

OMBUD SERVICE

COMMUNITY SCHEMES OMBUD SERVICE

ACT 9 OF 2011 *

Assented to:
date:
11 June 2011
2016

Commencement
7 October
(see s. 60 of this

Act)

(English text signed by the President)

ACT

To provide for the establishment of the Community Schemes Ombud Services to provide for its mandate and functions; and to provide for a dispute resolution mechanism in community schemes; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows: -

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CHAPTER 1 INTERPRETATION (S1)

1. Definitions

In this Act, unless the context indicates otherwise –

‘adjudicator’ means a person contemplated in section 21 (2) (b);

‘association’ means any structure that is responsible for the administration of a community scheme;

‘Board’ means the Board of Service established by section 6;

‘chief financial officer’ means the person appointed as the chief financial officer in terms of section 14;

‘chief ombud’ means the person appointed as the chief ombud in terms of section 14;

‘common area’ means any part of land or building in a community scheme which is intended for common use by occupiers;

‘community scheme’ means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings including but not limited to a sectional titles development scheme, a share block company, a home or property owner’s association, however constituted, established to administer a property development, a housing scheme for retired persons, and a housing co-operative as contemplated in the South African Co-operatives Act, 2005 (Act 14 of 2005) and ‘scheme’ has the same meaning;

‘Department’ means the Department of Human Settlements;

‘Director-General’ means the Director-General of the Department of Human Settlements;

‘dispute’ means a dispute in regard to the administration of a community scheme between persons who have a material interest in that scheme, of which one of the parties is the association, occupier or owner, acting individually or jointly;

‘executive committee’ means the executive body of a community scheme, including but not

limited to the trustees of a sectional title body corporate, the board of directors of a share block company and the management association of any housing scheme for retired persons;

'levies' mean the levies contemplated in section 59;

'managing agent' means any person who provides management services to a community scheme for reward;

'mandate' means the mandate of the Service, as contemplated in section 5;

'minister' means the Minister of Human Settlements;

'occupier' means a person who legally occupies a private area;

'ombud' means a person contemplated in section 21 (2) (a);

'owner' means a person who has a legally secured right to possession and occupation of a private area, including but not limited to the owner of a sectional title unit, the holder of shares in a share block company and the holder of an occupation right in a housing scheme for retired persons;

'person' includes an association, partnership, trust, corporation, private or public entity and such person's representatives, successors and assignees;

'practice directive' means a practice directive issued in terms of section 36;

'private area' means any area in a community scheme set aside for private occupation or ownership, excluding any common area;

'prescribe' means prescribe by regulation made under this Act;

'Public Finance Management Act' means the Public Finance Management Act, 1999 (Act 1 of 1999);

'regulation' means a regulation made in terms of section 29;

'scheme governance documentation' means any rules, regulations, articles, constitution, terms, conditions or other provisions that control the administration or occupation of private areas and common areas in a community scheme, and 'scheme governance provision' has a corresponding meaning;

'Service' means the Community Schemes Ombud Service established by section 3; and

"this Act" includes the regulations.

CHAPTER 2 COMMUNITY SCHEMES OMBUD SERVICE (ss 2 – 37)

2. Purpose of Act

The purpose of this Act is to provide for –

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

3. Establishment of Service

- (1) There is hereby established a juristic person to be known as the Community Schemes Ombud Service.
- (2) The Service operates as a national public entity listed in terms of the Public Finance Management Act with its executive authority vested in the Minister.
- (3) The Service must establish a national head office and, where necessary, regional offices.
- (4) The provisions of the Public Finance Management Act apply to the Service.

4. Functions of Service

- (1) The Service must –
 - (a) develop and provide a dispute resolution service in terms of this Act;
 - (b) provide training for conciliators, adjudicators and other employees of the Service;
 - (c) regulate, monitor and control the quality of all sectional titles scheme governance documentation and such other scheme governance documentation as may be determined

by the Minister by notice in the *Gazette*; and

(d) take custody of, preserve and provide public access electronically or by other means to sectional title scheme governance documentation and such other scheme governance documents as may be determined by the Minister by notice in the *Gazette*.

