

# CSOS Amendment of Rules

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## SECTION 36 OF THE CSOS ACT

This section allows the CSOS to make Practice Directives relating to the operations of the CSOS.



## OBJECTIVES OF THE CIRCULAR

The objective of this Circular is to provide operational guidelines and clarity on the procedure and content requirements for the lodgment of Rules with CSOS for approval (both Management and Conduct Rules).



## PROCEDURAL REQUIREMENTS

- ❑ CSOS will conduct quality assurance on the scheme's governance documentation received, and specify amendments, if necessary.
- ❑ The scheme must inform the body corporate members of the required amendments, either via email or by affixing the amended Rules on the notice board of the body corporate within **seven days** after the trustees received the Section 10 certificate from CSOS.
- ❑ If the CSOS did not issue a Section 10 certificate, the management or conduct rules of the body corporate **is not enforceable** against the members.



## APPROVAL OF THE RULES

- ❑ Schemes are required to collect or make arrangements to collect their approval certificates from CSOS Head Office, Berkley Office Park, 8 Bauhinia Street, Highveld Technopark, **Centurion**, or as indicated from time to time.
- ❑ On the written request by a scheme, the approved certificate may be couriered to the **CSOS Regional offices**, either in KZN, WC or EC or FS and can be collected from those offices.



# AMENDMENT OF THE SECTIONAL TITLES ACT (ACT NO 95 OF 1986)

- ❑ Section 35(2)(b) of the Sectional Titles Act has been **repealed** by section 10(2)(b) of the Sectional Title Schemes Management Act.
- ❑ If reference is made in the rules to the Sectional Titles Act- it must be changed to the Sectional Titles Schemes Management Act.
- ❑ All amendments to the Rules must be submitted to CSOS for approval and are no longer lodged with the Deeds Registrar.
- ❑ A special resolution cannot be passed at a trustees meeting, only ordinary trustees' resolutions (majority votes).



# UNDESIRABLE RULES



# 1. Fines and Penalties

- ❑ Fines and or penalties may not be equal to or more than the applicable monthly levy of the owner of the unit concerned.
- ❑ The trustees do not have any power to decide on fines and penalties on their own or to take any action against an owner or occupier – the fair and equitable procedure as set out in the rules must have been followed.
- ❑ A fine and penalty clause should include the following:





<b>FIRST TRANSGRESSION NOTICE</b>	<b>SECOND TRANSGRESSION NOTICE</b>
<i>In writing to member or occupier</i>	<i>In writing to member or occupier</i>
<i>Explain transgression (offence)</i>	<i>Explain transgression (offence) – relates to the same offence as a first offence</i>
<i>Advise to stop</i>	<i>Advise to stop</i>
<i>Give timeframe</i>	<i>Give timeframe</i>
<i>Member or occupier may dispute offence</i>	<i>Member or occupier may dispute offence</i>
<i>Meet with the board of trustees</i>	<i>Meet with the board of trustees</i>
<i>No fine may be imposed</i>	<i>Fine may be imposed</i>

