



**CIRCULAR ON AMENDMENT OF RULES IN TERMS OF THE SECTIONAL TITLES SCHEMES
MANAGEMENT ACT**

Revision history

This section records the change history of this document

Revision #	Date of Release	Author (s)	Summary of Changes
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Approvals

The undersigned has approved the release of version 4 of CSOS' Practice Directive on the Amendment to Circular on Lodgment of Sectional Titles Schemes Rules in terms of the STSMA

Name	Designation	Signature	Date
Adv. Boyce Mkhize	Chief Ombud Recommender		06 MAY 2021
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CIRCULAR ON THE AMENDMENT OF RULES

No: 1

2021

SECTIONAL TITLES SCHEMES MANAGEMENT ACT, 2011 (ACT 8 OF 2011)

CIRCULAR ON THE AMENDMENT OF RULES IN TERMS OF THE STSMA

1. DEFINITION

In this Circular, any word or expression to which a meaning has been assigned by the STSMA and Regulations under the STSMA shall bear the same meaning assigned to it in the STSMA or Regulations made in terms of the STSMA, and unless the context indicates otherwise. *Words denote in italics means an amendment: -*

Term	Definition
"Act"	means the Community Schemes Ombud Service Act (2011) Act, No. 9 of 2011, and includes any Regulations made in terms of the Act;
"Circular"	Means a Notice issued in terms of the Sectional Titles Schemes Management Act;
"CSOS"	means the Community Schemes Ombud Service;
"Ombud"	means the Chief Ombud and/or Regional Ombuds appointed in terms of the CSOS Act;
"STSMA"	Means the Sectional Titles Schemes Management Act;

2. OBJECTIVES OF THE CIRCULAR

- 2.1 The objective of this Circular is to provide operational guidelines and clarity on the procedure and content requirements for the lodgment of Rules with CSOS for approval (*both Management and Conduct Rules*).

2.2 The Circular is not intended to amend, replace, override or supersede the CSOS Act or STSM Act.

3. LEGISLATIVE FRAMEWORK

3.1 Community Schemes Ombud Service Act, No 9 of 2011

3.2 Competition Act, No 89 of 1998

3.3 Constitution of the Republic of South Africa, No 108 of 1996

3.4 Housing Development Schemes for Retired Persons Act, No 85 of 1988

3.5 Promotion of Administrative Justice Act, No 3 of 2000

3.6 Sectional Titles Schemes Management Act, No 8 of 2011

3.7 Sectional Titles Act, No 85 of 1986

4. SCOPE OF APPLICATION

4.1 The Circular applies to the following persons: -

4.1.1 Community Schemes as defined in CSOS Act, all persons who own and occupy units in such schemes, and all persons who manage such schemes.

4.1.2 The CSOS.

5. ADMINISTRATIVE PROCEDURE

5.1 The community schemes must complete the application for the Amendment of Rules Form (Form B).

5.2 Form B can be completed online or downloaded from the CSOS website at www.csos.org.za. Alternatively, the form can be obtained at any of the CSOS offices nationwide.

- 5.3 The completed form can be submitted to CSOS either online, by post, email, or hand-delivered to any of the CSOS's Regional Offices. The email address is sectionaltitles@csos.org.za. Other contact details can be downloaded from the CSOS website.
- 5.4 The applicant bears the onus of ensuring that all relevant information has been submitted to 'make their case', in other words, to ensure that their application form is correctly completed and meets legislative requirements. The CSOS cannot complete application forms for applicants and nor can the CSOS instruct Applicants on how to complete their application form unless the Applicant is illiterate or physically impaired.
- 5.5 The application form and any attachments may either be typed or handwritten. If typed, the font must be clear. Handwritten applications must be clear and legible.
- 5.6 If an application is not clear and legible, whether typed or handwritten, the applicant will be requested to submit a revised application that is clear and legible.

