

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

Community Schemes Ombud Services Act 9 of 2011 – Time Periods for Lodging Disputes with the Ombud Service

This is the fourth 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 time periods for the lodging of disputes as provided for in the Community Schemes Ombud Services Act.

[Part III – Community Schemes Ombud Services Act – The Dispute Resolution Process](#)

[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](#)

The Community Schemes Ombud Services Act contains only two sections that are relevant for purposes of our present enquiry.

1. Time limits for raising disputes with the governing body

The first is Section 41, which deals with time limits placed on certain applications only. It reads as follows:

“(1) An application for an order declaring any decision of an association or an executive committee to be void, may not be made later than 60 days after such a decision has been taken.

(2) An ombud may, on good cause shown, condone the late submission of an application contemplated in subsection (1).”

In other words, where a complainant's dispute relates to a decision that was taken by the governing body of a communal scheme, the dispute must be referred to the Ombud Service within 60 days after the decision was made. This provision was clearly inserted to assist general governance of community schemes. Where the governing body takes a decision, it is implemented and all in the scheme are bound thereto. It would cause havoc if some 14 months later, due to a dispute,

such a decision is overturned and a rule that was in practice and applied for this period, is suddenly undone.

However, the Ombud may condone late filing, provided the applicant can show good reason for the late filing.

2. The default position – all other disputes

The default position would then be that a claimant can refer a dispute to the Ombud Service within the normal three year prescription period.

3. The right of appeal

Section 57 of the Act deals with the right to appeal a finding by the adjudicator. It determines as follows:

“(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.

(3) A person who appeals against an order, may also apply to the High Court to stay the operation of the order appealed against to secure the effectiveness of the appeal”

In short, Section 57 provides that:

- A party to proceedings may appeal to a High Court, but ONLY on matters relating to law. This means that if the dissatisfied party disagrees with a finding made in respect of the facts, that aspect cannot be referred to a High Court for adjudication.
- An appeal against the finding of an adjudicator must be lodged within 30 days after the order was made.

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