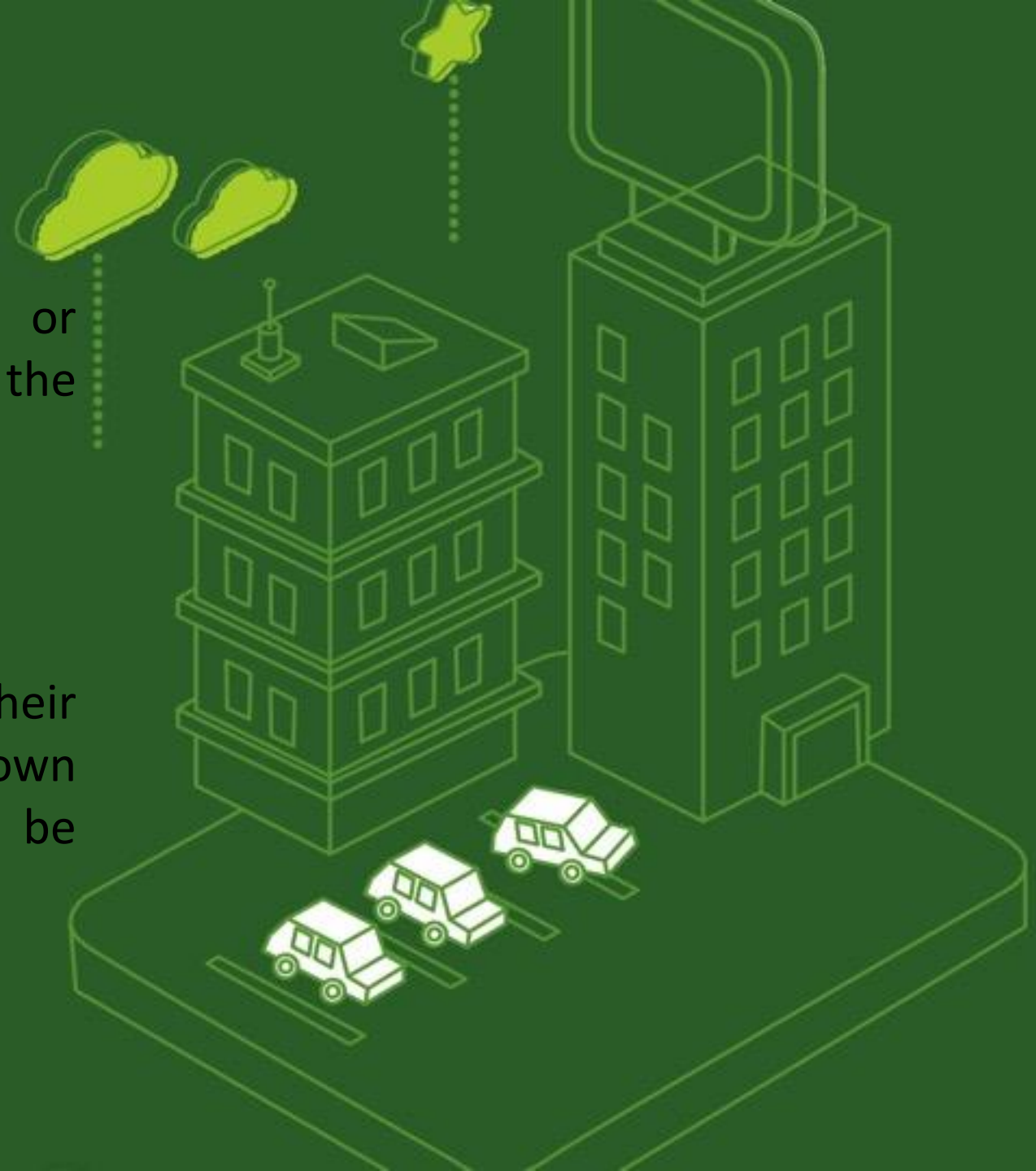


## 2. Littering

- ❑ A rule stating that owners or tenants or occupiers are not allowed to eat on the common property.