(2) In performing its functions the Service –

(a) must promote good governance of community schemes;

(b) must provide education, information, documentation and such services as may be required to raise awareness to owners, occupiers, executive committees and other persons or entities who have rights and obligations in community schemes, as regards those rights and obligations;

(c) must monitor community scheme governance; and

(d) may generally, deal with any such matters as may be necessary to give effect to the objectives of this Act;

(3) The Service acts through its Board.

5. Mandate

(1) The Minister must conclude a written mandate with the Service as soon as possible, but not later than six months after the appointment of the Board.

(2) The mandate must –

(a) contact the operational and performance indicators against which the performance of the Service is measured.

(b) contain specific service delivery targets that the Service must attain; and

(c) contain directions regarding the utilization of any surplus revenue.

(3) The mandate must deal with any other matter that the Minister and the Service may agree on.

(4) The mandate must be reviewed every five years or such shorter period as the Minister may determine.

(5) The mandate must be consistent with this Act and other relevant legislation.

6. Board of Service

(1) There is hereby established a Board to be known as the Board of the Service.

(2) The Board is responsible for the management and governance of the Service.

(3) The Board consists of –

(a) two executive members; and

(b) seven non-executive members.

(4) The Minister must appoint the chairperson and deputy chairperson of the Board from the non-executive members of the Board.

(5) The Board may designate any other non-executive member of the Board to act as chairperson if both the chairperson and the deputy chairperson are absent or unable to perform their functions.

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INTERPRETATION

Definitions

1. In these regulations, any word or expression to which a meaning has been assigned by the Act shall bear the same meaning assigned to it in the Act, and unless the context indicates otherwise –

"applicable levy factor" means levy factor set by the Minister for that category of scheme;

"Board" means the body established in terms of section 6 of the Act;

"chairperson" means the chairperson of the Board appointed by the Minister in terms of section 6(4) of the Act;

"chief ombud" means the chief ombud of the Service appointed in terms of section 14 of the Act;

"managing agent" means a person who provides management services to a community scheme for reward, whether monetary or otherwise, including any person who is employed to render such services;

"scheme executive" means a person who is a trustee, director, or another person who exercises executive control of a community scheme;

"scheme management service" means any financial, secretarial, administrative or other service relating to the administration of a community scheme; and

"the Act" means the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011).

CHAPTER 2

ACTIVITIES OF BOARD

Meetings of Board

2. (1) The Board must hold at least four regular meetings in a year.
- (2) Meetings of the Board must be held at a time and place determined by the Board.
- (3) The chairperson-
- (a) may at any time convene a special meeting of the Board, and
- (b) must convene the special meeting only when requested to do so in writing by one third of the members of the Board.
- (4) The chairperson or the Board may, from time to time, determine that-
- (a) a meeting must be held; or
- (b) a member of the Board may participate in a meeting by telephone, closed-circuit television or other electronic means of communication that allows all participants to communicate.
- (5) A member of the Board who participates in a meeting as contemplated in sub-regulation (4) must be regarded as being present at the meeting.

Notices

3. (1) The chairperson or the chief ombud must give not less than seven days' written notice of any meeting to all members of the Board, except-
- (a) in cases of emergency; or
- (b) where all members of the Board agree to accept shorter notice.

- (2) The notice contemplated in subregulation (1) must-
- (a) specify the date and time of the meeting;
 - (b) state the general nature of the business of the meeting; and
 - (c) either —
 - (i) state the place of the meeting; or
 - (ii) specify the means of communication by which the meeting will be held.

(3) The proceedings of or resolutions passed at a meeting of the Board are not invalid merely because a member did not receive a notice of the meeting, provided that the chairperson or the chief ombud made a reasonable attempt to give the member sufficient notice.

