

Alternative dispute resolution in residential sectional title schemes in South Africa: A systematic literature review and research agenda

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Key words: Alternative Dispute Resolution; Sectional Titles governance; Residential; Housing; South Africa

SUMMARY

This paper evaluates governance challenges in South African residential sectional title schemes through alternative dispute resolution (ADR) mechanisms. Using PRISMA 2020 methodology, a systematic literature review of Scopus, Sabinet, and Google Scholar was conducted. The findings reveal systemic inefficiencies within ADR institutions and a lack of an integrated framework linking ownership rights, governance, and dispute resolution. The paper recommends developing a comprehensive rights-based governance framework and highlights future research priorities, including comparative international models, technology's role in accessibility, and socio-economic factors shaping homeowners' use of ADR services. By situating South African experiences within comparative international literature, the paper highlights the need for context-sensitive, rights-oriented governance reforms. The study concludes by proposing a future research agenda focusing on property owner experiences, institutional capacity, and the role of technology in improving access to ADR.

SUMMARY (Setswana and IsiNdebele)

Pampiri eno e sekaseka dikgwetlho tsa botsamaisi mo residential sectional title schemes ka tiriso ya Alternative Dispute Resolution (ADR) mo Afrika Borwa. Mokgwa wa PRISMA 2020 o dirisitswe go tlhopha le go sekaseka dingwalo tse di tswang kwa Scopus, Sabinet le Google Scholar. Dipholo di bontsha bofokodi mo mekgatlhong ya ADR le go tlhoka sebopego se se akaretsang ditokelo tsa beng ba dintlo, botsamaisi le mekgwa ya go rarabolola dikgotlhang. Pampiri eno e gakolola tlhamiwa ga sebopego se se kopanyang ditokelo, botsamaisi le ADR, mme dipatlisiso tsa isagwe di tshwanetse go bapisa mekgwa ya mafatshe a mangwe, go sekaseka karolo ya thekenoloji mo tokafatsong ya phitlhelelo ya ADR, le go lemoga ditlamorago tsa maemo a loago le ikonomi mo tirisong ya ditirelo tsa ADR.

Leliphepha lihlolela imitjhapho yokuphatha kumacebo we-residential sectional title schemes ngaphasi kwe-Alternative Dispute Resolution (ADR) eMzansi Afrika. Kusetjenziswa indlela ye-PRISMA 2020 ukuhlola imithombo efana ne-Scopus, Sabinet kanye no-Google Scholar. Imiphumela ikhombisa ubudisi bokusebenza phakathi kwemizimba ye-ADR kanye nokungabi khona kohlelo oluhlanganisa amalungelo wabanikazi bezitja, ukuphathwa kwezakhiwo, kanye nezindlela zokuxazulula imitjhapho. Leliphepha liphakamisa kwakhiwe uhlaka oluphelele oluhlanganisa amalungelo, ukuphathwa kanye ne-ADR. Ucwanningo oluzako kufuze luhlanganise ukuhlaziywa kweemodeli zamanye amazwe, ukuhlolisisa indima yetheknoloji ekuthuthukiseni ukufinyeleleka kwe-ADR, kanye nokuhlola izinto zezehlalo nezozoqosomnotho ezithinta ukufinyelela nokusebenzisa kwabanikazi bezitja imisebenzi ye-ADR.

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1. INTRODUCTION

Shared housing ownership models such as condominiums, strata titles, and sectional titles have emerged globally in response to urbanisation, affordability pressures, and land scarcity (Choon, Ven, Seng, Chin and Kathitasaphy, 2022; Easthope, van den Nouwelant and Thompson, 2020). In South Africa, residential sectional title schemes play a central role in affordable housing provision but continue to experience persistent governance challenges, including power imbalances, weak owner participation, and disputes relating to management and compliance (Van der Merwe, 2016; Boshoff and Ndala-Ka Dlamini, 2017).

