



Residential Communities Council NPC
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Dear Kanya,

RE: CSOS Legislative Review Process

Herewith please find included the input from the RCC (Residential Communities Council).

The process took longer than we initially anticipated.

We are of the view that this process will have to go through the total process of a Bill Amendment Process

Regards

A handwritten signature in black ink, appearing to read 'Hannes Hendriks', written over a white rectangular area.

Hannes Hendriks: Chairman of the RCC

COMMUNITY SCHEMES BILL TO ENABLE KEY CHANGES TO THE COMMUNITY SCHEMES OMBUD SERVICE ACT, ACT 9 OF 2011 ('CSOS Act')

Comments and concerns on the proposed changes/additions to the CSOS Act as included in the BILL referred to above. The comments and concerns encompass those of the Residential Community Council and its members.

NOTE

Where references are made to the proposed changes/additions, the Section in the Bill is referred to first followed by the Section of the Act being affected. Other references are named specifically.

1. CSOS Identity Name (Entire Act)

1.1 Amendment's.

Proposed to change or alter the CSOS name to broaden its meaning to beyond the ambit of being an "Ombud". The resulting primary function of the CSOS is to function as an Industry Regulatory body. That would be a function much wider than being a 'ombud' or dispute resolution body. The opportunity is clearly created to come up with a suitable/impact name which effectively positions the entity as an empowered regulator.

1.2 Comments.

1.2.1 The changes have serious implications on the industry and the unilateral alterations to able a movement of the entity from an 'ombud' service, for which a monthly levy is recovered from each homeowner in schemes, to a 'regulator', who in fact like other regulators cannot recover levies from citizenry other than statutory taxes, defies the original purpose of the creation of the ombud service.

1.2.2 The entity is reminded that the original purpose of the Act is to provide for

- a) the establishment of the service,
- b) the functions, operations, and governance of the Service,
- c) a dispute resolution mechanism in community schemes.

1.2.3 The entity is reminded that widening the ambit of the CSOS to a predominantly 'regulatory' functionary, will cause more confusion and contribute to more 'trespassing' on the ambit of other regulatory scribes such as the Companies Act

under which the larger portion of industry namely homeowners' associations are governed and regulated.

- 1.2.4 The question of recovery of levies from homeowners in schemes for the original service, where after changes are affected, the service should be funded from the state coffers and not from homeowners in schemes. Should community schemes then consider claiming levies already paid to the CSOS back?
- 1.2.5 The 'broader' functions as envisaged must be described in full and the reasons and expected outcome in practice for the change or addition must not be as vague but clearly motivated. If amendments are summarily accepted and gazette it would be another example of irresponsible unilateral changes that will have continues legal repercussions in the industry.

2. Functions of the Service (Section 4)

2.1 Amendment's.

- 2.1.1 Addition to the regulation of the quality of community scheme governance documentation to ensure that schemes are in compliance with the Act.
- 2.1.2 To ensure that homeowners are protected from undesirable practices in the industry.
- 2.1.3 Implementation of transformation measures and good governance within schemes.
- 2.1.4 Establishment and administration of transformation fund.
- 2.1.5 Establishment and administration of the fidelity fund.

2.2 Comments.

- 2.2.1 In terms of 2.1.2 and 2.1.3 clear examples are needed to support the reason for these amendments.
- 2.2.2 The establishment of a transformation fund is a serious concern, and unclear as to the reason and purpose of such a fund. There is already a 'fidelity fund' imposed. Unlike the rest of the entire Government Service which included regulatory bodies, the CSOS is already collecting a substantial income from imposing a levy on homeowners in schemes. To what end would this additional financial burden on scheme's budgets be established?

2.2.3 The establishment and administration of a Fidelity Fund is already a function of the PPRA. Why should the CSOS impeach the functions of another Act/Entity? A clear distinction should be made between Free Hold and Sectional Title as communities are vastly different.

2.2.4 The establishment of the CSOS came with vast public participation processes and the original purpose of the CSOS which is organized within the Act came as a result of that process. The establishment of various funds within the CSOS Act which already exist and are enshrined in other Acts and governed by those entities is a concern and is questioned.

