



NATIONAL ASSOCIATION
OF MANAGING AGENTS
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NAMA 2019 National Conference



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NAMA INDABA 2019

**PRESENTATION BY:
MARINA CONSTAS**

- **Succinct update on CSOS dispute resolution process for non-compliance with rules**
- **Hot off the press information surrounding CSOS orders and appeals**
- **Staggering news on Airbnb front**
- **Levy collection lecture**



NAMA 2019 National Conference

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Community Schemes bring to the surface the tensions that exist in modern cities between individual rights and collective responsibilities.

Uniqueness of living in Sectional Title scheme:

- 1. Most obviously, the close proximity of neighbours.**
- 2. Interdependence of unit owners.**
- 3. Joint decision making.**

Vancouver City Council Report.

- The Building Resilient Neighbourhoods Project.**
- The “Hey Neighbour” Programme.**
- The High Density Housing for Family with Children Guidelines.**
- Social Concierges in Apartment Blocks Initiative.**

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- **Germany 12th Century**

France, Switzerland

- **USA**

**By 1969 every state promulgated
Condominium legislation**

- **Australia SA**

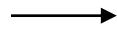
1960's and 70's

- **United Kingdom**

**Commonhold and leasehold
reform Act, UK Commission 2018**

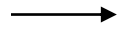


Germany 12th Century



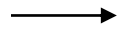
France, Switzerland

USA



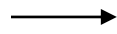
**By 1969 every state promulgated
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Australia SA



1960's and 70's

United Kingdom



**Commonhold and leasehold
reform Act, UK Commission 2018**

**DISPUTE RESOLUTION FACTS
CSOS
JANUARY – APRIL 2019**

Applications for assistance in resolving dispute:	- 1583
Gauteng	- 925
Natal	- 360
Cape Town	- 298
Sectional Title Developments	- 1385
Homeowners' Associations	- 171
Financial issues	- 831
Behavioural issues	- 147
Total appeals	- 13

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Gauteng	-	84% finalised
	-	320 referred to Adjudication
Natal	-	72% finalised
	-	113 referred to Adjudication
Cape Town	-	58% finalised
		94 referred to Adjudication

CSOS ORDERS AND APPEALS

- An appeal against an award must be lodged within 30 days after the date of delivery of the order of the adjudicator.
- Who can appeal the order?
 - An applicant;
 - The Association;
 - Any person who is dissatisfied with the Order.

BUT only on a question of law.

- Which court hears the Appeal?

The High Court

Interesting note – The Appellant may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal.

PRACTICAL PROBLEM VARIOUS HIGH COURTS HAVE TREATED THE APPEAL PROCESS DIFFERENTLY

- **26th March 2019 – Gauteng Local Division of the High Court issued a Practice Directive**
- **The Directive's purpose? – to make provision for the constitution of a full court to decide what the process should be.**
- **The full court heard the matter on the 13th of June 2019.**

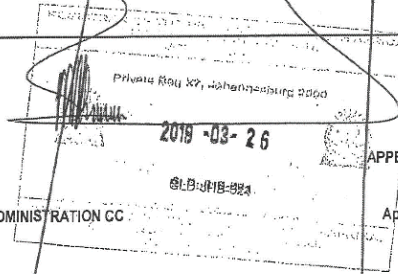


OFFICE OF THE JUDGE PRESIDENT

GANTENG LOCAL DIVISION OF THE HIGH COURT OF SOUTH AFRICA
Private Bag X7, JOHANNESBURG 2000
Tel 011 335 0482 – Fax 086 207 1291
Corner Pritchard & Von Brandis Streets, Fifth Floor, Johannesburg
NWalkinshaw@judiciary.org.za

Date: 26 March 2019

In re: The matter of:



APPEAL CASE NO: A3034/2018

STENERSEN AND TULLEKEN ADMINISTRATION CC

Appellant

and

LINTON PARK BODY CORPORATE AND COMMUNITY SCHEMES OMBUD SERVICE

Respondents

JUDGE PRESIDENT'S PRACTICE DIRECTIVE IN TERMS OF SECTION 14(1)(b) OF THE SUPERIOR COURTS ACT, ACT 10 OF 2013

1. This is a Directive issued in terms of Section 14(1)(b) of the Superior Courts Act, Act 10 of 2013, read with Section 173 of The Constitution of the Republic of South Africa. The purpose of the Directive is to make provision for the constitution of a Full Court, to sit at first instance to hear and determine the matters referred to a Full Court, including the issues identified hereunder.

