

2ND CSOS INDABA 2024



www.csosindaba.com

**12-13
SEPTEMBER 2024**

 **BOLIVIA LODGE,
POLOKWANE, LIMPOPO**



Affordable Reliable Justice

www.csos.org.za



**Promoting Well Governed,
Empowered And Transformed
Community Schemes.**





Strengthening Financial Management of Schemes Presentation Outline :

- General financial management disputes Identified
- What does good Financial Governance in schemes entail?
- Compliance: Financial Governance under the Jurisdiction of CSOS
- Levy matters adjudicated
- Financial disclosure matter adjudicated
- The future of levies: proposed flat levy





Strengthening Financial Management of Schemes

When a person purchases property situated within a home owners association, he becomes **contractually bound to all its governing documents and rules.**

The **duty of members of a body corporate /home associations to pay levies and other contributions, is a contractual commitment** , which is generally provided for in the governance documents of the Scheme such as its memorandum of incorporation (In the case of HOA), articles of association or constitution.

General Financial Management Disputes

1. Body Corporates(BC) and Home Owners Associations (HOA's) not disclosing financial statements or to relevant stakeholders (Homeowners, creditors , regulatory bodies i.e CSOS)
2. BC and HOA accounts not audited by an independent Auditors duly appointed by an AGM
3. Policies, processes and procedures followed to appoint and process payments not being transparent / non existent;
4. Payments processed by managing agents without Director's approval;
5. Irregular payments made to lawyers and security companies;
6. Extension of contracts and SLA's without the director's approval
7. Exorbitant levies charges and lack of education around the various levies chargeable by a scheme
8. The list above is not exhaustive – All orders are public information in terms of section 58(2) of the CSOS Act

General Financial Management Disputes continued:

Classification (S39 of the CSOS Act)

Due to the current economic climate and high unemployment rate, disputes arising from non-payment of levy arrears and interest imposed against arrear levies continue to dominate dispute applications within the 2023/24 financial year.

As depicted in the table below, the trend analysis is that the financial issues dominate the type of applications received.

Classification of Applications for 2023/24 Financial Year										
	Behavioural Issues	Financial Issues	General and Other	Meetings issues	Management	Private / Common Areas	Governance Issues	Not Clearly Defined	Not Assessed	Total
Q1	211	2303	177	107	27	270	32	185	418	3730
Q2	204	2400	175	132	28	351	40	214	195	3739
Q3	181	2378	198	118	20	291	21	207	359	3773
Q4	201	2661	205	100	28	308	37	212	593	4345
Total	797	9742	755	457	103	1220	130	818	1565	15587



What does good Financial Governance in schemes entail?

1. Budgeting and Financial Planning:

Develop an annual budget that reflects the community schemes needs, priorities, and future projects. - Include inputs from residents to ensure transparency and alignment with their expectations. (Special levies arise)

2. Transparent Financial Reporting:

Regularly provide clear financial statements (income, expenses, reserves) to all members. - Use understandable formats and summaries to ensure accessibility.

3. Regular Audits:

Conduct annual independent audits to verify financial practices and accuracy. - Share audit results with the community to build trust and accountability. (SAICA Project)

4. Reserve Funds:

Maintain a reserve fund for unexpected expenses and future capital improvements. - Clearly communicate the purpose and status of reserve funds to residents.

5. Expense Control:

Implement policies for approving expenditures, ensuring they align with the budget. - Require multiple quotes for significant purchases to promote competitive pricing.



Affordable Reliable Justice

GOVERNANCE

What does good Financial Governance in schemes entail?

6. Internal Controls:

Establish checks and balances within financial processes to prevent fraud and errors. - Assign different individuals to manage funds, record transactions, and authorize payments.

7. Member Involvement:

Encourage resident participation in financial decision-making, such as budget discussions. - Provide forums for members to voice concerns or suggestions regarding financial matters.

8. Education and Training:

Offer training for board members and residents on financial management principles and practices. - Promote financial literacy among community members to foster informed participation.

9. Debt Management:

Avoid excessive borrowing and manage any existing debts responsibly. - Clearly communicate the implications of debt to all residents.

10. Legal Compliance:

Ensure adherence to relevant laws and regulations regarding financial governance. - Stay informed about changes in legislation that may impact financial practices.

By integrating these elements, a community scheme can achieve robust financial governance, fostering trust and stability among its members.