This paper critically examines governance challenges in South African residential sectional title schemes by assessing the effectiveness of alternative dispute resolution mechanisms in safeguarding ownership rights, situating the findings within both local and comparative international contexts. It adopts an ownership-rights-centered governance lens and uses a PRISMA 2020-guided systematic literature review to evaluate whether the existing Alternative Dispute Resolution (ADR) mechanisms (particularly the Community Schemes Ombud Service (CSOS) and the National Home Builders Registration Council (NHBRC)) adequately protect ownership rights, respond to inherent governance challenges, while promoting equitable governance in residential sectional title schemes. Appendix A depicts the PRISMA flow summary that was followed.

2. METHODOLOGY

A systematic literature review was conducted in accordance with PRISMA 2020 guidelines (Page, McKenzie, Bossuyt, Boutron, Hoffmann, Mulrow, Shamseer, Tetzlaff, Akl and Brennan, 2021). Searches were undertaken in Scopus, Sabinet, and Google Scholar to capture both international scholarship and South Africa specific literature (Ugwu and Opah, 2023). Articles were included if they addressed the residential sectional title schemes, governance, or ADR, and were peer-reviewed. Exclusions applied to non-residential schemes and non-analytical commentary. A final total of 44 articles were analysed thematically.

2.1 Data Sources and Search Strategy

Scopus, Sabinet, and Google Scholar were the three academic databases selected. These databases were chosen to capture both the international academic insights as well as the South African focused research. To enhance coverage during the screening phase, supplementary databases including Web of Science, ProQuest, and EBSCO Host were also consulted. The Rayyan review platform was used to manage records and remove duplicates

Search terms included combinations of the keywords "sectional title", "residential", "dispute resolution", "alternative dispute resolution", "ADR", "ombud", "condominium", "strata title", and "apartment". Additionally, the Boolean operators (AND/OR) were applied to refine search results.

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The records that were identified through database searching revealed a total of 63 from Scopus, 43 from Web of Science, 122 from ProQuest, 224 from EBSCO Host. 382 articles were imported to Rayyan review platform. Duplicate articles were identified and removed.

During the article screening, authors remained with 320 records after which the duplicates removed and screening was conducted, with 276 records excluded.

For eligibility, 44 full-text articles were assessed.

The 44 articles were included in final analysis. Appendix B depicts a summary of articles that were included in the review.

Articles were included if they:

- Focused on residential sectional title, condominium, or strata title schemes;
- Addressed governance, dispute resolution, or ADR mechanisms;
- Were published in peer reviewed articles or recognised academic outlets;
- Were published in English.

Articles were excluded if they:

- Focused solely on non-residential schemes;
- Addressed housing issues without reference to shared ownership or dispute resolution;
- Consisted of policy briefs or non-analytical commentary lacking scholarly depth.

Following the screening and eligibility assessments, a final total of 44 articles was identified for detailed analysis. A summary table of included articles, indicating year of publication, geographical focus, and thematic emphasis, is provided in Appendix B.

2.3 Method of Analysis

The selected articles were coded thematically, focusing on the residential sectional title property ownership rights, governance structures, power dynamics, institutional performance of ADR bodies, and comparative international insights (Bramer, DE Jonge, Rethlefsen, Mast and Klijnen, 2018). A summary of the included studies is provided in Appendix B.

3. RESULTS

3.1 Ownership and Governance

The literature reveals that South African residential sectional title schemes are characterised by weak enforcement of ownership rights, often compounded by developer dominance and limited owner participation (Ti, 2022; Sobantu and Noyoo, 2022). These governance weaknesses undermine transparency and accountability within schemes, increasing the likelihood of disputes.

Comparative international literature provides important context as depicted in Appendix D. Studies from Brazil demonstrate that ownership rights remain ineffective in the absence of robust governance and ADR frameworks (de Camargo Cavalheiro and Abiko, 2023). Additionally, research from Turkey highlights how legal fragmentation undermines the condominium governance (Murat Selim, Pajo, Çakir, Demir, 2021). These parallels suggest

that South Africa's challenges are not unique but are shaped by the local institutional design and enforcement capacity.

3.2 ADR Institutions

The CSOS and NHBRC were established to provide accessible alternatives to litigation for resolving disputes in residential schemes. However, the literature consistently identifies delays, inconsistent adjudication, and weak enforcement as significant limitations (Babolaal-Frank, 2021; van der Merwe, 2019; Mazibuko, Simpeh and Smallwood, 2021). Such shortcomings reduce confidence in the ADR mechanisms and limit their ability to protect ownership rights effectively.

