



PRACTICE DIRECTIVE ON COMPLIANCE AND ENFORCEMENT



No.1

2022

Version #	Date of Release	Author (s)	Summary of Changes
1.0		Ms. Johlene Wasserman	EXCO submission

Approvals

The undersigned has approved the release of version 1 of CSOS' Practice Directive on Compliance and Enforcement process in terms of the CSOS Act.

Name	Designation	Signature	Date
Adv. Boyce Mkhize	Chief Ombud		03 February 2022
Ms. Phindile Mthethwa	Chairperson of the Board		04 February 2022

NO. 1 OF 2022 ON PRACTICE DIRECTIVE ON COMPLIANCE AND ENFORCEMENT IN TERMS OF SECTION 36 OF THE CSOS ACT

1. DEFINITION

1.1 In this Practice Directive, any word or expression to which a meaning has been assigned by the Community Scheme Ombud Service Act (CSOS Act), Sectional Titles same meaning assigned to it in the CSOS Act or Regulations made in terms of the CSOS Act, and unless the context indicates otherwise.

WORD OF PHRASE	DEFINITION
Complaint	An allegation that a person or company may have contravened the law.
Intentional Non-Compliance	Schemes are informed of the legislative obligation but choose not to comply
Enforcement Action	The use of one or more enforcement tools to remedy a contravention.
Intelligence Assessment	The process of collating information for analysis to produce findings that inform compliance activities.
Monitoring	Checks and inspections of the actions of schemes.
Partner Agency	Agencies with mutual interests and the ability to share information with the CSOS.
Community Scheme	Means any scheme or arrangement in terms of which there is shared use of and responsibility for parts of land and buildings, including but not limited to a sectional title development scheme, Sectional Titles Act, 1986 (No. 95 of 1986), and Sectional Titles Schemes Management Act, 2011 (No. 9 of 2011), a share block company, Share

Blocks Control Act, 1980 (No. 59 of 1980), a home or property owner's association, however constituted, established to administer a property development, a housing scheme for retired persons, Housing Development Schemes for Retired Persons Act, 1988 (No.65 of 1988) and a housing co-operative as contemplated in the South African Co-operatives Act, 2005 (Act No. 14 of 2005) and "scheme" will have a corresponding meaning; Community Schemes Ombud Service Act, 2011(No.9 of 2011).

2. OBJECTIVES OF THE CIRCULAR

- 2.1 The objective of the Circular is to provide information on the procedures and content required for compliance and enforcement. Nothing in this Circular supersedes the requirements of the CSOS Act.
- 2.2 The underlying aim of this Circular is to have in place effective systems to maximize the compliance of community schemes with their duties and obligations to ensure that any non-compliance is held to an absolute minimum; thereby ensuring that schemes comply with the CSOS Act, STSMA Act and all other relevant legislation.
- 2.3 In achieving this aim, CSOS will strive to be a leading regulator which advocates an innovative and collaborative approach.
- 2.4 CSOS will use a range of regulatory options to drive compliance, prioritise the available resources based on possible risk, be outcome-focused, and work closely with the stakeholders to ensure a collaborative approach to scheme compliance.
- 2.5 CSOS will be firm but fair in carrying out the regulatory activities, and ensure that the actions are proportionate, consistent, transparent, and targeted.

3. LEGISLATIVE FRAMEWORK

3.1 CSOS is primarily responsible for the regulation, promotion, and monitoring of good governance of the Community Schemes Ombud Service Act and the Sectional Title Schemes Management Act, however, the following legislation has a direct impact on the successful implementation of the Practice Directive:

- a) Community Schemes Ombud Service Act, 2011(Act No 8 of 2011);
- b) Public Finance Management Act, 1999 (Act No 1 of 1999);
- c) Sectional Titles Act, 1986 (Act No 95 of 1986);
- d) Share Block Control Act, 1980 (Act No. 59 of 1980);
- e) Housing Development Schemes for Retired Persons Act (1988 (Act No. 65 of 1988);
- f) South African Co-operatives Act, 2005 (Act No. 14 of 2005);
- g) Companies Act, 2008 (Act No. 71 of 2008);
- h) Sectional Titles Schemes Management, 2011 (Act No. 8 of 2011), and
- i) Constitution, 1996.

