued by the Deeds Office.

29. What will be the process for the approval of Rules for new schemes?

On the CSOS website is a Practise Directive regarding the amendment of Rules.

C. PAYMENT OF CSOS LEVIES AND FEES**30. Is CSOS going to supply invoices for the payment?**

Yes. Please speak to the revenue department.

31. How much levy is payable?

Depend on the levy payable to the scheme. There is a levy calculator on our website together with a Practise Directive regarding the payment of levies and fees.

32. How often must payment be made?

Monthly to the community scheme; which payment is made to CSOS quarterly.

33. CSOS levies will also be calculated on exclusive use contributions and special levies – is this true? Or is it only calculated on the normal monthly levies?

Only on the administrative levy.

D. ANNUAL FINANCIAL STATEMENTS**34. Who must audit the financial statement?**

An independent Auditor.

35. Can the person who is involved in the or preparation of the monthly financial report audit the financial statements?

No, the Sectional Titles Schemes Management Act prohibits it.

36. STSMA – if less than 4 members each member must be Trustees. What if an owner is unwilling to stand?

There is no need for election or appointment, every member automatically becomes a Trustees by application of the law.

37. Must a community scheme have a fidelity fund certificate?

Each community scheme must have fidelity fund insurance to the value of not less than 25% of the total annual levies budgeted for. Each portfolio manager must have the same fidelity fund insurance unless it is clearly stated in the umbrella that it covers that. Please peruse prescribed managing rule 25 of the Sectional Titles Schemes Management Act.

38. Schemes within schemes (*for example a body corporate within a homeowners' association*), will there be double charges or will there only be one levy amount?

Combine the levy and the principal will apply.

39. Section 6(7) of the STSMA may be interpreted to suggest that members owning multiple sections (and so units) only have one vote notwithstanding their multiple ownership in a scheme and is contrary to Section 6 (6)?

In number only 1 vote; in terms value – PQ applies.

40. In levy collections and arrears, does the CSOS have a monetary jurisdiction?

Yes, in terms of Section 39(1) of the CSOS Act.

41. Will matters already pending in a Court of Law be capable of being referred to the CSOS? We are particularly interested in levy collection matters which are already before the Court and concerned that defaulting owners may use the ability to refer the matter to the CSOS if same does indeed exist, as a delaying tactic thereby frustrating the process to the prejudice of the scheme and owners?

By agreement between parties or by referral of Court.

42. It is understood that in certain instances the CSOS levy may be waived. Members will have to complete the necessary forms; however, it is unclear how these forms are to be submitted? How will the scheme know that an owner's CSOS levy contribution has been waived – will the owner receive a waiver certificate which they can provide to the scheme?

The application for waiver or discount is submitted to CSOS by email to waiver@csos.org.za. CSOS will administer the means test and the results will be communicated to both the schemes and the applicant. *Please see the CSOS Practise Directive on waivers on the website.*

43. What are the different types of Practise Directives of the CSOS?

1. Levy & payments;
2. Amendment of scheme governance rules;
3. Dispute resolution;
4. Waiver of levies & fees;
5. Application for special and unanimous resolutions.

Sincerely,
NDIVHUO RABULI
Chief Ombud (Acting)