Quorum

4. (1) No business may be conducted at a meeting of the Board unless a quorum of members of the Board is present.
- (2) A quorum for a meeting of the Board is the majority of its members.
- (3) If a quorum is not present within 30 minutes of the time determined for a meeting of the Board, the person presiding at the meeting may adjourn the meeting to the same time and place, seven days after the adjournment.
- (4) If a quorum is not present at an adjourned meeting within 30 minutes of the time determined for such meeting, the meeting is automatically cancelled.

Adjournment of meetings

5. (1) The person presiding at a meeting at which a quorum is present —
- (a) may adjourn the meeting with the members' consent; and
 - (b) must adjourn the meeting if the members so direct.
- (2) An adjourned meeting must be held at the time and place agreed to by the members before the meeting is adjourned.

Presiding at meetings of Board

6. (1) Subject to sub-regulation (2) —
- (a) the chairperson must preside at all meetings of the Board at which the chairperson is present; and
 - (b) in the absence of the chairperson or in the event that the chairperson is for any reason unable to act as chairperson, the deputy chairperson must preside at a meeting of the Board.
- (2) If neither the chairperson nor the deputy chairperson is present, the members present must appoint a member of the Board from amongst themselves to preside at the meeting.

Procedure and making of decisions

7. (1) Subject to these regulations and the common law of meetings, the Board may regulate its own proceedings.
- (2) A motion at a Board meeting—
- (a) does not require a seconder; and

(b) must be determined by resolution of the majority of votes of members of the Board present and voting.

(3) If the deliberative votes for and against a motion are equal in number, including the vote of the presiding officer, the presiding officer must exercise a casting vote to maintain the existing position.

Minutes

8. (1) The chief ombud must ensure that complete and accurate minutes of each meeting are kept.

(2) Draft minutes of each meeting must-

(a) be distributed to all members of the Board as soon as possible, but not later than 10 days after the meeting to which they relate;

(b) be presented at the next meeting of the Board for amendment, if necessary, and adoption; and

(c) be recorded and entered in a minute book kept for that purpose.

(3) The person presiding at the next meeting must sign and date an affirmation to the effect that the minutes of the previous meeting have been adopted by the members of the Board.

(4) The chairperson must provide the Minister with a summary of the minutes after every meeting of the Board.

Written resolutions

9. (1) Subject to subregulation (2), members of the Board may, without holding a meeting, take resolutions in writing.

(2) The chairperson or the chief ombud may deliver to each member of the Board a notice-

(a) including the text of a proposed resolution; and

(b) setting a closing date not being less than seven days after the date of the notice, for the submission of written agreement to the resolution.

(3) If before expiry of the closing date the majority of the members of the Board have agreed to the resolution, without amendment, it is considered to be a resolution of the Board.

Execution of documents and validity of actions

10. (1) No document signed on behalf of the Board is valid and binding unless it is signed on the authority of a Board resolution by the chairperson and another non-executive member of the Board.

(2) A resolution taken or any other act performed by the Board remains valid and effective, despite the later discovery of some defect in the appointment of a member of the Board or any member's disqualification from office in terms of section 9 of the Act.

CHAPTER 3

SCHEME LEVIES AND SERVICE FEES

Levies and amounts payable

11. (1) Every community scheme must pay the levy referred to in the Community Schemes Ombud Service Regulation: Levies and Fees on quarterly basis.

(2) The Minister may, by notice in the *Gazette*, set and amend-

(a) an applicable levy factor in the form of a decimal fraction for each of various stated categories of scheme, with definitions of each category;

- (b) a maximum amount of the levy for a community scheme in each category; and
 - (c) the rates of discount or waivers of levies, with details of the qualifications for such discounts or waivers.
- (3) The levy is calculated subject to any applicable maximum amount, discount or waiver referred to in subregulation (2), according to the following formula:

- (a) The lesser of R 40.00 or 2% of the amount by which the monthly levy charged by the Scheme exceeds R 500.00.

Service fees and costs

- 12.** The Minister must, by notice in the *Gazette*, set or amend-
- (a) fees regarding-
 - (i) applications made in terms of section 38 of the Act;
 - (ii) adjudication of disputes;
 - (iii) the inspection of documentation in the custody of the Service in terms of section 46 (2); and
 - (iv) services rendered based on cost recovery and payable by persons who make use of the Service;
 - (b) the rates of discount or waivers of fees, with details of the qualifications for such discounts or waivers;
 - (c) the maximum amount of costs an adjudicator may order as contemplated in section 53(3) of the Act.

