

NEW LEGISLATION FOR SECTIONAL TITLE AND OTHER COMMUNAL HOUSING SCHEMES – PART III

Community Schemes Ombud Services Act 9 of 2011 – The Dispute Resolution Process

This is the third in a series of notes in which we guide you through the essentials of two new related Acts that deal with the management of various communal schemes and the resolution of disputes between owners and schemes' governing bodies. In this edition, we look at the dispute resolution process that is envisaged in the Community Schemes Ombud Services Act.

[Part II – Community Schemes Ombud Services Act – The Who](#)

[Part I - Community Schemes Ombud Services Act - An Introduction](#)

[Sectional Titles Schemes Management Act, 8 of 2011](#) (Size: 1.58MB)

[Community Schemes Ombud Services Act, 9 of 2011](#)

When a community scheme's governing body, an occupier or an owner has a dispute about the administration of the scheme with any person who has a material interest in the scheme, the parties can approach the Ombud Service for assistance in resolving the dispute. (The Act does not oblige them to do this and disputing parties, *locus standi*, may approach a court, refer their matter for private arbitration or approach the Rental Housing Tribunal, whichever forum is appropriate for the issue at hand.)

What happens once a dispute has been referred to the Ombud Service?

1. The Ombud Service may ask for certain further details

Section 40 of the Act provides that once the Ombud Service has received the application, it may request:

1.1. further information;

1.2. verification of the information submitted; or

1.3. ask the applicant to indicate whether existing internal dispute resolution provisions (should they exist in terms of the relevant governing body's founding provisions) were initiated, and if so, the outcome thereof.

2. Ombud Service may then Reject (or Accept) the application

Section 42 determines that the Ombud Service, after receipt, must reject the application if:

- the relief sought is outside the jurisdiction of the Ombud Service. In this regard it must be remembered that the Ombud Service may only make certain categories of orders relating to the administration of a community scheme. If the applicant requires an order that is not within the category of allowable orders (Section 38), then the Ombud Service cannot deal with the application;
- the applicant fails to provide the further details that the Ombud Service requested (i.e., as listed in 1.1 above);
- the applicant, after receiving notice from the Ombud with regard to submissions made by other parties to the dispute, does not confirm to the Ombud Service that he/she wishes to proceed with the application. The applicant must give this confirmation to the Ombud Service within 14 days after receiving the notice from the Ombud Service;
- the Ombud is of the opinion that the dispute should be dealt with in a court or other tribunal with competent jurisdiction.

In addition, it must be noted that certain fees are payable in respect of the Ombud Service's adjudication fees and applicants may apply for a waiver or discount with regard to the fees. However, if in the opinion of the Ombud, the application does not qualify for the discount or waiver, the application must be rejected.

3. After acceptance of the application – Conciliation or adjudication

Conciliation

Section 47 determines that on acceptance of an application (and after receipt of any submissions from affected persons or responses from the applicant), the dispute may be referred to conciliation if the Ombud considers that there is a reasonable prospect of a negotiated settlement of the dispute.

4. Adjudication

If there is no referral to conciliation or the conciliation failed, then Section 48 determines that the application (together with any submissions and responses) must be referred to an adjudicator. The Ombud must give the applicant and all affected parties notice of the referral, together with all the details of the costs of the adjudicator's services and the manner in which payment must be made and secured.

Only after payment has been received, will the adjudicator commence the

process, which includes investigating all the aspects of the application. The adjudicator may again ask for further information from the applicant or other relevant persons, may inspect premises, may invite such persons to the process whom he deems may assist in the resolution of the dispute, and the like.

After considering the available evidence, the adjudicator may either dismiss the application and make a cost order, or he may grant an order (as per the list of allowable orders contained in Section 38 of the Act). The order must be delivered to the applicant, the governing body of the communal scheme, the Ombud and to any other affected person.

Limited rights of appeal exist and these will be discussed in the next the Property Law Update.

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