



PRACTICE DIRECTIVE ON S39(7)(b) OF THE CSOS ACT, 2011

Revision history

This section records the change history of this document.

Revision #	Date of Release	Author (s)	Summary of Changes
1.0		Adjudicator General, Kanozi Mlotha	Newly developed.

Approvals

The undersigned has approved the release of version 1.0 of Circular on S39(7)(b) of the CSOS Act 2011.

Name	Designation	Signature	Date
Adv. Boyce Mkhize	Chief Ombud		

Contact Details

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No. 1

COMMUNITY SCHEMES OMBUD SERVICE

I, the undersigned, Boyce Mkhize, acting in terms of section 36 of the Community Schemes Ombud Service Act, 2011(Act 9 of 2011), do hereby issue a Practice Directive on section 39(7)(b) on Dispute Resolution Process. The Practice Directive is set out hereunder: -

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1. EXECUTIVE SUMMARY

As encapsulated in S36(1) of the Community Schemes Ombud Service Act, 2011 (the CSOS Act), the chief ombud must issue practice directives regarding any matter pertaining to the operation of the Service. Further, S36(2) provides that the practice directives must, subject to the CSOS Act and the regulations, direct the performance of any act in the operation of the Service.

Accordingly, in terms of S39(7)(b) of the CSOS Act, this practice directive seeks to determine '*any other order proposed by the chief ombud*'. This includes relief to be sought and other orders not provided for but, related or incidental to orders already provided in and through S39 of the CSOS Act.

2. DEFINITIONS

In this Practice Directive, any word or expression to which a meaning has been assigned by the Community Schemes Ombud Service Act of 2011 (CSOS Act) and Regulations under the CSOS Act shall bear the same meaning assigned to it in the CSOS Act or Regulations made in terms of the CSOS Act, and unless the context indicates otherwise.

3. PROPOSED ORDERS IN TERMS OF S39(7)(b) OF THE CSOS ACT

The Chief Ombud proposes the following prayers for relief and orders in respect of section 39(7)(b) of the CSOS Act, subject to the Adjudication process:

- (1) In respect of contractual issues –
 - i) an order declaring a contract term and/or condition to be contrary to the CSOS legislation and/or its regulations relating to community schemes;
 - ii) an order declaring an enforcement and/or recognition of a contract term and/or condition relating to community schemes to be contrary to the CSOS legislation and/or its regulations; or
 - iii) an order requiring an association to pay overpayments and/or refund deposits to a former member of the scheme.

- (2) In respect of adjudication orders –
 - i) an order setting aside an adjudication order where adjudication proceedings did not follow the approved CSOS procedure; or
 - ii) an order setting aside an adjudication order where objective facts and/or evidence indicates that an adjudicator failed to properly apply his/her mind to issues which were material to the determination of the dispute and/or misconceived the nature and/or purpose of the inquiry.

- (3) In respect of trustees -
 - i) An order settling the question of who the lawful trustees of a Body Corporate are; or
 - ii) An order declaring that a trustee of a body corporate has acted in breach of his or her fiduciary duty, and to:
 - (a) pay, in his or her personal capacity, for any loss suffered as a result thereof by the body corporate; or
 - (b) pay back, in his or her personal capacity, any economic benefit received by the trustee by reason thereof.

- (4) In respect of administrators –
 - i) an order requiring an administrator to cite the CSOS as an interested party in their papers for:
 - (a) any extensions to their term of appointment; or
 - (c) any amendment to their terms of appointment.

- (5) In respect of managing agents –
 - i) an order barring a managing agent from managing finances within community schemes; or
 - ii) an order requiring the Property Practitioners Regulatory Authority to make a determination regarding the conduct of a managing agent as a property practitioner.

4. SCOPE OF APPLICATION

This Practice Directive shall apply to all applications regarding the resolution of disputes as per orders encapsulated in provision 3 above.

5. APPLICATION

- 5.1 The Application will follow the normal process as detailed in the 2019 Practice Directive on Dispute Resolution **with the exception of relief sought in terms of provision 3(2) above.**
- 5.2 An application for relief sought in terms of provisions 3(2) of this Practice Directive, will be lodged directly with the Chief Ombud and in terms of the process detailed below:
- 5.2.1 Applicants must complete an Application Form for Dispute Resolution and headed – **Application – Setting Aside of Adjudication Order by Chief Ombud in terms of S39(7)(b).**
- 5.2.2 The application form can be downloaded from the CSOS website at www.csos.org.za Alternatively, the form can be obtained from any CSOS office.
- 5.2.3 The applicant bears the onus of ensuring that the form is correctly completed, all relevant information is attached to the application form and submitted correctly to setaside@csos.org.za or any CSOS office.
- 5.2.4 The application must be in English, typed clearly and legibly, comprising of no more than **10 pages.**
- 5.2.5 **The other Party must be copied in all correspondence when making an application to set aside an adjudication order.**

6. CONSIDERATION OF APPLICATION BY THE CHIEF OMBUD

- 6.1 The Chief Ombud will read the papers and apply his mind, *and where necessary*, may request for further representations.
- 6.2 Once the application is considered, an outcome will be communicated to both Parties.
- 6.3 Where the adjudication order is set aside, the Chief Ombud will refer the dispute to the Regional Ombud who will, in terms of the 2019 Practice Directive, allocate the dispute to another adjudicator to be heard *de novo*.
- 6.4 An urgent review of the matter may be considered, where, in the opinion of the Chief Ombud and based on motivations provided by a party seeking to set aside an Order, is warranted.

7. TRANSITIONAL ARRANGEMENTS

- 7.1 Due to numerous complaints received by the Office of the Chief Ombud, this practice directive shall apply retrospectively from 1 April 2022.
- 7.2 An affected party shall apply to the Chief Ombud in terms of provision 5 above of the Practice Directive.
- 7.3 The Chief Ombud shall determine and amend, as and when required, **any orders proposed by the chief ombud** to ensure that there is harmony and good governance within community schemes.

8. GENERAL MATTERS

- 8.1 The Community Schemes Ombud Service (CSOS) is committed to resolving disputes swiftly, efficiently and in a fair manner, hence