4. SCOPE OF THE CIRCULAR

4.1 **The Scope of the Circular is to:**

4.1.1 Establish and maintain a 'pre-compliance culture' amongst schemes so that they are aware of, and understand their obligations, want to comply with their legal duties, and advocate that non-compliance by others is unacceptable. This will be achieved by:

- (a) promoting positive compliance behaviour amongst themselves in the early stages of implementation in order to influence the subsequent willingness of community schemes to comply.
- (b) developing a climate in which the CSOS and STSMA Acts are applied fairly, are complying, and that those who do not comply will be penalised.

4.2 The following measures will be used to detect non-compliance:

4.2.1 Whistleblowing.

- 4.2.2 Registration verification at dispute phase.
 - 4.2.3 The sharing of information with other schemes; Government Entities and private sectors like financial institutions, Insurance, and Accounting and Auditing Regulatory Bodies.
 - 4.2.4 Proactive activity such as registration sampling or targeted visits to schemes that are at a high risk of non-compliance.
 - 4.2.5 Prove of breaches in a fair, objective, and professional manner and ensure that those responsible are held to account for their actions.
- 4.3 Effective enforcement against non-compliance will be achieved by applying appropriate civil and criminal sanctions.

5. COMMUNITY SCHEMES COMPLIANCE AND ENFORCEMENT APPROACH

- 5.1 All community schemes must comply with the CSOS Act and regulations, including but not limited to the following legislation:
- 5.1.1 Community Schemes Ombud Service Act; 2011 (Act No 8 of 2011);
 - 5.1.2 Public Finance Management Act, 1999 (Act No 1 of 1999);
 - 5.1.3 Sectional Titles Act (Act No 95 of 1986);
 - 5.1.4 Share Block Control Act, 1980 (Act No. 59 of 1980);
 - 5.1.5 Housing Development Schemes for Retired Persons Act (1988 (Act No. 65 of 1988)
 - 5.1.6 South African Co-operatives Act, 2005 (Act No. 14 of 2005);
 - 5.1.7 Companies Act, 2008 (Act No. 71 of 2008);
 - 5.1.8 Sectional Titles Schemes Management, 2011 (Act No. 8 of 2011), and
 - 5.1.9 Constitution, 1996.

5.2 Willingness to Comply

- 5.2.1 The CSOS will prioritise and work with schemes that are willing to comply with the CSOS laws (The CSOS Acts, Regulations, and Practice Directives) but do not have the information to guide them. This means providing information to educate the schemes so that they comply. Educational activities may include information

on our website (www.csos.org.za) and the publication of CSOS specific information through different media channels, participation at schemes (in full) AGM and reputable industry sources of information.

- 5.2.2 Regulated schemes are required to operate in accordance with the CSOS Act and other relevant legislation. This includes understanding what is allowed as part of registration compliance. Compliance does not end with registration; it continues with the submission of the Annual Returns, the quality assurance of section title schemes governance documentation, and the payment of levies (i.e., CSOS levies).
- 5.2.3 Regulated schemes with strong compliance cultures that remain compliant with their obligations will be inspected less frequently unless they specifically seek out support from the CSOS.

5.3 Require Assistance in Complying

- 5.3.1 Those who want to comply but need guidance and assistance, will be engaged, and provided with the direction required to return to compliance with the CSOS Act and other relevant legislation. This may be through monitoring programs, audits, or compliance and education campaigns.
- 5.3.2 Training and education will be done in line with the CSOS Strategy on Training, Education, and Awareness. The CSOS will undertake to arrange proactive information and educational project to assist regulated schemes to comply with the CSOS Act and advise the broader community of how the CSOS Act protects them.

5.4 Intentional Contravention

- 5.4.1 Non-Compliance of the CSOS Act or other relevant legislation, where no effort is made to return to compliance, or failure to inform the CSOS, will be subjected to enforcement action by the CSOS. The CSOS will take proportionate enforcement action and function as a deterrent for others not to breach the CSOS Act or other legislation as per section 34 of the CSOS Act.

5.5 Engagement

5.5.1 The CSOS will engage with regulated schemes that need guidance and support to achieve compliance with the CSOS Act. The CSOS will undertake various compliance activities focused on assisting regulated schemes to remain compliant or return to compliance without initially using regulatory powers, if the engagement is not yielding positive results, then the use of regulatory powers may become necessary.

