

Managing property properly

Community Schemes Ombud Service: Failure to comply

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This article will focus on the consequences of a community scheme's failure to comply with some of the requirements of the Community Schemes Ombud Service Act 9 of 2011 ("the CSOSA").

The CSOSA has set out a number of requirements that must be complied with by community schemes across the country, and certain requirements have deadlines which must further be met.

For example, every community scheme must register with the Community Schemes Ombud Service ("the CSOS"), providing the CSOS with their governance documentation and any other information that may be required to be completed and submitted to the CSOS; pay a levy to the CSOS, according to a prescribed formula and recoverable from the members of the community schemes; and file its annual returns and copies of its annual financial statements with the CSOS.

In terms of section 34 of the CSOSA, there are various listed offences, which, if contravened, may result in conviction. This section provides that any person, associated with a community scheme or with the CSOS, may be found guilty of such an offence, and may be liable, on conviction, to a fine or imprisonment, for a period not exceeding 5 years, or to both a fine and such imprisonment. Should such a person be convicted for a second, or subsequent conviction, for a listed offence, they may be liable to a fine or imprisonment, for a period not exceeding 10 years, or to both a fine and such imprisonment.

The listed offences are:

- The failure to provide access to any of the scheme's records, including its books of account;
- The failure to comply with a directive issued by the Chief Ombud;
- The failure or refusal to give the required information, or the giving of false or misleading information;
- The refusal to perform a duty or the prevention of someone from performing a duty in terms of the CSOSA;
- The acceptance of an unauthorised fee or reward in connection with a position within the CSOS;
- Making use of the name, design of logo of CSOS without permission to do so;
- The failure to comply with the fiduciary duties of the CSOS, and the unauthorised disclosure of the information of the CSOS.

As you can see from the above, it is vitally important for scheme executives and members to comply with the provisions of the CSOSA, as the consequences for non-compliance is quote far-reaching.