Background:

2. The matter identified in the heading of this directive is referred for hearing to the Full Court pursuant to section 14(1)(b) of the Superior Courts Act. The matter concerns the noting of appeals in matters dealt with in terms of section 57 of the Community Schemes Ombud Services Act 9 of 2011 ("CSOS Act").

3. Following adjudication in order to resolve a dispute between the parties, the appellant noted an appeal in terms of section 57 of the CSOS Act against the whole of the adjudication order granted by the Community Schemes Ombud. Section 57 provides that:

- "1. An applicant, the association or any affected person who is dissatisfied by an adjudicator's order, may appeal to the High Court, but only on a question of law.
2. An appeal against an order must be lodged within 30 days after the date of delivery of the order of the adjudicator."

4. It is in this regard that divergent practices have developed in various Divisions. In the recent Western Cape Division decision of *Trustees for the Time Being of the Avenues Body Corporate v Alain Shmaryahu and CSOS 2018 (4) SA 566 (WCC)*, the court held that:

"The proper manner in which such an appeal should be brought in the circumstances is upon notice of motion supported by affidavit(s), which should be served on the respondent parties by the Sheriff."

5. In contrast, the Appellant noted a judgment of this Division wherein the procedure prescribed by the Western Cape High Court was not followed.

The Legal Issues Raised:

6. Since no direction or procedure is prescribed by the rules of court, the CSOS Act or its regulations for the noting of appeals against adjudication orders handed down by the Ombud, there is a need for the Full Court to make a determination on the manner and procedures that ought to be followed when noting appeals in terms of section 57 of the CSOS Act.

Directive:

7. Therefore, in terms of section 14(1)(b) of the Superior Court Act 2013, Act 10 of 2013, a Full Court is hereby constituted for the purpose of hearing and disposing of the matter referred to herein as well as any other matter that may be raised for determination by the Full Court.

AIRBNB ANARCHY

- Short term letting for less than 6 or 3 months.
- Complete paralysis of municipalities to deal with onslaught.
- Originally meant for letting out rooms in a home.

Arguments which have been put forward for Airbnb:

1. "Airbnb creates opportunities to bring tourists to the country and creates jobs in the tourism industry".
2. "We are a free market, we cannot regulate."
3. "It's too difficult to prosecute."

Suggestions from anti-Airbnb activists:

- Acknowledge that the use of an entire residential property for transient letting is a commercial activity and contravenes zoning laws if land use departure is not obtained.

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- **Acknowledge that the Sectional Titles Schemes Management Act 8 of 2011 does not allow for commercial use of sectional title properties.**
- **Acknowledge that the municipalities have allowed the commercial use of sectional title properties in their entirety. They have ignored calls from residents whose quality of life has been eroded. They have failed to acknowledge that this practice exacerbates the challenges brought by apartheid spatial planning.**

SOLUTIONS:

1. ONE HOST ONE HOME POLICY

Each home may only let and advertise ONE property on any advertising platform and it must be the property in which they principally reside.

- ### **2. Properties zoned for residential use may not be used for holiday letting in their entirety.**
- Sectional Title properties should never be let in their entirety.**

This allows for “homesharing”. It’s a good compromise to allow people to earn extra money from their property without alienating the community.

COULD THESE RULES CONSTITUTE A COMPROMISE?

Short-term leasing of units (being for periods of three months or shorter) may only be undertaken with the trustees' prior written consent, which must not be unreasonably withheld subject to the terms and conditions hereinafter.

Short-term rentals of less than 3 nights are discouraged.