5.5.2 Different and non-stringent approaches will be used to engage with regulated schemes:

- (a) regulated schemes that are not conversant with the CSOS Act may request direct engagement with CSOS employees to assist them on the path towards achieving full compliance.
- (b) regulated schemes that have a record of being compliant and not requiring guidance on meeting their obligations should expect to see CSOS investigators on a less frequent basis but remain engaged through the distribution of information through various CSOS communications channels. If there are issues, the schemes may call or email employees of the CSOS to obtain advice and guidance if required.
- (c) During the audit process, the CSOS will work with managers or trustees to ensure that they are meeting their obligations.

6. Enforcement

6.1 All Schemes that contravene the CSOS Act will be subject to strong enforcement action by the CSOS. The CSOS will take enforcement action to resolve contraventions and set a deterrent for others not to breach the CSOS Act. The CSOS' enforcement actions will be proportionate to the seriousness of the breaches.

6.2 The CSOS will select a regulatory response from the enforcement tools such as a penalty, provided in the CSOS Act, based on the specific circumstances of the case.

6.3 The CSOS will continue to develop and share case studies about the effectiveness and use of enforcement tools. This transparency will support a consistent approach to enforcement action over time.

7. ENFORCEMENT OPTIONS

7.1 Informal Mediation Action

7.1.1 The CSOS may issue instructions by telephone, email, registered mail, and in person. The aim is to provide as much assistance as is reasonably practicable to assist schemes that are struggling to comply for whatever reason, or where a scheme voluntarily brings a minor breach to our attention and is already taking (*or has taken*) appropriate action. When assistance and instruction is given, it will be in writing, unless the issue is immediately rectified telephonically.

7.1.2 Where the CSOS has identified a risk of non-compliance, it may take preventative action by issuing targeted communications to a scheme, its managing agents; its trustees or its appointed executive managing agent.

7.2 Intervention Action

7.2.1 The CSOS will issue a warning letter to the schemes that are responsible for breaches. The letter shall be issued if there is sufficient evidence available to substantiate proof of a breach has taken place. The letter will bring the breach to the scheme's attention and give it an opportunity to rectify the breach within a reasonable period, or to take the requisite steps to prevent it from re-occurring.

7.2.2 The letter will indicate a timeframe for compliance with the applicable prescripts, state the consequences if the breach is not rectified or occurs again in the future, indicate that the CSOS will consider using its powers, and it may also indicate ways to avoid similar breaches in the future.

8. STATUTORY POWERS: FORMAL ACTION

8.1 Formal requests for information

8.1.1 If the CSOS suspects that a breach has occurred, or if it has received a complaint of non-compliance, then it will write to a scheme or its representative to provide

the requested relevant information in the manner, place, and period as specified in the notice.

- 8.1.2 Failure to provide the information or providing false or misleading information may lead to penalties and/or criminal prosecution as set out in section 34 of (1) (a) (b) (c) of the CSOS Act.

9 Inspection powers

- 9.1 The CSOS Inspectors/ Investigators will conduct door-to-door information sharing measures and guide the schemes to register. The schemes that are willing to comply and register, will be assisted. The Inspectors/ Investigators will take the details of those that intentionally refuse to comply, and the transgression will be reported to the South African Police Services (SAPS). The Inspectors/ Investigators will also provide administrative support and monitoring of the cases once handed to the SAPS.

10 Statutory notices

- 10.1 The CSOS will issue statutory notices to schemes if they are of the opinion that a breach has occurred, and a remedy is required to secure compliance. The CSOS will use specific rules governing the use of different statutory notices. It may be used to direct a person to take, or not to take, a specific action(s) within a specified timeframe. The CSOS will consider the specific circumstances in each individual case in deciding the most appropriate course to achieving compliance.

11 ANNUAL COMPLIANCE PLAN

- 11.1 The CSOS will develop and publish a summary of its annual compliance plan in order to allow stakeholders to see what the CSOS is planning for the coming year. The plan will also be driven by the need to ensure that schemes submit the Annual Return as provided in Section 59 of the CSOS Act.
- 11.2 The publication of the annual compliance plan will be a signal to industry members that the CSOS will be paying particular attention to schemes submitting their Annual Return and ensuring compliance. The identified areas will not restrict the CSOS from taking compliance or enforcement action where there is evidence of contravention.