6. APPLICATION REQUIREMENTS

6.1 NEW COMMUNITY SCHEMES (OPENING OF SECTIONAL TITLES REGISTER)

- 6.1.1 In terms of section 11 of the Sectional Titles Act, when a developer seeks approval from the Registrar of Deeds for the opening of the sectional title register, such approval must be accompanied by a certificate issued in terms of section 10 of the STSM Act, approving the Rules that will apply to the community scheme.
- 6.1.2 The application for approval of Rules in terms of section 10 must be accompanied by the following documents: -
- a) Prescribed Form B (Notice of Amendment of Rules), duly signed by the developer or the conveyancer;
 - b) Approved Sectional Plan;
 - c) Consolidated Rules; and
 - d) Conveyancer Certificate, if Annexure 1 and 2 of the STSMA Regulations are adopted, confirming such adoption.

6.2 EXISTING COMMUNITY SCHEMES

6.2.1 An application for approval of the amendment of scheme Rules must be accompanied by the following documents:

- a) Prescribed Form B (duly signed by two Trustees or one trustee and the Managing Agent, where applicable);
- b) Consolidated rules;
- c) Minutes of the general meeting whereat the Rules were tabled for approval by the members of the body corporate;
- d) Unanimous Resolution where the Management Rules are submitted; or
- e) Special resolution in respect of Conduct Rules.

7. PROCEDURAL REQUIREMENTS

- 7.1. CSOS will conduct quality assurance on the scheme's governance documentation received, and specify amendments, if necessary.
- 7.2 *The scheme must inform the body corporate members of the required amendments, either via email or by affixing the amended Rules on the notice board of the body corporate within seven days after the trustees received the Section 10 certificate from CSOS.*
- 7.3 *If the CSOS did not issue a Section 10 certificate, the management or conduct rules of the body corporate is not enforceable against the members.*

8 QUALITY ASSURANCE

- 8.1 The schemes governance documentation will be quality assured against the provisions of the STSM Act and the Regulations, CSOS Act, the Constitution of the Republic of South Africa, Municipal by-laws, Case Law and any other relevant and/or applicable legislation.

- 8.2 Quality Assurance is designed to ensure that the schemes governance documentation applies fairly and equally to all members of the community schemes. Should any provision of the Governance Document be found to be in conflict with applicable legislation, it will be rendered invalid and must be severed from the document.
- 8.3 The language for the drafting of the documents must be plain and understandable by members. The use of derogatory or discriminatory words must be avoided. In addition to checking the language used, the CSOS will also check for spelling errors and the layout of the document.
- 8.4 All community schemes governance documentation must be subjected to a process of periodic review to ensure that the information contained in the document is still correct, accurately reflects current practices and any changes to legislation.
- 8.5 Minor amendments that do not constitute material changes to the documentation can be requested, and made by Executive Governance, Compliance and Enforcement at any time. Minor amendments are, for example, spelling or numbering errors. These amendments do not require any approval by the Body Corporate.

9. APPROVAL OF THE RULES

- 9.1 Section 10(2) of the STSM Act states that the Management Rules can be substituted, added, amended or repealed by the developer or by unanimous resolution of the members of the body corporate. The conduct rules can be substituted, added, amended or repealed by the developer or special resolution of the members of the body corporate.
- 9.2 The commencement of the substitution, addition, amendment, repeal of the rules comes into effect after the approval by the Chief Ombud (i.e., on the date of the issuing of a certificate as contemplated in section 10(5)(c) of the STSM Act).
- 9.3 The substitution, addition, amendment, or repeal of the rules must be reconciled with the provisions of the prescribed Management and Conduct rules, STSM Act, the Constitution of the Republic of South Africa, the Act, any other applicable legislation and relevant By-Laws. The substitution, addition, amendment, or repeal of the Rules will not be approved by the Chief Ombud if the Chief Ombud believes they are not reasonable and appropriate for the scheme.

