



COMMUNITY SCHEMES OMBUD SERVICE AMENDMENTS TO THE PRACTICE DIRECTIVE 2019

1. EXECUTIVE SUMMARY

1.1 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 practice directives must, subject to the CSOS Act and the regulations, direct the performance of any act in the operation of the Service.

1.2 Accordingly, to achieve efficiency, the Chief Ombud is herein amending the Practice Directive 2019 by adding or removing certain provisions within the dispute resolution process.

2. SUSPENSION OF THE DISPUTE RESOLUTION FEE

2.1 The payment of the prescribed application fee in provision 13 of the Practice Directive and currently determined at R50,00 (Fifty Rand) per application is herein suspended indefinitely.

2.2 Accordingly, all disputes lodged after the date of this directive, will be at no cost to the Applicant.

2.3 Application fees already paid at effective date are not refundable.

3. WAIVER OF THE ADJUDICATION FEE

- 3.1 The payment of the adjudication fee, currently determined at R100,00 (One Hundred Rand) and payable in terms of provision 22.1 of the Practice Directive 2019, is herein waived for all adjudications.
- 3.2 Accordingly, all adjudications that are yet to commence after the date of this directive, will be conducted at no cost to the Applicant.
- 3.3 Adjudication fees already paid at effective date are not refundable.

4. NOTICE TO AFFECTED PARTIES - SECTION 43

- 4.1 To ensure better turn-around times for dispute resolution, the notice period to be given to parties in terms of 14.1 of the Practice Directive is herein reduced from 14 (Fourteen) days to 7 (Seven) days.

NOTICE TO APPLICANT – SECTION 44

- 4.2 In terms of 14.2 of the Practice Directive, the period of 10 (Ten) days is reduced to 5 (Five) days for the Ombud to allow the applicant to inspect the submission or to provide any written response relating to the issues raised in the submission.

EXTENSION

- 4.3 In terms of 14.3 of the Practice Directive, the extension to be considered in exceptional cases is reduced from 10 (Ten) days to 5 (Five) days.

5. NOTICE OF CONCILIATION

- 5.1 To ensure better turn-around times for assessment of applications for dispute resolution, the notice period to be given to parties in terms of 17.1 of the Practice Directive is herein reduced for conciliation from 14 (Fourteen) days to 7 (Seven) days.

6. PROCEDURE FOR CONDUCTING CONCILIATIONS

- 6.1 Unless otherwise advised, no face-to-face Conciliations will be conducted, except where the parties may not have access to necessary technology to facilitate virtual hearings.
- 6.2 For conciliations conducted telephonically or virtually, the parties in dispute are requested to have sufficient data, bandwidth, battery-life or connectivity for the duration of the Conciliation.
- 6.3 The Conciliator will connect the parties to the conciliation on a conference call.
- 6.4 The Conciliator will record the proceedings and inform parties accordingly.
- 6.5 The Conciliator will explain the process to the parties and inform them of their rights and obligations.
- 6.6 If the parties reach a settlement, the Conciliator will draft a settlement agreement and read the entire agreement to the parties.
- 6.7 The parties will be asked to confirm the content of the agreement.
- 6.8 The Conciliator will subsequently send a copy of the pre-read settlement agreement to both parties for their records and the recording, confirming the settlement agreement will be deemed to be the Settlement Agreement.
- 6.9 Where possible, the Conciliator will request that all parties sign the agreement on the space provided and return a signed copy only by email for the CSOS file.
- 6.10 The CSOS Conciliation file will thereafter be finalized and closed.
- 6.11 In an event that the parties do not agree on an appropriate settlement of their dispute, the Conciliator will issue a certificate of non-resolution incorporating an automatic referral to adjudication, unless the Applicant elects to abandon or withdraw the matter.

7. NOTICE OF ADJUDICATION

- 7.1 To ensure better turn-around times for dispute resolution, the notice period to be given to parties for adjudication is herein reduced from 14 (Fourteen) days to 7 (Seven) days.
- 7.2 Notwithstanding the above, where the adjudication is conducted on papers and a request for final submissions has been made to the parties within the prescribed time frame, the Adjudicator may proceed and adjudicate the matter on papers without the notice period provided in 7.1 above.