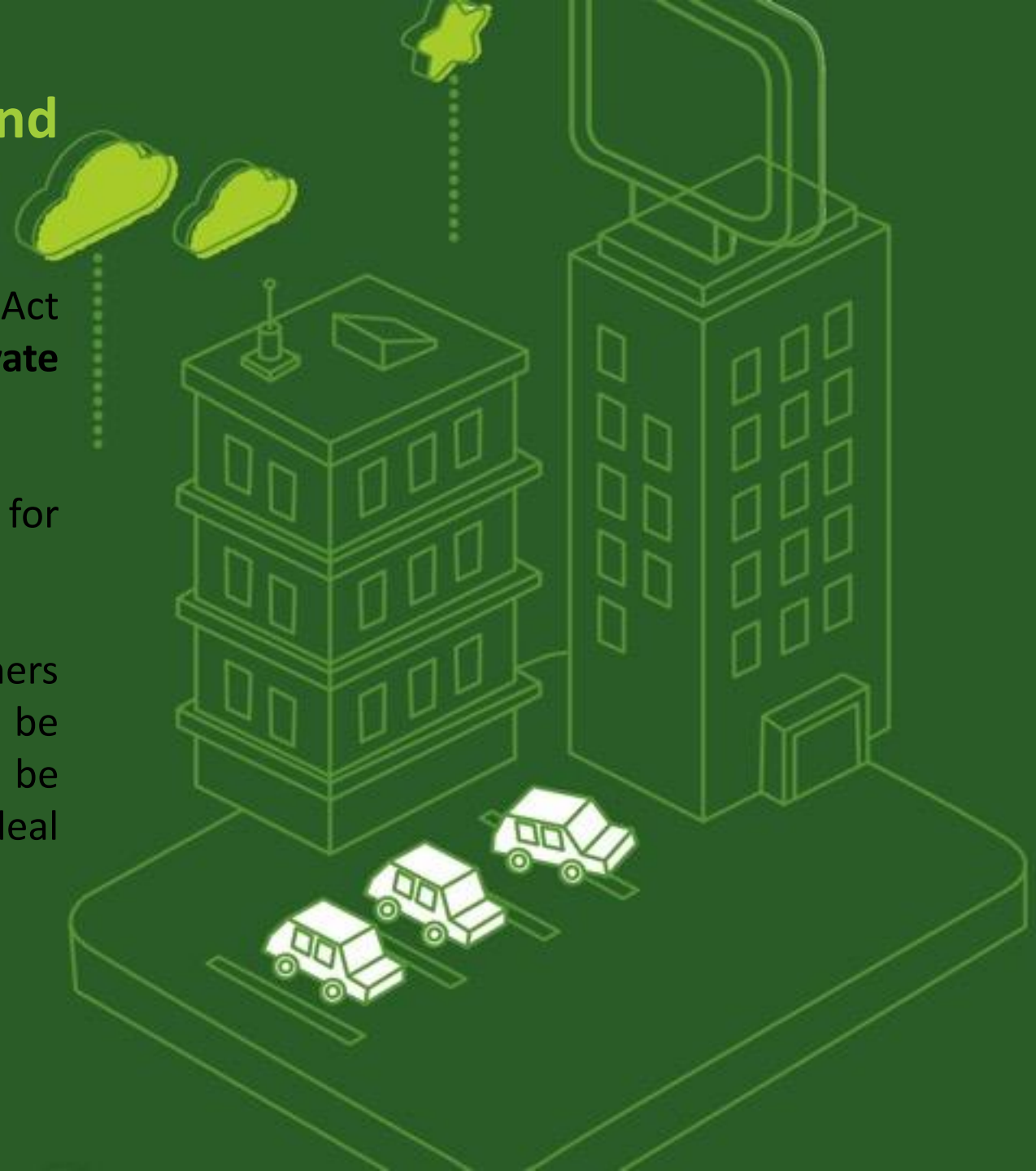
## 3. Insurance

- ❑ When a tenant or occupier amends their personal insurance policy (over their own movable property), the trustees should be notified.



## 4. Enforcement of Management and Conduct Rules

- ❑ That Management Rule 71 of the Sectional Titles Act of 1986 has been repealed relating to **Private Arbitrations**.
- ❑ That the CSOS Act provides for the procedure for dispute resolution including adjudication.
- ❑ An internal dispute resolution process for owners must be embedded in the rules prior for it to be referred to the CSOS as it aims to allow owners to be heard and provide a fair and equitable process to deal with such issues.



## 5. Contravention of Rules and Laws

- ❑ If, as a result of a breach by an owner of these rules or any other obligation of the owner, the Body Corporate or the trustees may instruct an attorney, the defaulting owner shall be liable for all costs and charges of whatsoever nature on an Attorney and Client scale incurred by the Body Corporate as a result thereof, once duly taxed by a taxing master; this is contrary to **Prescribed Management Rule 25(4)** contained in Annexure 1 to the STSMA which states: A member is liable for and must pay to the body corporate all reasonable legal costs and disbursements, as taxed or agreed by the member, incurred by the body corporate in the collection of arrear contributions or any other arrear amounts due and owing by such member to the body corporate, or in enforcing compliance with these rules, the conduct rules or the Act.



