

CIRCULAR

No: 2

2018

SECTIONAL TITLES SCHEMES MANAGEMENT ACT, 2011 (ACT NO. 8 OF 2011)

PROCEDURE FOR THE APPLICATION OF UNANIMOUS AND SPECIAL RESOLUTIONS IN TERMS OF SECTION 6 (9) OF THE STSMA

1. Objective of the Circular

The objective of the Circular is to provide operational guidelines and clarity on the implementation of the Section 6 (9) of the Sectional Titles Schemes Management Act (Act No 28 of 2011) (STSMA) and the Sectional Titles Schemes Management Regulations (2016) (the Regulations). The Circular is not intended to amend, replace, override or supersede the STSMA and the Regulations.

2. Legislative Framework

- 2.1 Community Schemes Ombud Service Act
- 2.2 Sectional Titles Schemes Management Act
- 2.3 Sectional Titles Act
- 2.4 Constitution of the Republic of South Africa
- 2.5 Promotion of Administrative Justice Act.

3. Scope of Application

The Circular applies to Sectional Titles Development Schemes, Managing Agents and the CSOS. The Circular only applies to application in terms of section 6 (9) of the STSMA.



4. Filing the Application

- 4.1 The body corporate must apply to the Chief Ombud by filing Form ST1 attached to this Circular. The body corporate must ensure that the form is legible and that all required information as set out in clause 6 of this Circular is attached to the form.
- 4.2 The application will be considered in the ambit of STSMA and whether it complies with the provisions of the aforementioned Act and the Regulations.
- 4.3 The Chief Ombud may reject an application that does not meet the requirements of this Circular, the STSMA and the Regulations. The Chief Ombud will provide the scheme with the reasons for rejection of application.
- 4.4 A reference number will be allocated to the application, which must be used in all correspondences relating to the application.
- 4.5 No fee is payable for the processing of this application.

5. Community Scheme approval process

- 5.1 Before submitting an application to the Chief Ombud for the approval of the unanimous resolution, the Body Corporate must ensure that the matter relating to the resolution was tabled at the General Meeting for approval.
- 5.2 The notice of a meeting for an approval of a special resolution or unanimous resolution is 30 days as set out in section.
- 5.3 The requirement for the Special Resolution is that at least 75% calculated both in value and in number, of the votes of the members of the body corporate represented at a general meeting should have passed the resolution; or agreed to in writing by members of a body corporate holding at least 75% calculated both in value and in number, of all the votes.
- 5.4 The requirement for the unanimous resolution is that it should have been passed unanimously by all the members of the body corporate at a meeting at which at least 80% calculated both in value and in number, of the votes of all the members of a body corporate are present or represented; and all the members who cast their votes do so in favour of the resolution; or agreed to in writing by all the members of the body corporate.

6. Supporting documentation

- 6.1 The minutes of the general meeting indicating the voting in terms of percentage and number.
- 6.2 The confirmation by trustees of the votes in both number and value of members who voted in favour of the resolution.
- 6.3 A list indicating the number of members who voted for or against the resolution.
- 6.4 Reasons from members who voted against and their contact details.

7. Assessment of application

- 7.1 The chief Ombud will assess the application having regard to whether the approval of the resolution will be lawful, reasonable and fair to all scheme members and in this regard will consider the following: -
 - 7.1.1 The objective of the STSMA and the Regulations;
 - 7.1.2 The reasons submitted by members who voted against the resolution;
 - 7.1.3 The objective and purpose of the resolution;
 - 7.1.4 Whether the resolution will enhance the living conditions of the members residing in the scheme or promote proper governance in community scheme.
- 7.2 Before the Chief Ombud can approve the application, at least more than 75% of members entitled to vote in both number and value should have voted in favour of the unanimous resolution.
- 7.3 At least more than 50% of members entitled to vote in both number and value should have voted in favour of the special resolution.

8. Request for further particulars

- 8.1 If the information indicated in 6 above is not provided or is not adequate to enable the Chief Ombud to make a decision, she may request further particulars.

8.2 If the body corporate fails to provide the information as requested, the chief Ombud may reject the application.

9. Notice to members of the community scheme

9.1 Having considered the provisions of section 33 of the Constitution and the Promotion of Administrative Justice Act, it is imperative that the Chief Ombud notify any interested and affected parties and provide them with an opportunity to be heard before a decision is made. This is also meant to ensure that there is transparency in the approval process.

9.2 The Ombud will provide the interested and affected parties notice on the nature and purpose of the resolution received from the Body Corporate for approval. This would entail all information and supporting documents received from the Body Corporate.

9.3 The notice to the affected parties will be sent to them in writing using contact details submitted by the body corporate during the application for approval.

9.4 The body corporate must ensure that the said notice is circulated to all members of the body corporate and provide proof to that effect. The read receipt notice or member signature acknowledging receipt, will serve as proof that the notice has been received by a member of the body corporate.

9.5 The affected parties will have 7 (seven) days to respond to the notice.

9.6 If no response is received from the members, as requested, the Chief Ombud will proceed and make the decision.

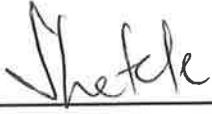
9.7 The decision by the Chief Ombud must be distributed to all members of the body corporate. The body corporate must take notice of the provisions of section 6(8) of the STSMA, which indicates that where the unanimous resolution would have an unfairly adverse effect on any member, the resolution is not effective unless that member consents in writing within seven days from the date of the resolution.

10. Decision by the Ombud

Once the Ombud has made a decision, any party who is affected or is an interested party, may file a Review application with the High Court against the decision of the Chief Ombud.

11. Commencement of the Circular

This Circular No 2 of 2018, will commence on date of signature hereof and will remain effective until amended, substituted, withdrawn or repealed.



ADV SEENG CATHERINE LETELE
CHIEF OMBUD

DATE: 01 August 2018



Application for Approval of Special or unanimous resolution

Sectional Titles Schemes Management Act 2011 – Section 6(9)

Scheme Details:	
Name of Scheme:	
CSOS Reg Number:	
SS Number / year:	
Address of scheme:	
E-mail:	
Telephone:	
Contact person:	

To:

Chief Ombud

We, the undersigned trustees and *(where applicable)* managing agent of the body corporate of the above scheme hereby apply for approval of a special / unanimous resolution *(where applicable)* in terms of section 6 (9) of the Sectional Titles Schemes Management Act. At the General meeting of the body corporate held on _____, the body corporate could not reach the special / unanimous resolution. *(Please attach all the necessary proof of the voting results, reason for those who voted against and their contact details)*

Details of the resolution to be approved by the Chief Ombud:

Resolution	Details
Unanimous /Special Resolution	The Body Corporate requires unanimous or special (<i>tick</i>) resolution to enable the Body Corporate to <i>(A separate document can be submitted if the space below is not sufficient)</i> :

*** One resolution per request**

To be signed by two trustees and managing agent.

Name:	Capacity:
Signature:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> D D / M M / Y Y Y Y
Name:	Capacity:
Signature:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> D D / M M / Y Y Y Y
Name:	Capacity:
Signature:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> D D / M M / Y Y Y Y

Approval of the unanimous / special resolution by the Chief Ombud – Community Scheme

Ombud Service

Approved	
Not Approved	
Name:	Chief Ombud
Signature:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> D D / M M / Y Y Y Y



Application for Approval of Special or unanimous resolution

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To:

Chief Ombud

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**Approval of the unanimous / special resolution by the Chief Ombud – Community Scheme
Ombud Service**

Approved	
Not Approved	
Name:	Chief Ombud
Signature:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> D D / M M / Y Y Y Y