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As you may by now already be aware, the following two pieces of new legislation have come into effect from the 7th of October 2016 which have important implications for all Community Schemes in South Africa, which includes Home Owners' Associations:

1. Community Schemes Ombud Service Act, 2011;
2. Regulations on Community Schemes Ombud Service Act;

The Community Schemes Ombud Service Act (CSOS).

The Community Schemes Ombud Service (CSOS) will be there to assist in dispute resolutions and control sectional title governance. Any person can apply for the CSOS to assist them in disputes and this will include assistance in coming to a resolution on matters.

The service will be funded through a levy to be added to the overall levies of each community scheme and is paid to the CSOS quarterly. The CSOS levy is calculated in proportion to each owner's monthly levy payment to the scheme. More information is available on the CSOS website: <http://www.csos.org.za/>

The summary below highlights some of the major implications of the legislation:

Registration of all Community Schemes

All Schemes will have to register with the Community Schemes Ombud Service ("CSOS") and the submission of specified governance documentation (within 30 and 90 days respectively).

Levy payment to the CSOS

This involves a payment of a monthly CSOS levy commencing 1 January 2017 in an amount equal to 2% of the amount

- ABOVE R500.00 of your monthly levy, up to a maximum of R40.00.
 - i.e If your current levy is R500.00 or less, your contribution will be zero.
 - If your current levy is say R900.00, your contribution will be R8.00 a month
 - (R900 – R500 * 2%).

This charge will appear as a new line item on your monthly levy statement in line with this timing.

Recovering of arrear levies

The CSOS will also assist HOA's in levy recovery from owners in arrears, without having to wait months for the normal judiciary process to take place.

The Establishment of a reserve fund

The CSOS requires a body corporate to establish two funds: an administrative fund and a reserve fund. Contributions collected from owners must be paid into the administrative fund and used only to fund operating expenses in the current financial year. A portion of the contributions must also be allocated to the reserve fund and used to pay for future maintenance & repairs.

The aim of this fund (25% of the budgeted annual levy figure) is to cover costs of future maintenance and repairs to common property. Propserv - Limpopo advocated this principle in the past and most of our clients do already comply, there should be no significant effect on the budget or levies in this regard.

Fidelity Cover

Requirement for the Scheme to have fidelity cover subject to the provisions of Regulation 15 of the CSOS Act.

Limit proxies

There will be a limit on the number of proxies held per person and a person will not be able to be proxy for more than two members.

Conduct Rules

In cases where the rules have been substituted, added to or changed, the chief Ombud must approve these and a certificate will be issued to that effect. All the rules must be made available at all meetings and given to people who are new to the scheme, whether owners or tenants.

Maintenance plan

A body corporate is required to prepare a 10 year plan for the maintenance, repair and replacement of "major capital items" on the common property. The maintenance plan must be approved by the body corporate at the AGM, and, at each AGM, the trustees must report to the body corporate the extent to which the plan has been implemented.

While the above summary is not intended to be definitive, it does highlight some the major changes facing us.