## 6.Domestic Employees

- ❑ Domestic workers are not allowed to receive visitors, not allowed to talk to one another on common property or walk around the community scheme without a name tag or pass or in the instance that trustees may refuse a domestic worker entry to the common property, these rules are discriminatory against domestic helpers and contrary to the **Constitution of the Republic of South Africa**.



## 7. Duty of unit owners

- ❑ Owners or occupiers are requested to advise the trustees whether first mortgage bonds exist and if so, the name of the Financial Institution/Company which holds the bond.
- ❑ Outside security gates, burglar bars, canopies etc. are situated on the common property is the responsibility of the unit owners, this is not correct as the maintenance and repair thereof become the responsibility of the Body Corporate.

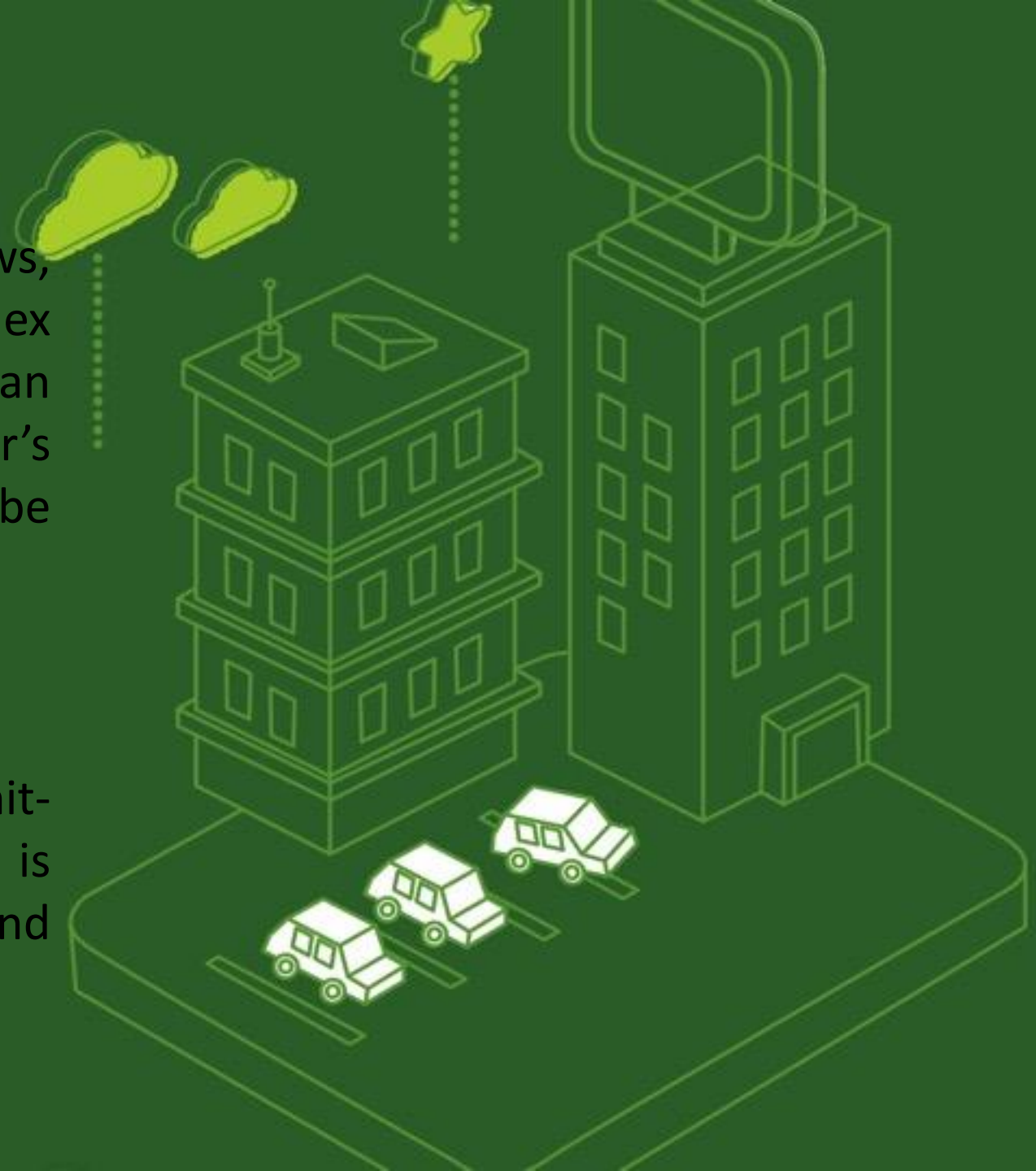


## 8. Geysers

- ❑ Damage occurring to fittings i.e., windows, carpets, etc. are covered by the complex insurance policy subject to payment of an initial excess, as in a normal homeowner's policy, including that drip-trays must be placed underneath geysers.

## 9. Tenant Evictions

- ❑ The Body Corporate cannot force a unit-owner to evict his/her tenant, as this is unreasonable, irrational, and unconstitutional.



## 10. Vehicles

- ❑ The vehicle will be **towed** - trustees cannot authorize the towing of a vehicle, may impose a penalty if this is in the respective rules.

## 11. Slaughtering

- ❑ The slaughtering of animals for cultural or religious purposes cannot be prohibited in terms of the Constitution of the Republic of South Africa.





## ❑ Conditions for slaughter may, however, be imposed, for example:

- At least two (2) weeks written notice of the intended religious or cultural event requiring such ritual slaughter shall be given to the trustees for approval;
- The date and time of the proposed slaughtering;
- The type of animal to be slaughtered;
- The name and qualification of the person registered by the relevant authority to perform the religious or cultural slaughtering;
- Confirmation that the animal will be brought onto the premises immediately prior to the ritual or cultural slaughtering, and that all remains of the animal will be removed immediately from the premises after the act of ritual or cultural slaughtering;
