

Managing property properly

Advantages of Arbitration

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PMR 71 sets out a procedure for the **determination of disputes by arbitration** in sectional title schemes. Any dispute between the body corporate and an owner, or between owners, arising out of the Sectional Titles Act or the Management Rules or the Conduct Rules can be determined by arbitration. Where an interdict or any form of urgent or other relief is required the aggrieved party will have to approach a court having jurisdiction. The body corporate or an owner is entitled to approach a court for relief in connection with a dispute, even if urgent relief is not sought. But in these circumstances, the other party to the dispute can object to the court action and require that the matter be determined by arbitration.

There are **advantages** to resolving disputes by arbitration. In the first place it gives certainty. The decision of the arbitrator is final and binding and may be made an order of the High Court upon application of any party to or affected by the arbitration.

In the second place the arbitration proceedings can be more **economical and efficient than court proceedings**. The arbitration can be held as informally as the arbitrator may determine. Therefore arbitration may be less formal than litigation, and the hearing is usually shorter than a court case would be. Another advantage in this regard, is that an arbitration hearing can be scheduled much sooner than a court date. The savings in time can result in lower overall costs to the parties involved.

The third advantage is that the parties can, by agreement, appoint an arbitrator who will decide their case. **The arbitrator must be independent, suitably experienced and qualified** having regard to the nature and complexity of the dispute or complaint and to the costs which may be involved. If the parties cannot agree on the arbitrator to be appointed, the Chief Registrar of Deeds must, on written application and payment of a prescribed fee, appoint an arbitrator in writing within seven days.

Furthermore the parties provide input on when, where and how the adjudication will proceed. This gives them greater control than in litigation, where court rules are inflexible and time frames depend on the availability of court resources.

The structure of the arbitration proceedings allows for more input by the parties than court proceedings. Added to this the proceedings are more flexible, taking the circumstances of the parties into account. In this way the arbitrator can accommodate the parties' schedules and can take into consideration the convenience of the venue for the arbitration. The arbitrator can even do an inspection in loco of the scheme.

It often occurs that the parties agree that the outcome will remain confidential between the parties and the arbitrator. Hearings are usually closed and the arbitrator's decision is not normally a matter of public record unless it is made an order of court.

Arbitration has a more informal atmosphere than court proceedings which contributes to a **less antagonistic atmosphere which encourages cooperation**. This can be a particular advantage if the parties continue to reside in the scheme as neighbours after their dispute is resolved.

It must be noted that arbitration can be expensive as the costs of arbitration include the arbitrator's fees; any fees charged by a neutral administrative body to oversee the process; any fees charged by expert witnesses; and any other expenses incurred for such things as meeting room rental, photocopies, faxing, long distance travel costs, etc. The arbitrator has the discretion to determine that the costs of the arbitration be paid by one of the disputing parties or any of them jointly or in such shares as he or she deems appropriate having regard to the outcome of the arbitration. The successful party may be reimbursed for some or all of their costs associated with the arbitration. However, the parties are usually required to pay their own legal fees. Therefore, the parties will rarely recover all the expenses incurred in the arbitration proceedings.

When the **Community Scheme Ombud Service Act 9 of 2011**, comes into effect a process of "adjudication" will be provided by the Service for all forms of community scheme and this is expected to replace the current PMR 71 arbitration process for sectional title disputes.

Footnote from Compeg:

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