The owner must keep proper and accurate records of the full identities, addresses and contact details of all tenants leasing their units and must provide same to the trustees and managing agent in a manner as prescribed from time to time by the trustees. Such information must include:

The name and surname of the short-term rental tenant;

The apartment number that they are staying in;

The dates of the short-term stay;

The name and 24-hour contact details and cellphone number of the reservation agent and/or host and/or owner's representative who is responsible for the administration of the tenant;

The owner must ensure that a copy of the scheme's Conduct Rules is made available to each and every tenant that rents their units. In this regard, Conduct Rules must be made available to all tenants upon arrival and a copy is to be placed in the unit and be available on the booking website.

The owner must ensure that each tenant signs and undertakes to comply with the scheme's Conduct Rules.

In particular, the tenant's attention must be drawn to Conduct Rule 7, dealing with the behaviour of occupiers and visitors in sections and on common property.

The number of short-term rental tenants per apartment cannot exceed 2 (two) adults per bedroom in each apartment. All short-term rental tenants must abide by the parking rules governing the building. Such rules include only parking in the designated bay applicable to the apartment number, as well as parking within the demarcated lines of the parking bay.

As per Conduct Rule 7, the tenant must not create noise likely to interfere with the peaceful enjoyment of another section or another person's peaceful enjoyment of the common property, must not obstruct the lawful use of common property by any other person, and must take reasonable steps to ensure that the owners, or occupiers' visitors do not behave in a way likely to interfere with the peaceful enjoyment of another section or another person's peaceful enjoyment of the common property.

Any damage or loss caused by the short-term rental tenant to the common property will be recoverable from the owner concerned as if that owner caused the damage to the common property.

The trustees may withdraw any consent provided to the owner for short-term rentals if the short-term tenant breaches any conditions as set out above. In addition thereto, in the event that an owner has had a short-term tenant breach the conditions as set out herein, then the trustees may in such circumstances refuse their consent for short-term letting in respect of that owner.

- **Tourism Act 3 of 2014 is to be changed by the draft Tourism Amendment Bill gazetted on 12 April 2019.**
- **Short term letting will be regulated by the Department of Tourism.**
- **Public comment opportunity closed on the 15th of July.**

LEVY COLLECTION LECTURE

A Managing Agents' mandate can easily be terminated due to the Trustees' perception that arrear levies are not being dealt with.

Levies are the lifeblood of the scheme. The operational running of a Body Corporate is no different to running a business. Collecting arrear levies via the Courts.

- **Summons**
- **Default judgement**
- **Attach movables**
- **Attach immovables – Section 66 application**
- **Sale of unit**

Advantages:

- **The Court system is speeding up.**
- **Default judgements are taking 7-10 days.**
- **The taxed legal costs can be recovered.**



- **Collecting arrear levies via the Ombud**
- **Mediation**
- **Adjudication**

Advantages:

You can sort out a payment arrangement as early as the mediation hearing.

An application can be made to attach the tenants rental, if applicable.

- **Switching off electricity or water, or reducing same, without a Court Order is not an option, it is illegal. Claudia Niehaus v High Meadow Grove Body Corporate – Gauteng High Court, 13th November 2018.**

“In any number of cases it has been held that to deprive a person of electricity supply is an example of the deprivation of quasi – possession, which is remediable by the *mandament van spolie*, (spoliation order).”

“The argument that electricity was reduced and not completely switched off is without merit. A full court has previously held that spoliation relief avails even where the applicant has not been entirely deprived of possession of the whole of his “property”, in this case, “electricity.”

- **Disconnection of electricity with a Court Order is a viable option, particularly for large amounts outstanding.**

The legal concept of levies is completely separate from water and electricity. You cannot terminate electricity if levies are unpaid, nor can you pursue the route of prohibiting the purchase of electricity in a pre-paid electricity situation if levies remain unpaid.

- **A tenant residing in the unit is protected by Section 16h(A) of the Rental Housing Act 50 of 1999, which prohibits the unlawful disconnection of electricity.**

AN IMPORTANT THOUGHT I'D LIKE TO LEAVE YOU WITH.....

“Driven urban renewal will leave an indelible imprint on our cities in the form of newly emerging sectional title owners and managing agents. How we work out the conflicts and tensions inherent in this form of property ownership will determine the success or not of the renewal agenda.”

**Professor Hazel Easthope
Sydney University**