- A notice from the local authority must accompany the notice confirming that all by-laws with regards to the ritual or cultural slaughter have been/will be complied with;



- A certificate from the Society for the Prevention of Cruelty towards Animals (SPCA) must accompany the above notice confirming that an official from the SPCA will be present at the proposed event to ensure that the animal to be slaughtered will not endure unnecessary pain and suffering during such slaughter;

- Notice must be given to all adjacent units of the date and time of the proposed slaughter and proof of the receipt of such notice by the owner/tenant responsible for the unit must be timeously submitted to the trustees;

- Failure to comply with the requirements set out above will entitle the Body Corporate to prevent the act of ritual or cultural slaughtering from taking place on the premises or penalizing the owner with a fine.



## 12. Rule created Exclusive Use Areas

- ❑ EUA must include a plan to scale of the exclusive use areas to be created – a plan to scale must be drafted by an architect or a draughtsman.
- ❑ The owner may not let the exclusive use area designated to his unit without the written permission of the board of trustees. Such permission may not unreasonably be withheld.
- ❑ Each owner is responsible for the repair and maintenance {flower beds, oil spills, etc.) of the exclusive use area, including the maintenance and repair of any water pipes, electrical wiring, downpipes, security devices, lapas, verandas and the like solely servicing that area.



## 13. Business activities

- ❑ When the purpose for which a section or exclusive use area is intended to be used is shown expressly or by implication on or by a registered sectional plan, not use nor permit such section or exclusive use area to be used for any other purpose: Provided that with the written consent of all owners such section or exclusive use area may be used for that purpose as consented to.

## 14. DSTV / solar panel installations

- ❑ A DSTV dish may only be installed by an expert, the word expert must be defined - a DSTV certified professional installer.