Interest on overdue amounts

- 13.** Any community scheme which, or person who, fails to pay a levy or any other amount due to the Service on the date that amount is due and payable must pay

the Service interest on that amount for the period it remains outstanding at a rate prescribed by the National Credit Act, 2005 (Act No. 34 of 2005), as amended.

CHAPTER 4

PROMOTION OF GOOD GOVERNANCE, TRAINING AND EDUCATION

Duties of scheme executives

14. (1) A scheme executive must –
- (a) take reasonable steps to inform and educate himself or herself about the community scheme, its affairs and activities and the legislation and governance documentation in terms of which the community scheme operates;
 - (b) take reasonable steps to obtain sufficient information and advice about all matters to be decided by the scheme executives to enable him or her to make conscientious and informed decisions;
 - (c) unless excused by the chairperson of the scheme executives on reasonable grounds –
 - (i) attend all meetings of the scheme executives; and
 - (ii) attend the community scheme's annual general meeting, if it holds such a meeting;

- (d) exercise an active and independent opinion with respect to all matters to be decided by the scheme executives; and
- (e) exercise due diligence in relation to any business of, and necessary preparation for and attendance at meetings of, the scheme executives or any committee to which such scheme executive is appointed.

(2) The obligations of a community scheme executive in terms of sub-regulation (1) are in addition to and do not derogate from the fiduciary obligations of a scheme executive in terms of the common law or any applicable statute.

Fidelity insurance

15. (1) Subject to sub-regulation (5), every community scheme must insure against the risk of loss of money belonging to the community scheme or for which it is responsible, sustained as a result of any act of fraud or dishonesty committed by any insurable person.

(2) For the purposes of sub-regulation (1), "**insurable person**" means any-

- (a) scheme executive;
- (b) employee or agent of a community scheme who has control over the money of a community scheme;
- (c) managing agent; or
- (d) contractor, employee or other person acting on behalf of or under the direction of a managing agent,

who in the normal course of the community scheme's affairs has access to or control over the monies of the community scheme.

(3) The minimum amount of the fidelity insurance cover required in terms of sub-regulation (1) is the total value of-

(a) the community scheme's investments and reserves at the end of its last financial year; and

(b) 25 per cent of the community scheme's operational budget for its current financial year.

(4) The insurance cover referred to in sub-regulation (1) must-

(a) provide for payment of a loss by the insurer to the community scheme within a reasonable period after reasonably satisfactory proof of the loss has been furnished to the insurer; and

(b) not require that criminal or civil proceedings be taken or completed against the insured person before payment is made under the insurance policy.

(5) A community scheme is not obliged to obtain fidelity cover for an insurable person if that person has delivered to the community schemes written proof that-

(a) the monies of the community scheme are covered by fidelity insurance that complies with the requirements of sub-regulations (3) and (4); and

(b) the insurer concerned has noted the community scheme's interest in the application of the proceeds of the policy and undertaken not to cancel or

withdraw cover without giving the community scheme at least 30 days written notice.

Quality and form of governance documentation

16. In order to ensure that the scheme governance documentation that the Service regulates or takes custody of in terms of section 4(1) of the Act is reasonably accessible to the persons who have rights and obligations in terms of the said documentation, the chief ombud may by written notice to a community scheme, require that-

- (a) the scheme governance documentation be lodged with the Service within 90 (ninety) days after the establishment of a community scheme in terms of any applicable law or within 90 (ninety) days after the coming into operation of this Regulations;
- (b) any parts of such documentation that is illegible, incomplete or missing from the records of the community scheme must be replaced; and
- (c) the documentation and all amendments made to it by the community scheme or in terms of any applicable law must be consolidated so as to produce an updated document.