Financial Governance under the Jurisdiction of CSOS

•Prayers for relief (S39 CSOS Act)

•39. An application made in terms of section 38 must include one or more of the - In respect of financial issues—

- (a) an order requiring the association to take out insurance or to increase the amount of insurance;
- (b) an order requiring the association to take action under an insurance policy to recover an amount
- (c) an order declaring that a contribution levied on owners or occupiers, or the way it is to be paid, is incorrectly determined or unreasonable, and an order for:
 - the adjustment of the contribution to a correct or reasonable amount or an
 - order for its payment in a different way;



Affordable Reliable Justice

GOVERNANCE



Financial Governance under the Jurisdiction of CSOS

- Prayers for relief continued..

(d)an order requiring the association to have its accounts, or accounts for a specified period, **audited by an auditor specified in the order;**

(e)an order for the payment or re-payment of a contribution or any other amount ; or

(f)an order requiring a specified tenant in a community scheme to pay to the association and not to his or her landlord, all or part of the rentals payable

- under a lease agreement, from a specified date and until a specified amount

- due by the landlord to the association

The provisions highlighted here are not exhaustive



Affordable Reliable Justice

GOVERNANCE



PRESENTER NAME

Levy matters adjudicated :

Relief applied for in terms of the CSOS Act:

Section 39(1)(e) In respect of financial issues - an order for the payment or re-payment of a contribution or any other amount : **Ref: CSOS-9940/GP/23:**

Levies are essential for the efficient operation and maintenance of the common property within a scheme. An owner who continually defaults in paying his levies is effectively being subsidised by the other members of the scheme who conscientiously pay their contributions.

When a person purchases property situated within a Scheme, he becomes contractually bound to all its governing documents and rules.

The duty of members of home associations to pay levies and other contributions, is a contractual duty, which is generally provided for in the governance documents of the association such as its memorandum of incorporation, articles of association or constitution.



Levy matters adjudicated :

Interest on unpaid levies is generally also provided for in the governance documents of a community scheme.

Prior to the promulgation of the current version of the Prescribed Management Rules for Sectional Title Schemes, the Courts have held that the interest rates provided for in the National Credit Act⁹ are not applicable to the interest charged by community schemes.

Although this position was subsequently changed in respect of Sectional Title Schemes as a result of **Prescribed Management Rule 21(3)(c)** which provides that the **interest rate on arrear levies charged by bodies corporate must not exceed the maximum rate of interest payable per annum under the National Credit Act**, the Prescribed Management Rules do not apply to Homeowners Associations.

Hence in the absence of a similar provision in the governance documents of a Home Owners Association, interest provided for in the governing documents, will not be subject to the NCA.



Affordable Reliable Justice

GOVERNANCE

PRESENTER NAME



Financial Disclosures adjudicated:



- Relief applied for in terms of the CSOS Act:
- Section 39(1)(d) - an order requiring the association to have its accounts, or accounts for a specified period, audited by an auditor specified in the order. **Ref: CSOS004642/GP/22**
- The relief sought by the Applicant against the Respondent was upheld.
- As per the provisions of Section 39(1)(d) of the CSOS Act, The Adjudicator ordered and compelled both parties to have the HOA's accounts audited for the period March 2021 to June 2022 audited, by one of the three Auditors named thereunder

PRESENTER NAME





The future of levies

- The current levy model as per the regulation 11(3) of the CSOS regulations prescribes a levy formula as the lesser of R40.00 or 2% of the amount by which the monthly levy charged by the community scheme exceeds R500.00.
- The amount of the monthly CSOS levy payable by the schemes thus depends on the amount of the monthly levy charged by the community scheme to that owner
- The CSOS levy is thus heavily dependent on correct capturing of the monthly scheme levy, and it could be complicated/impossible for CSOS/homeowners and managing agents to verify these values

PRESENTER NAME



The future of levies

3ONE has considered the following metrics to be used when proposing a new levy structure.