- 9.4 The CSOS will examine the proposed substitution, addition, amendment, or repeal. If the proposed substitution, addition, amendment, or repeal is unreasonable, inappropriate or contravenes other legislation, the CSOS will instruct those corrections to be made, and refer the Rules back to the scheme for implementation.
- 9.5 In the event that the substitution, addition, amendment or repeal is reasonable, appropriate and complies with all legislation, or the scheme has effected corrections as instructed by the CSOS, the CSOS will issue the approval certificate in terms of section 10(5)(c) of the STSMA.
- 9.6 *Schemes are required to collect or make arrangements to collect their approval certificates from CSOS Head Office, Berkley Office Park, 8 Bauhinia Street, Highveld Technopark, Centurion, or as indicated from time to time.*
- 9.7 *On the written request by a scheme, the approved certificate may be couriered to the CSOS Regional offices, either in KZN, WC or EC or FS and can be collected from those offices.*

10 AMENDMENT OF THE SECTIONAL TITLES ACT (ACT NO 95 OF 1986)

- 10.1 Section 21 of the STSM Act states that the Rules prescribed under the Sectional Titles Act (which has been amended by the STSM Act) must continue to apply to new and existing schemes until the Minister of Human Settlements has made regulations prescribing management rules and conduct rules (which are now in place terms of the STSMA and Regulations).
- 10.2 The implication of section 21 is that old Prescribed Management Rules (Annexure 8 and 9) have been repealed and replaced by Annexures 1 and 2 of the STSM Act Regulations of 2016. However, any additions, substitution and amendments made to the old Annexures 8 and 9 will continue to apply until amended, substituted, added, amended, or repealed in terms of section 10(2) of the STSM Act. It must be noted that the additions, substitutions, and amendments that continue to apply, will only do so if they are not contrary to the provisions of the STSMA and Annexure 1 and 2 of the STSMA Regulations.
- 10.3 The Sectional Title Act, (STA) has been amended in terms of section 20 of the STSM Act. The implications of section 20 of the STSM Act are that certain provisions of the STA have either been amended or repealed. The extent of the amendment is published as a schedule under the STSM

Act. Consequently, sections of the STA dealing with the Rules have been repealed and CSOS will not approve rules that still refer to the STA provisions that have been repealed.

- 10.4 Annexure 8 and 9 of the STA have also been repealed and replaced by Annexures 1 and 2 of the Rules published in terms of the STSM Act.
- 10.5 *Section 35(2)(b) of the Sectional Titles Act has been repealed by section 10(2)(b) of the Sectional Title Schemes Management Act.*
- 10.6 *If reference is made in the rules to the Sectional Titles Act- it must be changed to the Sectional Titles Schemes Management Act.*
- 10.7 *All amendments to the Rules must be submitted to CSOS for approval and are no longer lodged with the Deeds Registrar.*
- 10.8 *A special resolution cannot be passed at a trustees meeting, only ordinary trustees' resolutions (majority votes), prescribed management rule must be followed in terms of Management Rules.*
- 10.9 The governance unit will not issue a certificate of approval of the Rules if there is a dispute lodged with the CSOS dispute department regarding the rules.
- 10.10 CSOS cannot accept an unsigned copy of minutes since it cannot be authenticated.
- 10.11 Form B, duly signed must be lodged with the request for amendment of Rules. CSOS will not approve the rules that do not comply with the prescribed requirements relating to the amendment and approval of rules.

11 UNDESIRABLE RULES

- 11.1 To ensure uniform application of the rules and compliance with all the regulatory requirement, CSOS has identified the following as undesirable rules and are relevant for quality assurance purposes, the list is attached to this Circular as an Annexure "A".