3. The CSOS Mandate (Section 5 & 6)

3.1 Amendment's.

3.1.1 Mandate to be reviewed every 3 years to align with Board terms, unless otherwise specified by the Minister.

3.2 Comments.

3.2.1 Aligning the mandate with the term of Boards will result in continuity being broken. How does a new Board know enough from the onset to review and affect changes to the mandate? A change every 5 years or one year post to appointment should be more effective.

3.2.2 It seems that there has been no input from Community Schemes. Community Schemes, including HOA's (by representation) should be included as part of the committee reviewing the Mandate.

4. Appointment of the Deputy (Sections 14, 15, 16, 17, 18)

4.1 Amendment's.

4.1.1 Addition of provision that the resignation of the Chief Ombud and the CFO must still be accepted by the Board (16.2).

4.2 Comments.

4.2.1 There is no reason for the appointment of a Deputy as the CFO can fulfill this task. Unnecessary costs.

4.2.2 Employment contracts are regulated and controlled through the Labour Legislation. In terms thereof there is no requirement for 'acceptance' thereof. It

is a unilateral action which ends the employment contract.

5. Removal of the Chief Ombud, Deputy Chief Ombud and Chief Financial Officer from office (Section 16, 17)

5.1 Amendment's.

5.1.1 The Chief Ombud must be subject to applicable labour legislation. Removal shall be on account of the following.

5.1.1.1 misconduct

5.1.1.2 failing to perform duties connected with his/her office diligently

5.1.1.3 operational reasons

5.1.1.4 the Chief Ombud may suspend the Deputy Chief Ombud during misconduct proceedings against him/her

5.1.1.5 the Chief Ombud, Deputy Chief Ombud and Chief Financial Officer and any company of which they are a director may not trade with the Service within 12 months after the termination of their employment or resignation from the Service.

5.2 Comments.

5.2.1 The Labor Law and the Employment Contract is applicable a paramount.

Following the LRA will prevent the dragging out of suspensions with full pay and unnecessary costs.

5.2.2 Again the mention of a Deputy Chief Ombud seems superfluous and unnecessary as already pointed out such a position is not necessary.

6. Acting Chief Ombud and Chief Financial Officer (Section 17, 18)

6.1 Amendment's.

6.1.1 Removal of this provision. Belongs on internal policies of the CSOS.

6.2 Comments.

6.2.1 Same comments as in 5.2 above.

7. Funds of Service (Section 22, 23)

7.1 Amendment's.

7.1.1 Inclusion of the following to 22(1)

- 7.1.1.1 interest derived from investments in the Service.
- 7.1.1.2 interest charged on late payments of levies and or fees.
- 7.1.1.3 administrative penalties and fines collected during compliance enforcement
- 7.1.1.4 community scheme resignation fees
- 7.1.2 Section 22(2) has been expanded to detail the utilization of funds as follows.
 - 7.1.2.1 to establish and maintain a transformation fund, fidelity fund, administrative fund, investment fund and any other fund that the business exigencies of the Service may demand,
 - 7.1.2.2 the fidelity fund shall be established for the purpose of providing **financial assistance** to owners in the community scheme under circumstances where the stakeholders of the community schemes failed to meet their obligations in terms of this Act. The fidelity Fund shall be managed by an independent fund manager, who shall be appointed by the Board,
 - 7.1.2.3 the transformation fund shall be established to assist with **transformation imperatives** within the community schemes Sector as determined by the Minister,
 - 7.1.1.4 the administration fund shall be used to fund the operations of the Service. An excess amount left on the administration fund shall be invested by the Service with a financial institution,
 - 7.1.1.5 Investment Fund means surplus funds invested by the Service with a financial institution pursuant to this Act.

7.2 Comments.

- 7.2.1 The short explanations given about the funds are seriously questioned. The 'transformation fund' is not clearly defined and the purpose of the fund is questionable. The reasons are not definitive and need to be tested.
- 7.2.2 Why should a fund be established to 'assist' owners where their community has failed to comply with the Act. Community Boards are evaluated by the members and action is taken decisively. In terms of HOA's and other schemes, all of them

are governed in terms of their various Acts; MOI's and governance documents.
It is not really clear what the fund is for?