- 01 The size of the properties, measured in square meterage
- 02 The Scheme (or administrative) levy charged per unit
- 03 The number of units per Scheme (ie introducing a flat rate per unit)

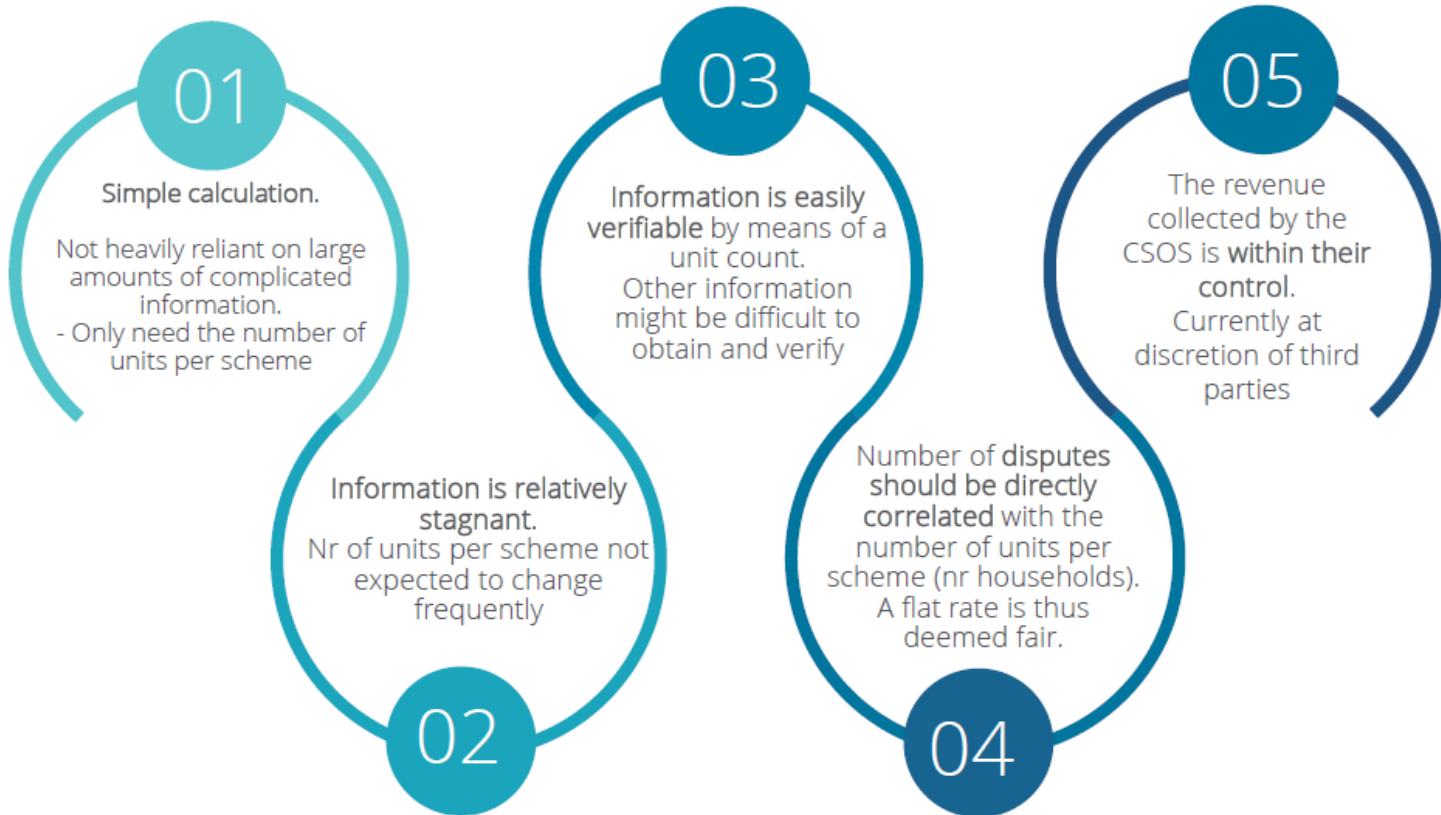
- After considering the available data, we have concluded that that a flat rate per unit is the most appropriate levy model to be utilised by CSOS.

A simpler and more transparent method would be preferred, allowing for easier budgeting for both community schemes and CSOS, and reduced administration associated with payment reconciliation



Affordable Reliable Justice

Effects of using a flat rate levy structure





The future of levies

- Amendment of Section 11(3)(a) of the CSOS regulations
- The amendment will prescribe a flat rate that is reviewable annually inline with the inflation considerations
- Stakeholder consultations will be undertaken once appropriate legislative approvals are obtained

PRESENTER NAME



Thank you!
Questions ???

PRESENTER NAME