Similar institutional challenges are documented internationally, where the ADR bodies often struggle to meet growing demand due to resource and capacity constraints (Merrick, 2007; McGregor, 2015).

3.3 Alternative Approaches

Mediation and arbitration are recognised as cost-effective dispute resolution tools but remain underutilised in South African sectional title schemes due to low awareness and limited trust among owners (Greyvenstein, 2016; Schmitz, 2019). Emerging innovations, such as online dispute resolution platforms and block-chain platforms, show potential to improve accessibility and efficiency, although regulatory support remains limited (Argelich-Comelles, 2024; Mojašević and Vučetić, 2024).

3.4 Comparative Insights

International literature reveals that governance and the ADR challenges are widespread, with Australia facing governance imbalances and building defect crises (Easthope et al., 2020; Crommelin, Loosemore, Easthope and Randolph, 2024). Furthermore, African contexts, including Ethiopia, Kenya, Angola, and Tanzania, struggle with affordability and rely on rental markets than owning in sectional title schemes (Frias and Udelsmann Rodrigues, 2018; Gulyani, Takuldar and Bassett, 2018; Teklemariam, 2023). It is further recommended that reforms that will come out for this study be tailored to South Africa's socio-economic realities.

Appendix D highlights the global comparative insights. Additionally, a thematic synthesis of the South African and international literature reviewed, including governance, ownership rights, and dispute resolution patterns, is provided in Appendix C.

4. Discussion

The findings confirm that disputes in the residential sectional title schemes are deeply rooted in governance arrangements and institutional capacity rather than isolated interpersonal disagreements. In South Africa, disputes commonly emerge from the decision-making processes within the BCs, the conduct of the managing agents, and ongoing developer influence in the schemes, all of which directly affect the owners' ability to exercise and safeguard their ownership rights. These dynamics often entrench structural power imbalances, limiting meaningful participation by the individual property owners and undermining principles of transparency and accountability.

Despite the establishment of specialised alternative dispute resolution (ADR) institutions, systemic challenges continue to persist. Additionally, weak enforcement of the dispute

outcomes, limited deterrent consequences for the non-compliance, and fragmented regulatory oversight continue to constrain the effectiveness of ADR mechanisms (Nel, 2023). Consequently, while ADR is positioned as an accessible alternative to formal litigation, its capacity to provide substantive protection for the ownership rights remains uneven in practice. This raises concerns regarding alignment with the constitutional values, particularly the right to property and the right to lawful, reasonable, and procedurally fair administrative action.

The literature remains fragmented in its treatment of the residential sectional title disputes, frequently addressing governance, ownership rights, and dispute resolution as discrete issues rather than interconnected components of a single regulatory system. This lack of integration obscures the extent to which governance failures within sectional title schemes directly erode the substantive enjoyment of ownership rights and limit effective access to recourse. As a result, dispute resolution mechanisms often function reactively, addressing symptoms rather than the structural conditions that generate disputes. The discussion that follows builds on the thematic synthesis presented in Appendix C, which contrasts South African findings with comparative international insights.

Furthermore, comparative insights as detailed in Appendix D emphasise the importance of context-specific and institutionally coherent reforms. Jurisdictions with more effective dispute resolution outcomes tend to embed the ADR within stronger governance frameworks, characterised by clearer allocation of responsibilities, enhanced enforcement powers, and regulatory coherence (Liebenberg, 2022; Pieterse, 2024). These systems recognise that the dispute resolution mechanisms are most effective when aligned with broader governance reforms that protect ownership interests and promote accountability.

Accordingly, the findings suggest that strengthening dispute resolution in the South African residential sectional title schemes requires more than procedural improvements to ADR processes. Meaningful reform must address governance deficiencies, clarify institutional mandates, and ensure that the dispute resolution mechanisms actively support the protection of property ownership rights within a constitutional framework. Without such alignment, ADR risks remaining a managerial tool that mitigates disputes without addressing the systemic governance failures from which they arise

5. Conclusion and Research Agenda

This review finds that governance challenges in South African residential sectional title schemes are inseparable from the performance of ADR institutions. While CSOS and NHBRC were designed to protect property owners' rights, systemic inefficiencies undermine their effectiveness (Scott and Van Dyk, 2022). Appendices C and D represents the comparative insights revealing that similar challenges exist globally, but the reforms must be tailored to South Africa's socio-economic realities (van der Merwe and Habdas, 2006). However, the thematic gaps and recurring institutional challenges identified in Appendix C further inform the proposed future research agenda.