- 7.2.3 There is no need for a fund. Boards should be evaluated against a system of key performance indicators to ensure that performance is of standard. Communities do this through their own governance documents.
- 7.2.4 There is already a shadow cast on financial management at the CSOS in the past. What assurances and accountability will there be with the addition of various funds?
- 7.2.5 It is still not clear whether the CSOS has found/identified each and every scheme in the Republic. Only once the CSOS can prove to existing members that ALL schemes contribute; can the establishment of additional funds be considered. Existing contributors cannot subsidize communities that do not comply with the Act, which is no doubt currently the case.
- 7.2.6 Established funds must be audited by independent auditors and reports made available to ALL contributing members on a yearly basis.

8. Schemes Registration (new addition)

8.1 Amendment/Addition.

- 8.1.1 Provision is made for the compulsory registration of community schemes.

8.2 Comments.

- 8.2.1 This was always a requirement of the CSOS. However, there is no proof that CSOS is actively identifying and registering ALL community schemes in the republic.
- 8.2.2 There is currently a serious problem with the CSOS communication system in terms of accounting (invoicing, billing, response to financial enquiries) which places a question on their ability to administer properly. The very act of adding this provision, which is already in place from the word go, shows disorientation within ranks. This causes serious concerns.

9. GEPF sole mandate (Section 21)

9.1 Amendment's.

- 9.1.1 Deletion of the provision which makes it compulsory for the CSOS to invest retirement benefits with the GEPF.

9.2 Comments.

9.2.1 The GEPF is a fund for the retirement benefit of employees and must not be abused. The integrity of this fund must be beyond reproach. To irresponsibly gamble with the reserve is contrary to all employee contracts and the RCC is totally opposed to this amendment as should all government employees be.

10. Board Composition (Section 6,7)

10.1 Amendment's.

10.1.1 Increase in board composition to a maximum of 15 members, including the 2 executive members.

10.1.2 Inclusion of a member with special knowledge and experience in the legal and regulatory environment.

10.1.3 CSOS will secure professional indemnity insurance to cover the Board members against liability for their acts or omission performed when undertaking to execute their obligations pursuant to this Act and fulfilling the CSOS mandate.

10.2 Comments.

10.2.1 Non-representation in the CSOS Board by Scheme members is a serious shortcoming. At least one senior member of each type of scheme and industry bodies must be represented on the Board to bring sorely needed knowledge and experience to the entity that intends to regulate them.

11. Board members and Committees (Section 12, 13)

11.1 Amendment's.

11.1.1 Section re – named from Committees to Board Meetings & Committees.

11.1.2 A person co-opted in terms of section 12(4) shall not be a member of the Board and shall not have voting powers.

11.1.3 The terms and conditions of the co-opted person's appointment including remuneration shall be determined by the Board at the time of appointing such persons subject to supply chain management or human capital recruitment policies of the Service.

11.2 Comments.

No comment.

12. Disqualification from membership of the Board (Section 9, 10)

12.1 Amendments.

12.1.1 Disqualification extends to:

Members of parliament

- A provincial legislature, a member of Cabinet
- Deputy Minister, a Premier or member of a provincial executive council
- A member of the Nation or Provincial House
- House of Traditional Leaders, Member of municipal council

12.2 Comments.

12.2.1 Include members with direct interest and families of such members.

13. Dissolution of Board (new inclusion)

13.1 Amendment's.

13.1.1 New Provision regulating the terms of the Board's dissolution. The Minister may dissolve the Board under the following circumstances:

- The Board collectively disregards or contravenes applicable laws, ethical standards or lawful instructions.
- The Auditor General has matters of emphasis or declines to express an opinion on the accounts, financial statements and financial management at the CSOS for two consecutive years.

13.2 Comments.

No comment.

14.1 Administrative and Transformation Funds (New inclusion)

14.1 Amendments/additions.

14.1.1 Creation of the Administrative and Transformation Funds.

14.2 Comments.

Kindly refer to comments in paragraph 7 above.

15. Legal proceedings – documents relating to litigation (Section 32, 34)

15.1 Amendment's.

15.1.1 Removal of the Section in favor of clause to improve operational efficiency.

15.2 Comments.

No comment.

16. Scheme Governance (New inclusion)

16.1 Amendment/additions.

16.1.1 Introduction of undesirable and prohibited practices within community schemes which are punishable with administrative fines.