Training

17. (1) For the purposes of the Service's training function in terms of section 4(1)(b) of the Act, the Service must develop and identify training courses for the staff referred to in section 21 of the Act.

(2) For the purposes of the Service's education and information function in terms of section 4(2)(b) of the Act, the Service must develop, identify and publicise education and information programmes for owners, occupiers, executive committees and other persons who have rights and obligations in community schemes.

CHAPTER 5

ANNUAL RETURNS, CERTIFICATES AND FORMS

Scheme governance documentation and information

18. (1) The documents referred to in section 59(b) of the Act must be filed with the Service within 4 (four) months after the end of the community scheme's financial year, by filing in the prescribed *Form CS 2*

(2) The chief ombud must, by practice directive, determine and may in the same manner amend-

(a) the forms in relation to-

- (i) the annual return referred to in section 59(b)(i) of the Act;
- (ii) application by developers and sectional titles bodies corporate for approval of sectional title body corporate rules;
- (iii) application for and supply of copies of documents; and
- (iv) application for the supply of information; and

- (v) application for registration of a community scheme.
- (b) the documents and information that community schemes must submit to the Service annually in terms of section 59(b)(iii) of the Act.
- (3) A community scheme must file the registration in Form CS 1, within 30 (thirty) days of –
 - (a) coming into effect of this Regulation; or
 - (b) its date of incorporation in terms of applicable laws.

Dispute resolution

19. (1) An application referred to in section 38(1) of the Act must be made by submission of an application by physical delivery or electronically, in accordance with the practice directive issued by the chief ombud.

Legal representation

20. The notice in regard to legal representation referred to in section 43(2)(e) of the Act must read as follows:

"In terms of section 52 of the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011) a person is not entitled to legal representation in adjudication proceedings unless the adjudicator and all parties agree or the adjudicator determines that a party cannot deal with the adjudication without legal representation".

Appeal against the decision of the Adjudicator

- 21 The notice in regard to the right of appeal referred to in section 54(1)(d) of the Act must read as follows:

"In terms of section 57 of the Community Schemes Ombud Service Act, 2011 (Act No. 9 of 2011) a person who is dissatisfied with an adjudicator's order is entitled to appeal to the High Court, but only on a question of law. The appeal must be lodged within 30 days after delivery of the order."

Power to enter and inspect

22. The Adjudicator or his or her appointed representative may request assistance of the South African Police Service if they are refused access to enter any premises.

Short title

23. These regulations are called the Regulations on the Community Schemes Ombud Service, 2016 and will come into operation on the date of publication in the Government Gazette.

COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011(ACT NO 09 OF 2011)

REGISTRION OF A COMMUNITY SCHEMES
(Section 59 (b) (iii))

For office use:

Registration number: C.C.- - - - - ' - - - -

AH required documents attached.: Yes /No

Levies paid: Yes I.No

SECTION 1- PARTICULARS

Any change to the details herein must be communicated to the SeNice by filling in Form1A Authorisation by the Executive Committee of the Scheme must be attached nominating the authorised person

Name of the Community Scheme: .

Type of the Community Scheme: .

Number of units within the community scheme: .

Province: .

Municipality: .

City: .

Suburb: .

Physical address: .

Postal address: .

Telephone: .

Facsimile: . .

Email: .

SECTION 2 - GOVERNANCE DOCUMENTS

Please indicate which of the documents regulate management of the community scheme. Copies of the documents to be attached to the form as an Annexures. Any change to the any of the Governance documents must be communicated to the Service by submitting Form A1

(Tick applicable document)

- Rules: D
- Constitution: D
- Regulations: D
- Memorandum of Incorporation (Articles): D
- Terms and condition of the Community Scheme: D
- Use Agreement (Share Block Schemes) : D
- Any other governance document : D

SECTION 3 - EXECUTIVE COMMITTEE

Names and details of the Trustees of a Sectional Title Body Corporate, the Board of Directors of a Share Block Company or management association of the Housing Scheme for Retired Persons or trustees of an Association. Any change to the representative must be communicated to the SeNice by submitting Form A 1 attached hereto. A copy of the Resolution appointing the Executive Committee must be attached.