12. REQUEST FOR ACCESS

12.1 Application for Access

- 12.1.1 A request for access must be made in Form CS Z1 to CSOS and be forwarded electronically, by post or hand delivery to the physical address.
- 12.1.2 The request must contain sufficient particulars to enable CSOS to identify the documentation requested, the identity of the requester and the scheme to which the record pertains.
- 12.1.3 The requester must indicate the address or e-mail where the information should be forwarded once the request is approved.
- 12.1.4 In making a decision whether access to the documentation should be provided, CSOS will take into account the provisions of the Promotion of Access to Information Act, 2000 and the Protection of Personal Information Act, 2005; more particularly in determining the confidentiality of the information requested.
- 12.1.5 *The request for access should be submitted to sectionaltitle@csos.org.za.*

13.1 Payment of Access Fee

- 13.1.1 The documentation requested will only be released upon proof of receipt that the requester has paid the access fee.
- 13.1.2 The prescribed fee of R8, 00 per copy will be charged for any request to access the documentation.
- 13.1.3 CSOS will provide the requester with the total amount to be paid and all payments must be made by electronic transfer into the CSOS Bank Account as indicated from time to time.
- 13.1.4 *The proof of payment must be submitted to sectionaltitle@csos.org.za.*

14. REVIEW OF THE CIRCULAR

- 14.1 This Circular will be reviewed annually or as and when there is a change in legislation, or if a court decision amends or varies any of the provisions contained herein.
- 14.2 The amended Circular will be published on the CSOS website.

15. REPEAL OF THE CIRCULAR

15.1 *Circular 3 of 2019 is hereby repealed and replaced by this Circular.*

16 COMMENCEMENT OF THE CIRCULAR

16.1 This Circular will commence on the date of signature hereof and will remain in force until amended, substituted, withdrawn or repealed.

- END -



UNDESIRABLE RULES IN TERMS OF PARAGRAPH 11.**ANNEXURE "A"**

Below is a list of previously identified Rules that must be removed from proposed community schemes rules that are regarded as non-compliant. This list is not exhaustive and includes all prohibitions contained in the STSMA:

1. Fines and Penalties

- Fines and/ or penalties may not be equal to or more than the applicable monthly levy of the owner of the unit concerned.
- The trustees do not have any power to decide on fines and penalties on their own or to take any action against an owner or occupier – the fair and equitable procedure as set out in the rules must have been followed.
- A fine and penalty clause should include the following:

FIRST TRANSGRESSION NOTICE	SECOND TRANSGRESSION NOTICE
<i>In writing to member or occupier</i>	<i>In writing to member or occupier</i>
<i>Explain transgression (offence)</i>	<i>Explain transgression (offence) – relates to the same offence as a first offence</i>
<i>Advise to stop</i>	<i>Advise to stop</i>
<i>Give timeframe</i>	<i>Give timeframe</i>
<i>Member or occupier may dispute offence</i>	<i>Member or occupier may dispute offence</i>

<i>Meet with the board of trustees</i>	<i>Meet with the board of trustees</i>
<i>No fine may be imposed</i>	<i>Fine may be imposed</i>

2. Littering

- *A rule stating that owners or tenants or occupiers are not allowed to eat on the common property.*

3. Insurance

- *When a tenant or occupier amends their personal insurance policy (over their own movable property), the trustees should be notified.*

4. Enforcement of Management and Conduct Rules

- *That Management Rule 71 of the Sectional Titles Act of 1986 has been repealed relating to Private Arbitrations.*
- *That the CSOS Act provides for the procedure for dispute resolution including adjudication.*
- *An internal dispute resolution process for owners must be embedded in the rules prior for it to be referred to the CSOS as it aims to allow owners to be heard and provide a fair and equitable process to deal with such issues.*
- *Please see undesirable rule number one.*

5. Contravention of Rules and Laws

- *If, as a result of a breach by an owner of these rules or any other obligation of the owner, the Body Corporate or the trustees may instruct an attorney, the defaulting owner shall be liable for all costs and charges of whatsoever nature on an Attorney and Client scale incurred by the Body Corporate as a result thereof, once duly taxed by a taxing master; this is contrary to Management Rule 25(4) contained in Annexure 1 to the STSMA which states: A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.*