16.2 Comments.

16.2.1 Fines can only be instituted when legally found guilty of the breach of the Law or found such at a hearing.

16.2.2 A formal penalty structure (list) must be clearly set out and made available for reference in the industry.

17. Internal appeal mechanism (New inclusion)

17.1 Amendments/additions.

17.1.1 Establishment of an internal appeal structure as a first resort for a party dissatisfied with the outcome of an adjudication order, prior to approaching a court to review the decision of the CSOS.

17.2 Comments.

17.1.2 Agreed. Structure must have authority to enforce.

18. Advisory Council (Section 18 of the STSMA)

18.1 Amendment's.

18.1.1 Broadening of the scope and objectives of the Sectional Titles Schemes Management Advisory Council to cover issues pertaining to all CSOS schemes and not just Sectional Titles.

18.1.2 Advisory Council will consist of not more than seven but not less than five members.

18.1.3 Council will consist of:

- Chief Ombud.
- Senior Official of the department designated by the Director General
- Remaining must be persons appointed by the Minister.

18.1.4 The Function of the Council will be as follows:

- Making recommendations to the Minister concerning any matter specified in the Regulations.
- Ensure regular review and implementation of the Act.
- Advise the Minister on any matter referred to by the Minister.

18.1.5 Deputy Chairperson will be appointed by the Minister.

18.1.6 For the Minister to appoint the remaining members of the Council, a Nomination Committee must be established by the Director - General for consideration as a Council member.

18.1.7 Appointment period for the members is five years.

18.2 Comments.

18.2.1 The Companies Act provides and regulates Homeowners Associations.

18.2.2 Council composition should be representative of Industry role players and specialist bodies such as ARC, CAISA, RCC etc.

18.2.3 The CSOS need to reflect on their insistence to manage the affairs of Homeowners Associations under the STSMA. The Companies Act regulates Homeowners Associations and there cannot be any overlapping, which is the reason why so many CSOS rulings are referred to High Courts. This issue needs to be addressed as the importance of this misnomer stays unattended and creates huge costs for parties for reviews in Courts.

19. Compliance and enforcement (New inclusion)

19.1 Amendments/additions.

19.1.1 A ban imposed on financial institutions against making credit facilities available to schemes unless schemes are registered with the CSOS.

19.2 Comments.

19.2.1 This is an unjust and unilateral imposing of unfair practice on the rights of entities to trade with commercial banks. This is outright unlawful and dictates what schemes, governed by other Acts, such as the Companies Act, can put in their Memorandum of Incorporations which are Lawful governance documents.

20. Compliance & enforcement (new inclusion)

20.1 Amendments/additions.

20.1.1 Prohibition placed on banks to against providing mortgage bonds in favor of a unit if the scheme is not registered with the CSOS.

20.2 Comments.

20.2.1 Impeaching the rights of commercial institutions and individual private rights of citizenry to engage in commercial activities. This is dictatorial, unlawful and shows the inability and poor administration of the CSOS of not being able to identify schemes and get them registered. This is the easy way out – not Lawful.

21. Compliance Notices (New inclusion)

21.1 Amendments/additions.

21.1.1 Where an Inspector identifies a contravention of this Act, a Compliance Notice will be issued to the person allegedly contravening this Act.

21.1.2 The Notice must inform the person of the non - compliance and the period in which they must comply, which must be reasonable. Failure to comply will result in a fine that shall accrue to the administrative fund.

21.2 Comments.

21.2.1 Unilateral action. What about an opportunity for making representations?

21.2.2 Add steps to ensure compliance with the Act.

22. Prohibited Conduct (New provision)

22.1 Amendments/additions.

22.1.1 The CSOS unilaterally provided a list of prohibited conduct which excludes input from the industry. Bullying conduct from CSOS is not acceptable, especially where schmes contribute financially to the CSOS coffers. Schemes should be allowed to make input/representations on proposals for such a list.