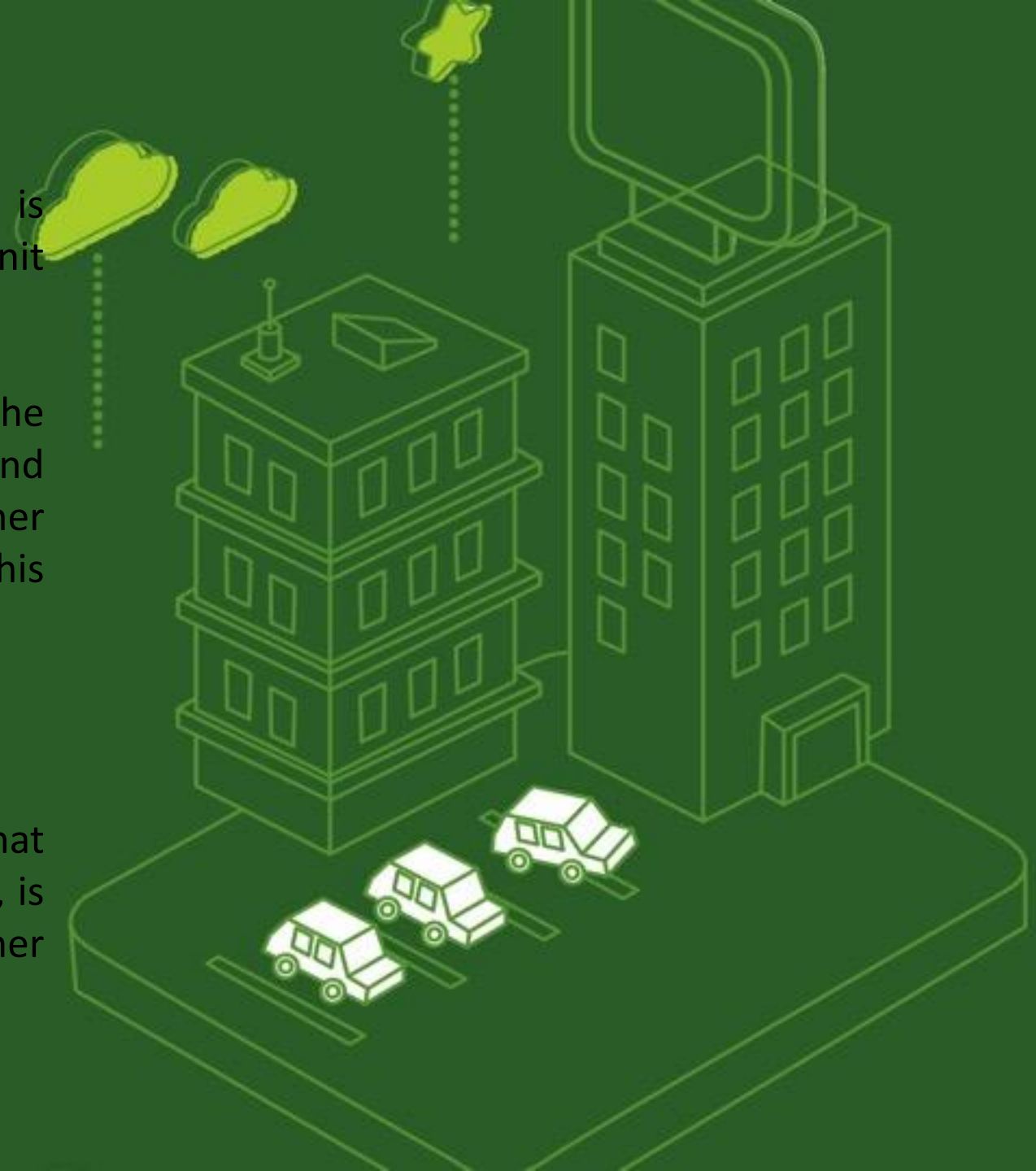


## 15. Estate Agents

- ❑ Only a certain agent may let or sell a unit, this is discriminatory, unreasonable and prejudicial to unit owners.
- ❑ This rule imposes an unreasonable limitation on the rights of an owner in the scheme to market, sell and let his or her unit through an estate agent of his or her choice, and the CSOS will not register a rule of this nature.

