



Applying for Dispute Resolution

The CSOS (Community Schemes Ombud Service) provides an Alternative Dispute Resolution service. This entails the resolution of disputes outside of the courts. This method is often preferred as the most cost effective and speedy way of settling disputes through methods such as conciliation and adjudication. It's free, and Adjudicator Orders are enforceable in the Magistrate Court or High Court depending on the nature of the relief granted in the determination.

NOTE: *Before you can make an application for dispute resolution to the CSOS, applicants must first have exhausted all internal dispute resolution mechanisms of the community scheme concerned.*

This is important. If there has been no attempt to resolve the dispute, CSOS will not consider an arbitration. This may mean changing a dog's behaviour or conditions.

Mediation: If direct communication doesn't resolve the issue, consider using a mediator. This is a neutral third party who can facilitate communication and help the parties reach a resolution.

Negotiation: If mediation doesn't work, try to negotiate with the trustees. Identify common interests, explore compromises, and document any agreements in writing.

When to Approach CSOS

If internal efforts to resolve the dispute fail, the CSOS can be a valuable resource. They offer a cost-effective and convenient way to resolve disputes in community schemes.

How to Apply: You can apply to the CSOS by completing the [Dispute Resolution Form](#) and submitting it to the [relevant jurisdiction's email address](#) or in person at a CSOS office.

CSOS Process: The CSOS will assess the application and, if accepted, will schedule a conciliation hearing. The Conciliation is free and there are two types: a quick telephone conciliation or a formal conciliation hearing.

Conciliations are chaired by a CSOS Conciliator who is there to assist the parties in finding a resolution. If the matter is not resolved, the conciliator will issue a Notice of Non-Resolution and will refer the matter to Adjudication.

Matters that are referred for adjudication will be subject to a thorough investigation prior to presentation at the adjudication hearing. At the adjudication hearing, the Adjudicator will

consider all the evidence presented and will hand down a determination that is binding on all parties to the dispute. There is no fee for the Adjudication.

Enforcement: If a CSOS order is not followed, the order can be enforced through the courts.

Other Options

Professional Assistance: If the dispute is complex or involves significant financial issues, you may want to consult with a legal professional or a property management expert.

Arbitration: Before the existence of CSOS, arbitration was a common method for resolving disputes in sectional title schemes. This involves appointing an impartial arbitrator to make a binding decision. Arbitration remains an option for complex disputes.

Key Considerations

Be Prepared: When approaching the CSOS, ensure you have all relevant documentation and information to support your case.

Understand the Process: Familiarize yourself with the CSOS's procedures and the potential outcomes.

Seek Professional Advice: If you are unsure about the process or need help with your case, consider seeking professional advice from a lawyer or property management expert.

Appeals

According to Section 57 of the CSOS Act, A CSOS adjudication can be appealed to the High Court. The appellant may also request a stay of the Adjudicator's order pending the outcome of the appeal.

The appeal process is subject to a few limitations:

1. The appeal must relate to a question of law.
2. The appeal must be lodged within 30 days of the delivery of the adjudication order.

How to Appeal: The appellant must file a notice of appeal with the High Court, clearly stating the grounds of appeal. It is advisable to engage an attorney to manage the process, which is why it can become expensive.

The notice of appeal must be served on the Adjudicator and the CSOS, usually by the Sheriff of the court. The appellant may also apply to the High Court to stay the Adjudicator's order pending the appeal. There is no requirement to apply for leave to appeal before filing the notice of appeal.

Other Options

While appealing is an option, there are other ways to challenge a CSOS adjudication order, including **review**, which may offer more time and flexibility:

A CSOS adjudication order falls within the definition of administrative action as defined in the [Promotion of Administrative Justice Act](#) (PAJA).

The PAJA is an Act of Parliament, passed to give effect to the constitutional rights to lawful, reasonable and procedurally fair administrative action, and to the right to be given reasons for administrative action. That is, it:

- Is the Act of Parliament mentioned in section 33 of the Constitution;

- Requires administrators to follow fair procedures when making decisions;

- Requires administrators to give adequate reasons, when asked to do so, for the decisions that they have taken;

- Requires administrators to inform people about their rights to review or appeal and to request reasons;

- Gives members of the public the right to challenge administrative decisions in court on a number of grounds; and

- It lays down the procedures that must be followed by people seeking judicial review.