8. PROCEDURE FOR ADJUDICATIONS

- 8.1 Unless otherwise advised or requested and agreed between the Parties, no face-to-face Adjudications will be conducted.
- 8.2 Adjudications will be conducted based on papers filed by the parties and further written submissions, documents, and information (including evidence in the form of affidavits and photos) as requested by the appointed Adjudicator.
- 8.3 The Adjudicator may at his or her discretion conduct the adjudication telephonically or virtually. Parties in a dispute are requested to have sufficient data, bandwidth, battery-life, or connectivity for the duration of the Conciliation.
- 8.4 Once an Adjudicator receives the adjudication file, he or she will notify the parties that he is in receipt of the matter and request confirmation from the parties that they are in receipt of the other parties' submissions.
- 8.5 All parties will and must be always copied in on all correspondence.
- 8.6 The following will be considered by the Adjudicator:
- 8.6.1 Application for Dispute Resolution/Statement of Claim, which is to be submitted by the Applicant and comprehensively setting out the nature of the dispute must be accompanied by:
- 8.6.1.1 All evidence, including photos and other supporting documents.

8.6.1.2 Relief sought in terms of section 39 of the CSOS Act; and

8.6.1.3 Any submission from the applicant to the respondent's reply.

8.6.2 Answer to Application for Dispute Resolution, submitted by the Respondent:

8.6.2.1 Refuting or providing an explanation to the Applicant's claim OR admitting the Applicant's claim;

8.6.2.2 Evidence refuting the Applicant's claim; and

8.6.2.3 Relief or counterclaim required by the Respondent.

*(All submissions must be in plain English, and there is no need to attempt to use legal jargon, which is completely unnecessary – if an Adjudicator does not understand anything, he or she will email both parties and ask for clarity – **the CSOS reiterates the requirement for fairness and a transparent process**)*

8.7 Based on the above submissions and due to the COVID-19 circumstances, the Adjudicator or any assigned administrator will request for further final submissions or written argument by either party within 5 (five) working days, before an Adjudicator considers the matter and publish the Adjudication Order.

8.8 Should a party fail to timeously make a written submission to the CSOS and the other party regarding a matter, as requested by the Adjudicator, he or she will forfeit an opportunity to make any further submissions thereafter, unless compelling circumstances approved by the Adjudicator exist.

8.9 The parties are prohibited, on their own accord, from communicating with the Adjudicator other than for the reasons mentioned above. Should a need to exist to communicate anything with the Adjudicator, a party requiring to do so, shall ensure that the communication includes the other party (ies) to the dispute.

8.10 This manner of adjudication is provided for in terms of section 50 and 51 of the CSOS Act, No. 9 of 2011, and this Directive must be read in conjunction with Practice Directive, 2019.

9. 90-DAY PERIOD

9.1 Considering the timeframe within which to dispose of disputes, the 90-day turn-around period for dispute resolution shall refer to 90 (Ninety) working days, which excludes weekends and holidays, and is calculated as follows:

9.1.1 45 (Forty-Five) days for a conciliation; and

9.1.2 45 (Forty-Five) days for an adjudication.

10. PROCEDURE ON URGENT APPLICATIONS

10.1 Assessment by the Case Management Officer in conjunction with the Ombud will be undertaken within 24 (Twenty-Four) hours of receipt and registration of the dispute application.

10.2 If the matter is determined to be one of urgency, the S43 notice will be issued requiring the Respondent to respond to the application within 24 hours.

10.3 The S44 notice will be issued requiring the Applicant to confirm whether to proceed with an adjudication order, within 24 hours of receipt of the S44 notice.

10.4 The Ombud will refer the matter for adjudication in terms of S48 of the Act.

10.5 The Adjudicator will issue an order within 48 hours from receipt of a response pursuant to a Section 44 Notice.

10.6 Urgency shall be determined on the basis of imminent harm, loss of life, damage or loss that may occur if the dispute is not handled on an urgent basis.

11. GENERAL MATTERS

- 11.1 The Community Schemes Ombud Service (CSOS) is committed to resolving disputes swiftly, efficiently and in a fair manner, hence the revised administrative and procedural processes.
- 11.2 The CSOS aims to deal with all conciliations and adjudications as quickly as possible, and with as little formality and technicality as provided for in the CSOS Act, No. 9 of 2011, but in a fair manner, hence the request for written submissions, documents, information, and evidence on an expedited basis.
- 11.3 The AMENDMENTS TO THE PRACTICE DIRECTIVE 2019 as contained herein, shall become effective on the date of signing this Directive and replace and substitute any other provisions inconsistent with these contained in the earlier Practice Directives.



ADV. BOYCE MKHIZE
CHIEF OMBUD
DATE:02/12/2021