Explaining the CSOS Practice Directive on POPIA

The release of the Community Schemes Ombud Service ("CSOS") Practice Directive, on 10 November 2022, relating to the processing of personal information in terms of the Protection of Personal Information Act 4 of 2013 ("the POPIA"), sent many bodies corporate into quite a tailspin, scrambling to ensure that they complied with the provisions, as set out in the aforementioned Practice Directive, as soon as reasonably possible.

This article will be highlighting the main points, and requirements that have been implemented by the CSOS, in relation to the POPIA, that bodies corporate will now need to comply with when receiving, processing, storing, and making available upon request, any personal information relating to the body corporate or its members.

The CSOS indicates that the purpose of this Practice Directive is to ensure that all members and/or residents' personal information within a body corporate is protected, and that every member and/or resident is entitled to receive specific information regarding the administration of the scheme in terms of the Community Schemes Ombud Service Act 9 of 2011 ("the CSOSA) and the Sectional Title Schemes Management Act 8 of 2011 ("the STSMA).

The Practice Directive goes on to state that upon taking transfer or occupation of their unit within the body corporate, each member and/or resident is deemed to have consented to their personal information being stored or shared with relevant parties by the trustees of the scheme, for the purpose of managing the affairs of the scheme.

Furthermore, that the processing of this personal information must only be limited to the administration and management of the scheme, i.e. collection of levies, compliance with scheme rules, maintenance requirements, and security requirements.

It is important to note that the Practice Directive specifically provides that the sharing of personal information of defaulting members, or members and/or residents who have contravened the scheme's rules, with other members or debt collectors will not require the defaulting or contravening member's and/or resident's consent.

Further to the above, the Practice Directive also provides that members of a scheme will not be permitted access to any personal information of other members and/or residents without those members and/or residents prior consent, unless it is information that a member is permitted access to in terms of Prescribed Management Rule 27, of Annexure 1 of the Regulations of the STSMA.

Furthermore, although section 3(1)(n) of the STSMA provides that the body corporate, through its duly elected Trustees, must comply with any reasonable request, in terms of PMR 27, for the names and addresses of the persons who are trustees and who are members, the CSOS emphasises that the trustees must be satisfied that they are considering a reasonable request for the information, and that the request must further

comply with the relevant provisions of the POPIA regarding processing, storage, deletion etc. of personal information.

CSOS is of the opinion that all information provided for in PMR 27(2)(b) of the STSMA qualifies as personal information in terms of the POPIA, and therefore requires the consent of the relevant data subject (person or entity) prior to the sharing thereof. However, CSOS goes on to say that personal information that is processed for the purpose of discharging a relevant function would not require the consent of the data subject, as often this could actually prejudice the proper discharge of that function. Therefore, personal information can only be processed, or provided to a member in terms of PMR 27, if it is for a lawful purpose.

At TVDM Consultants, our opinion of a lawful purpose is any empowering provision of the STSMA or the CSOSA. For example, if an owner wishes to obtain the contact information of fellow owners in order to garner 25% support to call a special general meeting, or if an owner would like the contact information of all owners to ask them to vote via round robin to approve an extension to their section.

In light of the above, the CSOS provided in the aforementioned Practice Directive that, within 6 months of the Practice Directive coming into effect, in other words 10 May 2023, every community scheme must develop its own POPIA manual which sets out the conditions for the accessing and dissemination of personal information, and that this POPIA manual must be approved, only once by members by ordinary resolution at an upcoming annual or special general meeting.

It must be noted that although CSOS set the above requirement in place, there seem to be no consequences for schemes who have not yet complied with the above. This is due to the fact that the Practice Directive indicates that the POPIA manuals, upon member approval, do not need to be submitted to the CSOS offices for their approval or for their record-keeping purposes. This means that upon body corporate approval, the POPIA manual will simply form part of the governance documentation of the scheme, that would be accessible to members in terms of PMR 27, when making the necessary application.

Should you require any assistance on the above matter or would like us to draft your schemes POPIA manual, please contact info@tvdmconsultants.com or call 061 536 3138.