## 16. Language Policy

- ❑ English is the business language and saying that meetings will only be held in Afrikaans for instance, is discriminatory against persons who speak other languages and is unfair and unconstitutional.



## 17. Developers

- ❑ The development period must have years of the estimated period or when the erven are all sold, whichever comes first, please specify this in the rules – usually only applies to homeowners' associations, however, it may be in the rules of a sectional title development.

## 18. Domicile

- ❑ Owners must be allowed to choose an alternative domicile in case they do not reside in their unit.



## 19. Alterations inside the unit

- ❑ A unit owner is at liberty to make any alteration to the inside of his or her section provided that such alteration does not affect the structural integrity of his or her section or the scheme as a whole, subject to the provisions of the Sectional Titles Schemes Management Act, the Sectional Titles Act (reciprocal servitudes of subjacent and lateral support) as well as the Management and Conduct Rules in toto. This includes the rules relating to nuisance.
- ❑ The provisions of section 5(h) of the STSMA read with section 24 of the Sectional Titles Act (Extension of Sections) cannot be amended by the Conduct Rules.



## 20. Location of pipes

- ❑ The trustees must ensure that they have in the records of the body corporate plans showing the location of all pipes, wires, cables, and ducts referred to in section (3)(1)(r) of the STSMA; new scheme must request these records from the developer and existing scheme must approach the local authorities.





## 21. Animals and pets

- ❑ The scheme may prohibit pets entirely, however that prohibition would not apply to a member or occupant that can show that he or she needs medical assistance and/ guide dog (animal). Such animals are automatically permitted.
- ❑ Where the scheme introduces a ‘no animal’ rule, where previously they permitted pets; they must take into account pre-existing pets. An owner that had a pet prior to the coming into effect of the rules must be permitted to retain that pet but may be prohibited from replacing that pet if it dies – the so-called ‘grandfather clause’.



## 22. Governance and Management issues

- ❑ The managing agents must make all audited financials available to the member, especially if the trustees have signed them off. An electronic copy must be made available to members. A charge for printouts and copies may be levied.
- ❑ The trustee's fiduciary duty expands beyond the term of office as a trustee. Thus, if a dispute arises and it relates to matters in their term of office and they are still a member of the body corporate, they will be required to respond and assist the current trustees to respond to the allegations.
- ❑ Election of trustees. The STSMA states that a member may nominate any person to stand for the office of trustee. Thus, a tenant or a 3rd party, if nominated, by an owner may stand for office subject to disqualification as provided in the Prescribed Management Rules attached to the STMSA.



## 23. Proxies

- ❑ A member may appoint a proxy to represent them at a meeting. The proxy may be any person (i.e., tenant or occupier). This appointment must be in writing the proxy form C is attached to the regulations. A person may not, however, be a proxy to more than 2 members (not units).

## 24. Mandate of trustees

- ❑ It is recommended that the limitation on trustees be reduced to writing and made known to all members. i.e., set limits of the money that can be spent by trustees; Trustee activity must be transparent and recorded in writing. Members are permitted access to records of meetings and to observe meetings (but may not vote at trustee meetings).