As per PAJA, there are numerous circumstances on which an individual may initiate proceedings in the High Court for the judicial review of a CSOS adjudication order:

1. The adjudicator was materially influenced by an error of law; 2. The adjudicator was biased or reasonably suspected of bias; 3. The adjudicator failed to consider relevant and material factors; 4. The adjudication process was procedurally unfair; 5. The adjudication order was unconstitutional or unlawful; 6. The adjudicator's decision was not rationally correlated to the information that was presented to the adjudicator.

To appeal or [institute review proceedings](#) in the High Court under the Promotion of Administrative Justice Act (PAJA), you must first exhaust internal remedies, if any exist, before approaching the court. If no internal remedies are available, or once they are exhausted, you have 180 days to bring your application. The application is typically made by way of a notice of motion, supported by an affidavit outlining the grounds for review and the relief sought.

Steps to follow:

1. Exhaust Internal Remedies:

If the administrative action you're challenging has a mechanism for internal review or appeal (as specified by law or the relevant institution), you must utilize that process first.

2. Identify the Relevant High Court:

Determine which High Court has jurisdiction over the matter. This is usually based on where the administrative action was taken or where the affected party is located.

3. Draft the Application:

Prepare a notice of motion outlining the relief you seek (e.g., setting aside the administrative action) and a founding affidavit detailing the facts and grounds for review.

4. Comply with Rules of Court:

Familiarize yourself with the Uniform Rules of Court (specifically Rule 53, in many cases) or any specific rules of the High Court you are approaching, and ensure your application complies with those rules.

5. Serve the Application:

Properly serve the application on the relevant parties (the administrator who took the action and any other affected parties).

6. Attend Court Hearings:

Be prepared to present your case at the court hearings, including presenting evidence and legal arguments.

7. Seek Legal Advice:

Consider consulting with a legal professional specializing in administrative law to guide you through the process.

Key Considerations:

Grounds for Review:

PAJA outlines various grounds for review, including legality, procedural fairness, and reasonableness.

Time Limits:

The 180-day time limit for bringing a review application is crucial and must be strictly adhered to.

Here are some real-world examples of irrational or unlawful Conduct Rules in South African sectional title or community schemes that have been challenged, either through the Community Schemes Ombud Service (CSOS) or in court.

No Pets at All – No Exceptions

A conduct rule stating that no pets whatsoever would be allowed in any units, with no allowance for applications.

Why it was challenged: The Prescribed Conduct Rules (PCRs) allow residents to apply to keep pets, subject to body corporate approval. A blanket ban removes that procedural right.

Outcome: CSOS declared a blanket ban unreasonable and invalid unless there is an application process. Even if the trustees always say no, the right to apply must exist.

Legal principle: Unreasonable limitation of a lawful use of property.

In one case, CSOS ordered the body corporate to grant permission for a support animal (emotional support dog), based on disability rights.

Fines Without a Hearing

A rule allowing trustees to impose immediate fines for any breach of the conduct rules, without a notice or hearing.

Why it was challenged: Violates natural justice (audi alteram partem – the right to be heard).

Outcome: CSOS declared the rule invalid. Even with a fine rule in place, trustees must follow due process: issue written notice, allow a response, and consider the evidence before fining.

Case reference: Fisher v Body Corporate of Misty Bay (2018, CSOS adjudication).

Why Do These Rules Get Approved by CSOS in the First Place?

Often, poor scrutiny, lack of legal training, or rubber-stamping of rules happens at CSOS regional offices. Once challenged, however, CSOS or courts will evaluate:

Is the rule reasonable?

Is it lawful and not discriminatory?

Does it allow procedural fairness?

Does it conflict with higher laws (e.g., the Constitution, STSMA, or common law)?

Conduct Rules are meant to maintain **peaceful community living**, not to act as private fiefdoms or petty bureaucracies. The problem is often lack of legal literacy, misapplication of authority, and inadequate oversight.

Not Without My Dog Legal