22.2 Comments.

22.2.1 Who decides on this and what input does the industry have?

23. Duty to keep accounting records and other documents (New inclusion)

23.1 Amendments/additions.

23.1.1 A scheme executive committee or managing agent must, from the date of receipt or creation of a document, retain for a period of five years any document relating to:

- the appointment of persons providing services to the scheme, including any contract concluded or mandate issued.
- Financial transactions of the scheme such as annual financial statements, whether they are audited or not.
- Moneys collected and expended by the scheme, including fines, levies and contributions.
- Correspondence exchanged with the Service.
- Complaints, and applicable correspondence, lodged by homeowners or tenants with the scheme.
- A managing agent or executive committee who fails to comply with subsection 1 is guilty of an offence.

23.2 Comments.

No comment.

24. Practice directives (Section 38)

24.1 Amendment's.

24.1.1 Inclusion of the following:

- Creating rules governing dispute resolution.
- Grace period on collection of levies or schemes registration.
- Management of mixed-use schemes.
- Process for making rules.
- Amendments or repeal of Governance Documentation.
Process of lodging rules.
- Approval of community schemes governance documentation process for amending CSOS forms.
- Issuing non-compliance letters to community schemes.

- Conduct of parties within a community scheme and managing agents.
- Delegation of Powers

24.2 Comments.

24.2.1 The provisions/amendments speak solely to the STSMA and do not consider that HOA's are governed under the Companies Act.

25. Time limit on certain applications (Section 41, 43)

25.1 Amendment's.

25.1.1 Addition of a Provision placing a Time Frame upon which a dispute may be lodged. This Provision will be added to prevent homeowners from lodging a dispute in malice.

25.2 Comments.

25.2.1 Are the same time limits applicable for the CSOS when dealing with a case to fruition?

26. Rejection of applications (Section 42, 44)

26.1 Amendment's.

26.1.1 Addition of the following provisions.

- The complaint appears to be frivolous, without merit or vexatious.
 - The complaint fails to allege facts that, if proven, would constitute grounds for a remedy under this Act.
 - The dispute between the parties is Lis pendens or closely related proceedings have commenced in another forum.
 - The dispute is res judicata or has been withdrawn by the applicant
- Condonation applications will include the following:
- The summary of the application.
 - The degree of lateness.
 - The reasons for the lateness.
 - The referring parties' prospects of succeeding with the application and obtaining the relief sought against the other party.

Any prejudice to the other party.

- Any other relevant factor.

26.2 Comments.

No comments.

27. Inspectors investigations teams (New inclusion)

27.1 Amendments/additions.

27.1.1 Appointment of inspectors to investigate non-compliances with the Act for purposes of internal enforcement, including their powers to enter properties and inspect.

27.1.2 Inspectors will be appointed by the Chief Ombud and will be issued with an inspector's identification card and an appointment certificate stating that the person has been appointed as an inspector in terms of this Act.

27.1.3 The Inspector must be in possession of these documents during the performance of duties.

27.2 Comments.

No comments.

28. Notice to affected persons and association (Section 43c, 45c)

28.1 Amendment's.

28.1.1 Removal of this Section considering dispute resolution fees and adjudication fees having been indefinitely suspended in the Practice Directive during 2021.

28.2 Comments.

No comments.

29. Adjudication (Section 48, 51)

29.1 Amendment's.

29.1.1 Deletion of section that grants applicants the right to choose an Adjudicator.

29.1.2 Addition for the Power of the Adjudicator to effect errors or omissions.

29.1.3 Addition of a section allowing the Adjudication to issue a cost order.

29.1.4 Addition to the orders that may be granted by the Adjudicator in respect of financial issues, governance issues, access to the scheme and essential services.

29.1.5 An order for the payment of outstanding levies owed to CSOS by the community schemes and or the developer.

29.1.6 An order for the reimbursement of loss of rental income.

29.1.7 An order requiring any person in possession of any accounting or other documents of the community scheme to return the community scheme documents.

29.1.8 An order declaring that the decision of the executive committee to terminate essential services not limited to water and electricity is unlawful and requiring the services to be reinstated.

29.1.9 An order declaring that an owner and/or occupier has been wrongfully denied access to the scheme and requiring access to be restored.

29.2 Comments.

29.2.1 In terms of 29.1.9 this is not in the mandate of the CSOS. A Court of Law must decide on this as this has to do with the breach or not of Rules which are in place in terms of MOI's.