6. Domestic Employees

- *Domestic workers are not allowed to receive visitors, not allowed to talk to one another on common property or walk around the community scheme without a name tag or pass or in the instance that trustees may refuse a domestic worker entry to the common property, these rules are discriminatory against domestic helpers and contrary to the Constitution of the Republic of South Africa.*

7. Duty of unit owners

- *Owners or occupiers are requested to advise the trustees whether first mortgage bonds exist and if so, the name of the Financial Institution/Company which holds the bond.*
- *Outside security gates, burglar bars, canopies etc are situated on the common property is the responsibility of the unit owners, this is not correct as the maintenance and repair thereof become the responsibility of the Body Corporate.*

8. Geysers

- *Damage occurring to fittings i.e., windows, carpets, etc. are covered by the complex insurance policy subject to payment of an initial excess, as in a normal homeowner's policy, including that drip-trays must be placed underneath geysers.*

9. Tenant Evictions

- *The Body Corporate cannot force a unit-owner to evict his/her tenant, as this is unreasonable, irrational, and unconstitutional.*

10. Vehicles

- *The vehicle will be towed - trustees cannot authorise the towing of a vehicle, may impose a penalty if this is in the respective rules.*

11. Slaughtering

- *The slaughtering of animals for cultural or religious purposes cannot be prohibited in terms of the Constitution of the Republic of South Africa.*
- *Conditions for slaughter may, however, be imposed, for example:*
 - *At least two (2) weeks written notice of the intended religious or cultural event requiring such ritual slaughter shall be given to the trustees for approval;*
 - *The date and time of the proposed slaughtering;*
 - *The type of animal to be slaughtered;*
 - *The name and qualification of the person registered by the relevant authority to perform the religious or cultural slaughtering;*

- *Confirmation that the animal will be brought onto the premises immediately prior to the ritual or cultural slaughtering, and that all remains of the animal will be removed immediately from the premises after the act of ritual or cultural slaughtering.*
- *A notice from the local authority must accompany the notice confirming that all by-laws with regards to the ritual or cultural slaughter have been/will be complied with;*
- *A certificate from the Society for the Prevention of Cruelty towards Animals (SPCA) must accompany the above notice confirming that an official from the SPCA will be present at the proposed event to ensure that the animal to be slaughtered will not endure unnecessary pain and suffering during such slaughter;*
- *Notice must be given to all adjacent units of the date and time of the proposed slaughter and proof of the receipt of such notice by the owner/tenant responsible for the unit must be timeously submitted to the trustees;*
- *Failure to comply with the requirements set out above will entitle the Body Corporate to prevent the act of ritual or cultural slaughtering from taking place on the premises or penalising the owner with a fine.*

12. Rule created Exclusive Use Areas

- *EUA must include a plan to scale of the exclusive use areas to be created – a plan to scale must be drafted by an architect or a draughtsman.*
- *The owner may not let the exclusive use area designated to his unit without the written permission of the board of trustees. Such permission may not unreasonably be withheld.*
- *Each owner is responsible for the repair and maintenance {flower beds, oil spills, etc.) of the exclusive use area, including the maintenance and repair of any water pipes, electrical wiring, downpipes, security devices, lapas, verandas and the like solely servicing that area.*

13. Business activities

- *When the purpose for which a section or exclusive use area is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section or exclusive use area to be used for any other purpose: Provided that with the written consent of all owners such section or exclusive use area may be used for that purpose as consented to.*

14. DSTV / solar panel installations

- *A DSTV dish may only be installed by an expert, the word expert must be defined - a DSTV certified professional installer.*

15. Estate Agents

- *Only a certain agent may let or sell a unit, this is discriminatory, unreasonable and prejudicial to unit owners.*
- *This rule imposes an unreasonable limitation on the rights of an owner in the scheme to market, sell and let his or her unit through an estate agent of his or her choice, and the CSOS will not register a rule of this nature.*