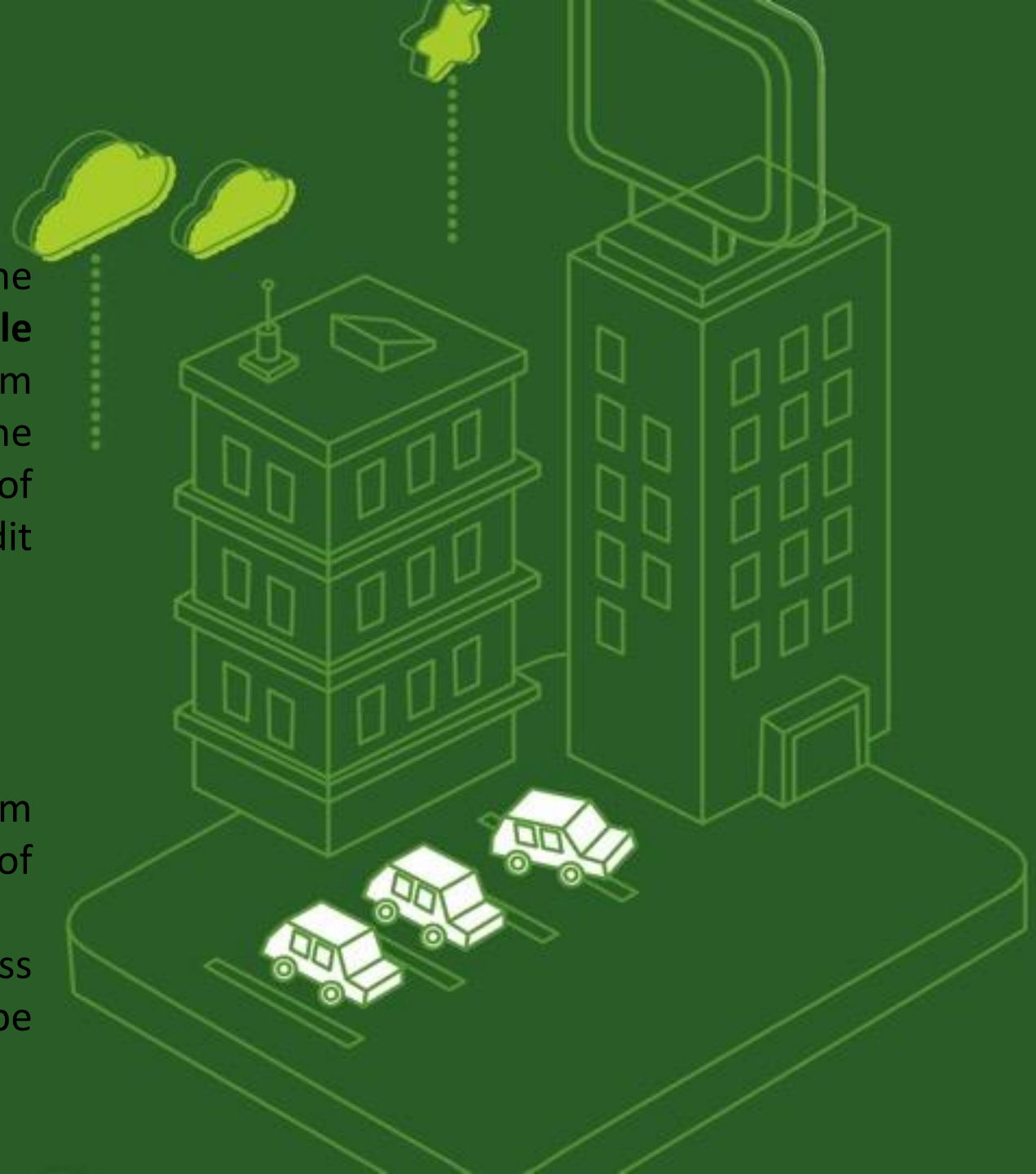


## 25. Interest

- ❑ -Interest can be charged at the discretion of the trustees in terms of **Prescribed Management Rule 21(3)(c)** subject to a maximum of 24% per annum capitalized monthly in arrear (provided that the interest rate must not exceed the maximum rate of interest payable per annum under the National Credit Act (2005) Act No 34 of 2005).

## 26. Levies

- ❑ There can be no rules preventing members from exercising their voting rights for non-payment of levies.
- ❑ Rules preventing the member/tenant/occupier access to the property for non-payment of levies will not be passed.



## 27.Costs

- ❑ Any rule attempting to recover the cost of travel and CSOS dispute resolution processes from a member will not be passed. The dispute directive specifically says all cost for dispute will be determined at conciliation or by an adjudicator.

## 28.Disconnection of Electricity and Water

- ❑ Disconnecting a member's water and electricity for non-payment of levies is against the Constitution of the Republic of South Africa.



**THANK YOU**

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