30. Powers of adjudicator (Section 51)

30.1 Amendment's.

30.1.1 Inclusion of the following sections:

- To rectify non-material errors or omissions in his or her orders which have no bearing on the outcome of the dispute.
- To invite people or witnesses that the Adjudicator considers able to assist in the resolution of issues.
- To issue interim orders.

30.2 Comments.

No comments

31. Legal representation (Section 52)

31.1 Amendment's.

31.1.1 Section on legal representation at conciliation clearly prohibited.

31.2 Comments.

No comments.

32. Notice of Order (Section 55)

32.1 Amendment's.

32.1.1 Inclusion of the Respondent as a party to the dispute.

32.2 Comments.

No comments.

33. Order dismissing application (Ombud's orders) (New inclusion)

33.1 Amendment's/additions.

33.1.1 Provision for issuing Dismissal Notice and Enforcing Order.

33.2 Comments.

No comments.

34. Compliance and enforcement (New inclusion)

34.1 Amendment's/additions.

34.1.1 Provision for issuing compliance notices and their effect.

34.1.2 New Provision includes-

- No Financial institute shall lend money or make a credit facility available to a community scheme unless that institution has satisfied itself that the community scheme is registered with the CSOS.
- A Financial institution lending money to a homeowner against the security of a mortgage bond in respect of a unit shall ensure that the community scheme is registered.
- A Conveyancer attending the registration of a mortgage bond in favour of an institution contemplated in this subsection shall ensure that that the community scheme is registered with the CSOS.

34.1.3 A Provisional Housing development board or authority shall not-

- Approve a community scheme development project in respect of which a homeowner is eligible for a state housing subsidy in respect of a residential unit that has been or is to be constructed as part of that project unless that scheme is registered with the CSOS.
- Grant a state housing subsidy to a housing consumer for the acquisition or alienation of a unit within a community scheme unless that scheme is registered with the CSOS.
- Allocate a unit within a community scheme in respect of a housing development project approved by it to a homeowner unless that scheme is registered with the CSOS.

34.2 Comments.

No comments.

35. Good Governance (New Inclusion)

35.1 Amendment's/additions.

35.1.1 Retention of Scheme accounting records.

35.2 Comments.

35.2.1 This requirement is already part of each scheme's governance documents. For example, HOA's are regulated by a Section in the Companies Act in terms of this requirement. There is already a fiduciary duty on Board members of Schemes and the requirements of CIPC, External Auditors, etc apply. Why CSOS should have it in this Act is surely only for the STSMA.

36. Enforcement (New inclusion)

36.1 Amendment's/additions.

36.1.1 Provision for imposition of administrative penalties and fines arising from non-compliance with certain provisions of the Act.

36.2 Comments.

No comments.

37. Enforcement (New inclusion)

37.1 Amendment's/additions.

37.1.1 Revision of prosecutable offences and more have been added.

37.2 Comments.

No comments.

38. Regulations (Section 29, 31)

38.1 Amendment's.

38.1.1 Addition of provision for penalties for failure to comply with any provision of this Act.

38.1.2 Funds to be kept by the community scheme.

38.2 Comments.

No comments.

39. Registration of Community Schemes and payment of Levies (New inclusion)

39.1 Amendment's/additions.

39.1.1 Addition of the following provisions:

- The CSOS keeps a register of all community schemes as per Section 1.
- The CSOS shall issue a certificate of registration to all schemes upon successful registration.
- Developers will be required to register the scheme within 30 days of registering the property by the Deeds Office.
- Non – Registration of a scheme as per the Act will now be classified as an offence.
- Provisional registration of schemes will be permitted subject to the terms and conditions prescribed by the Minister
- If a Developer or association fails to register with the CSOS, any homeowner shall have the right to apply for the registration of a scheme.
- Amendment of particulars of the scheme submitted during registration process will be permitted.

39.2 Comments.

39.2.1 Many schemes have yet to receive a registration certificate, even after many requests and been registered for years. What are the consequences for CSOS for this lack of diligence?

39.2.2 Registration should automatically kick in from the sale of the developers' first freehold stand or ST Unit which triggers the formation of the scheme. Whether it be a Body Corporate or an HOA or any other type of scheme.

40. Levies and annual returns (Section 59, 38)

40.1 Amendment's.

40.1.1 Revision of levy payments being dependent on calculation in favour of a flat rate of R20 for all schemes.

40.1.2 Submission of audited financial statements or independent review by a registered accountant depending on applicable threshold for all schemes unless otherwise stated.