16. Language Policy

- *English is the business language and saying that meetings will only be held in Afrikaans for instance, is discriminatory against persons who speak other languages and is unfair and unconstitutional.*

17. Developers

- *The development period must have years of the estimated period or when the erven are all sold, whichever comes first, please specify this in the rules – usually only applies to homeowners' associations, however, it may be in the rules of a sectional title development.*

18. Domicile

- *Owners must be allowed to choose an alternative domicile in case they do not reside in their unit.*

19. Alterations inside the unit

- *A unit owner is at liberty to make any alteration to the inside of his or her section provided that such alteration does not affect the structural integrity of his or her section or the scheme as a whole, subject to the provisions of the Sectional Titles Schemes Management Act, the Sectional Titles Act (reciprocal servitudes of subjacent and lateral support) as well as the Management and Conduct Rules in toto. This includes the rules relating to nuisance.*
- *The provisions of section 5(h) of the STSMA read with section 24 of the Sectional Titles Act (Extension of Sections) cannot be amended by the Conduct Rules.*

20. Location of pipes

- *The trustees must ensure that they have in the records of the body corporate plans showing the location of all pipes, wires, cables, and ducts referred to in section (3)(1)(r) of the STSMA; new scheme must request these records from the developer and existing scheme must approach the local authorities.*

21. Animals and pets

- *The scheme may prohibit pets entirely, however that prohibition would not apply to a member or occupant that can show that he or she needs medical assistance and/ guide dog (animal). Such animals are automatically permitted.*
- *Where the scheme introduces a 'no animal' rule, where previously they permitted pets; they must take into account pre-existing pets. An owner that had a pet prior to the coming into effect of the rules must be permitted to retain that pet but may be prohibited from replacing that pet if it dies – the so-called 'grandfather clause'.*

22. Governance and Management issues

- *The managing agents must make all audited financials available to the member, especially if the trustees have signed them off. An electronic copy must be made available to members. A charge for printouts and copies may be levied.*
- *The trustee's fiduciary duty expands beyond the term of office as a trustee. Thus, if a dispute arises and it relates to matters in their term of office and they are still a member of the body corporate, they will be required to respond and assist the current trustees to respond to the allegations.*
- *Election of trustees. The STSMA states that a member may nominate any person to stand for the office of trustee. Thus, a tenant or a 3rd party, if nominated, by an owner may stand for office subject to disqualification as provided in the Prescribed Management Rules attached to the STMSA.*

23. Proxies

- *A member may appoint a proxy to represent them at a meeting. The proxy may be any person (i.e., tenant or occupier). This appointment must be in writing the proxy form is attached to the regulations. A person may not, however, be a proxy to more than 2 members (not units).*



24. Mandate of trustees

- *It is recommended that the limitation on trustees be reduced to writing and made known to all members. i.e., set limits of the money that can be spent by trustees; Trustee activity must be transparent and recorded in writing. Members are permitted access to records of meetings and to observe meetings (but may not vote at trustee meetings).*

25. Interest

- *Interest can be charged at the discretion of the trustees in terms of Management Rule 21(3)(c) subject to a maximum of 24% per annum capitalized monthly in arrear (provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005).*

26. Levies

- *There can be no rules preventing members from exercising their voting rights for non-payment of levies.*
- *Rules preventing the member/tenant/occupier access to the property for non-payment of levies will not be passed.*

27. Costs

- *Any rule attempting to recover the cost of travel and CSOS dispute resolution processes from a member will not be passed. The dispute directive specifically says all cost for dispute will be determined at conciliation or by an adjudicator.*

28. Disconnection of Electricity and Water

- *Disconnecting a member's water and electricity for non-payment of levies is against the Constitution of the Republic of South Africa.*