- 11.3 The CSOS will set its plan based on legislative and policy guidance, and with due consideration of the resources available to the CSOS. Emerging issues will be identified through the information assessment process, or areas that have had little or no compliance activity historically or have not been subjected to compliance activities for an extended period.
- 11.4 The annual compliance plan will be published in summary from the information collected on community schemes. Where possible, the annual compliance plan will be published before the commencement of the financial year.

12. PARTNERSHIPS

- 12.1 The CSOS is guided by the CSOS Act to focus its compliance activities on the registration of community schemes and establish formal arrangements with other stakeholders to share information on registered Homeowners Associations, Share Block Companies, Sectional title developments, and any other form of Community Scheme.
- 12.2 The following Partners will be engaged:

12.2.1 Companies and Intellectual Property Commission (CIPC)

- CSOS will be provided with a link to access live information on Non-Profit Companies (NPC's), once CSOS has acquired an ICT System. In the interim CIPC will load/ dump all information on NPCs on the Sage System and CSOS must verify and confirm such information.

12.2.2 Deeds Office

- For all new Sectional schemes, the Deeds Office has an obligation in terms of Section 2 of the Sectional Titles Schemes Management Act, to provide CSOS with certificates of all new sectional title registers opened.

12.2.3 Independent Regulator Board for Auditors (IRBA)

- The IRBA provides CSOS with information on Community Schemes that are audited and found to have committed Reportable Irregularities. The CSOS will communicate the non-compliance to the schemes and monitor compliance with the findings.

12.2.4 The National Association of Managing Agents (NAMA)

- NAMA provides the CSOS with information on NAMA-affiliated managing agents as well as the list of Previously Disadvantage Managing Agents.

12.2.5 The Association of Rental Communities (ARC)

- ARC in collaboration with the CSOS provides education, information, and awareness to all homeowner's associations in South Africa.

12.2.6 The Residential Communities Council (RCC)

- RCC in collaboration with the CSOS provides education, information, and awareness to all homeowner's associations in South Africa.

12.2.7 The Community Association Institute of South Africa (CAISA)

- CAISA in collaboration with the CSOS provides education, information, and awareness to all homeowner's associations in South Africa.

12.2.8 The Office of the Surveyor – General (SG)

- The Office of the SG is the custodian of Sectional Title and General Plans which captures various data components from the hardcopy plans submitted by land surveyors and architects for approval. The SG provides the CSOS with these plans.

13 REPORTING OF NON-COMPLIANCE

13.1 Any owner or member of the community scheme can file or report any non-compliance within their community scheme.

13.2 Such owners or members must fill in the application for non-compliance of community schemes form as required by the Circular and provide the CSOS with all the relevant information. The Application Form should be submitted to compliance@csos.org.za and/or hand-delivered to any CSOS offices.

- 13.3 The non-compliance complaint will be captured into our database and a reference number will be issued.
- 13.4 The complaint will be assessed, and it will be determined if it falls within the CSOS jurisdiction.
- 13.5 If the matter does not fall within the CSOS jurisdiction, the Applicant will be referred to the appropriate dispute unit, tribunal, and/or organisation.
- 13.6 If the matter falls within our jurisdiction, the matter will be investigated, and the necessary correspondence will be issued to the scheme.

14 CONSEQUENCES OF NON-COMPLIANCE

- 14.1 In terms of Section 34 of the CSOS Act, the below are listed as offences and penalties:

14.1.1 OFFENCES AND PENALTIES

34. (1) Any person who—

- (a) fails to provide access to any books, accounts, documents, or assets when required to do so under this Act.
- (b) fails to comply with a directive issued under this Act.
- (c) fails or refuses to give data or information, or gives false or misleading data or information when required to give information under this Act.
- (d) intentionally refuses to perform a duty or obstructs any person in the exercise of a power or performance of duty in terms of this Act.
- (e) accepts any unauthorised fees or rewards, either directly or indirectly as a result of a person's position with the Service.
- (f) uses the name, logo, or design of the Service without authority.

- (g) contravenes or fails to comply with section 31; or
 - (h) fails to comply with sections 11(1), (2), and (3), is guilty of an offense, and is liable, on conviction, to a fine or imprisonment for a period not exceeding five years or to both a fine and such imprisonment.
- (2) Where a person is convicted for a second or subsequent conviction for an offense contemplated in subsection (1), he or she is liable to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

15. REVIEW OF THE CIRCULAR

- 15.1 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 or if the CSOS deemed it necessary to do so.
- 15.2 The amended Circular will be published on the CSOS website.

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.