Full names	ID Number	Contact details(phone numbers, e-mail)	Date of appointment

cSE10M4 - MANAGING AGENT

The information must be accompanied by a registration document of the company appointed as Managing Agent. If the managing agent is an individual, close corporate or a trust, information relating to that managing agent must be provided.

Company name: .

Company registration number: .

Business Address: .

Postal address: .

Telephone number: .

Facsimile: .

Email: . .

Authorised representative . .

SECTION 5 - FINANCIALS

Copy of the audited annual financial statement must be attached annually. the community scheme must submit a return by filling in Form 18 attached hereto.

A schedule of levies payable by each unit must be attached

Annual financial statement attached:

Appointed registered Auditors ..

Banking details:

Name of Bank .

Account number: .

Authorised signatory for banking: .

Financial year end for the community scheme: .

Total levy amount paid by each unit ..
(Attach a schedule of levies payable per unit)

Fidelity funds details ..
(provide separate Annexure where necessary)

Address where the financial records are kept: .

SECTION-6 - AVTHORISEDREPRJ:SEN'FA'FIVE -

Attach a copy of authorisation from the Schemes Executive Committee authorising the nominated representative and the signatory to the application. This person will act as a contact

Community Scheme. Any changes to the particulars must be communicated to the Service by filling in Form 1A

Full names of the nominee ..

Identity number: .

Residential Address: .

Postal address: . .

Telephone number: .

Facsimile: .

Email: .

SECTION 7 -S_OLEMNOECLARAFION

I, the undersigned authorised representative ...

identity number do hereby solemnly

declare that all the requirements of applicable legislation or common law have been complied with in respect of the formation of the Community Scheme and the information contained herein is true and correct to the best of my knowledge.

Signature: .

SECTION 8 • SUPPORTING DOCUMENTS

Either of the following documents must be attached to this this applicaUon, where applicable. Any change to the documents must be communicated to the SeNice by filling in Form1A

- Certificate of incorporation
- Constitution
- Rules
- Articles
- Memorandum of incorporation
- Terms and conditions of the Community Scheme
- Any other governance document
- Copy of registration certificate with CIPC
- Copy of the Title Deed
- Use Agreement
- Schedule of levies payable *by* each unit within the community scheme

COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011 (ACT NO 09 OF 2011)

NOTICE OF AMENDMENT OF PARTICULARS	
Registration number: _____	
NAME OF COMMUNITY SCHEME: _____	
OLD DETAILS	NEW DETAILS

I, the undersigned, authorised by special resolution dated attached hereto as an Annexure, do hereby submit the amendments to the particulars of the Community Scheme as Indicated above.

Name of authorised signatory ...

ID Number: .

Contact details: .

Signature: .

Dale: .

NB: no amendment will be effected without a resolution attached to this document

COMMUNITY SCHEMES OMBUD SERVICE ACT, 2011 (ACT NO 09 OF 2011)

FORM OF ANNUAL RETURN OF A COMMUNITY SCHEME
Section 59 b

For office use:

Registration number:

All required documents attached: Yes/No

Levy paid: Yes/No

Annual return of the (name of Community Scheme)

Approved at the General Meeting held on the ..

COMMUNITY SCHEME PARTICULARS

Name of Scheme: .

Registration number with Service: .

Registration date with Services: . .

EXECUTIVE COMMITTEE		
Name	ID Number	Contact details

FINANCIALS		

Audited Annual Financial Statement attached Yes/No

Schedule of levy paid by each unit within the community scheme Yes/No

Total amount paid R

	AMENDMENT
--	------------------

Amendment made on the following details on the registration form

- 1.
- 2.

Amendment form CS A1 Attached to this return

	DECLARATION
--	--------------------

I, the undersigned authorised representative ..
..... (full names)

Identity number ..
..... do hereby solemnly declare that all the information
contained herein is true and correct to the best of *my* knowledge and that I am authorised to sign this form on behalf of the Community Scheme by
virtue of a Resolution dated

Signature: .

Date: .