40.2 Comments.

40.2.1 Budgets should be submitted and levies should be calculated against budgets. Huge funds are being collected without proper accounting as per recent case history.

41. Interim Relief (New inclusion)

41.1 Amendment's/additions.

41.1.1 The chief ombud may, Mero motu (at his/her discretion) or on application by the aggrieved party, issue interim relief pending the finalization of the dispute to prevent serious irreparable damage or harm to the person or the property.

41.2 Comments.

No comments.

42. Special Resolution (Definitions)

42.1 Amendment's.

42.1.1 Broadening of definitions to include Round Robin Resolutions.

41.2 Comments.

No comments.

43. Functions of Bodies Corporate (Section 3)

43.1 Amendment's.

43.1.1 Expansion of the functions of a body corporate to include-

- replacement of common property, alterations and improvements to take account of the provisions in the prescribed management rules that cater for these expenses.

43.2 Comments.

No comments.

44. Additional Powers of Body Corporates (Section 5)

44.1 Amendment's.

44.1.1 The Body Corporate must, on application by an owner and upon special resolution by the owners, approve the extension of boundaries or floor area of a section in terms of the Sectional Titles Act; where occupation has taken place of the extension and the extension has not been registered within 90 days, the body corporate must charge a contribution as per section 3 on the expanded area as if it were registered.

Should the extension not be registered within 90 days and the owner of the section that has been extended does not furnish proof that a land surveyor and conveyancing attorneys have been appointed to register the extension, then the trustees may appoint the relevant professional to register the extension at the owner's cost.

44.2 Comments.

44.2.1 Of course, not applicable to Homeowners Associations – Companies Act.

45. Meetings of Body Corporates (Section (Section 6)

45.1 Amendment's.

45.1.1 Inclusion of the following section:

A member may be represented in person or by proxy at such meeting: Provided that a person must not act as a proxy for more than two members, unless the proxy has filled in a voting form clearly indicating, on each agenda item how they want their proxy to vote. Such proxy can be furnished to the chairperson of

the meeting before the meeting commences in terms of the proxy in question has not been voted on.

45.2 Comments.

No comments.

46. Trustees of Body Corporates (Section 7)

46.1 Amendments.

46.1.1 Inclusion of the following Legislation-

For the purposes of an agreement in respect of the beacons and boundaries of the common property required in terms of the Land Survey Act, 1997 (Act No. 8 of 1997), the trustees are deemed to be the owner of the land.

46.2 Comments.

No comments.

47. Fiduciary position of Trustees (Section 8)

47.1 Amendment's.

47.1.1 Section governing a Trustees fiduciary relationship to the body corporate.

47.2 Comments.

No comment. Not applicable to HOA's.

48. Proceedings on behalf of Body Corporates (Section 2b)

48.1 Amendment's.

48.1.1 Revision of the subsection, allowing an Applicant to make the application to the Regional Ombud rather than making a Court application.

48.2 Comments.

No comment.

49. Rules (Section 10(11))

49.1 Amendment's.

49.1.1 Addition of the following section-

- Rules will not be enforceable if the CSOS has not issued a section 10 certificate approving the rules.

49.2 Comments.

49.2.1 For STSMA. HOA's submit to CIPC for approval.

50. Appointment of Administrators (Section 16)

50.1 Amendment's.

50.1.1 Revision of the section including-

- Penalties for administrators that are not performing functions sufficiently shall be issued.
- Proposed signed agreement between Administrator and the Scheme regulating the relationship.

50.2 Comments.

50.2.1 Comment is reserved until a clear definition of "Administrator" is presented. Define 'Administrator'.

51. Destruction of- or damage to buildings (Section 17)

51.1 Amendment's.

51.1.1 Revision of the section to read as - *"In any case where an order is made under subsection (1)(c), the Court may impose such conditions and give such directions as it considers fit for the purpose of adjusting the effect of the order between the body corporate and the owners and mutually among the owners, the holders of registered sectional mortgage bonds and persons with registered real rights."*

51.2 Comments.

51.2.1 For STSMA only. Not applicable to HOA; s or other schemes regulated by another Act's.

Warm regards

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