It is further recommended that future research be conducted to:

- Assess owner experiences with CSOS and NHBRC processes;
- Examine power dynamics among the owners, developers, and managing agents;
- Evaluate the mediation and online dispute resolution in the residential sectional title schemes;

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- Develop integrated frameworks connecting the ownership rights, governance, and dispute resolution.

Ultimately, strengthening dispute resolution mechanisms is a critical step toward ensuring that ownership interests are effectively protected, governance structures are made more transparent and equitable, and long-term confidence in the residential sectional title housing sector is sustained. By enhancing the efficiency and accessibility of ADR processes, stakeholders can foster greater trust among property owners, reduce conflict, and create a more stable environment that supports both social cohesion and economic resilience within this vital segment of the housing market.

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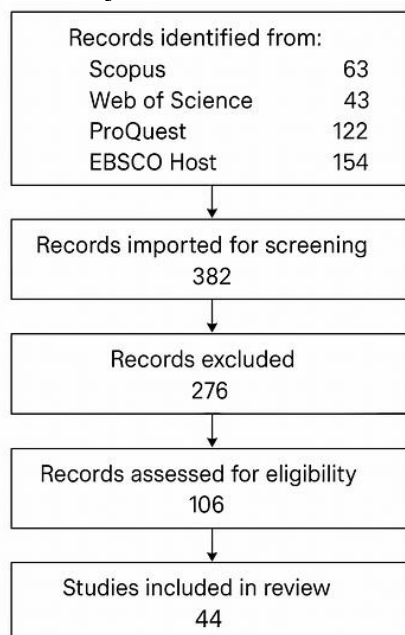
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Appendix A: PRISMA Flow Summary



PRISMA 2020

Note:

- Screening excluded non-residential schemes, non-analytical commentary, and duplicates.
- Final corpus of 44 articles was thematically coded into ownership rights, governance structures, ADR institutions, and comparative insights.

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Appendix B: Summary of articles included

Year	Author(s)	Geographical Focus	Theme
2016	Van der Merwe	South Africa	Sectional title law and governance
2015	Steenkamp and Lubbe	South Africa	Governance perspectives (managing agents, trustees, auditors)
2017	Boshoff and Ndala-Ka Dlamini	South Africa	Conflict in multi-owned residential properties
2021	Baboolal-Frank	South Africa	Sectional title dispute resolution analysis
2023	Nel	South Africa	Critical analysis of CSOS Act
2022	Liebenberg	South Africa	Rights-based remedies for structural human rights violations
2024	Pieterse	South Africa	Sectional title law and local government governance
2020	Easthope, Van den Nouwelant and Thompson	Australia	Apartment ownership and governance outcomes
2024	Crommelin et al.	Australia	Strata governance and building defect crises
2021	Murat Selim et al.	Turkey	Legal fragmentation in condominium governance
2023	de Camargo Cavalheiro and Abiko	Brazil	Ownership rights and governance frameworks
2018	Frias & Udelsmann Rodrigues	Angola	Spatial inequities and housing markets
2018	Gulyani, Talukdar & Bassett	Kenya	Affordability challenges and rental reliance
2023	Teklemariam	Ethiopia	Housing inequities and governance constraints
2014	Fisher & McPhail	South Africa	NHBRC and building defect resolution
2021	Mazibuko, Simpeh and Smallwood	South Africa	Contractor non-compliance and ADR challenges

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2019	Van der Merwe	South Africa	CSOS adjudication and enforcement issues
2016	Easthope and Randolph	Australia	Governance imbalances in strata schemes
2016	Greyvenstein	South Africa	Mediation and arbitration in sectional title
2019	Schmitz	International	ADR uptake and trust issues
2024	Argelich-Comelles	International	Block-chain contracts in ADR
2024	Mojašević and Vučetić	International	Online dispute resolution innovations

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Appendix C: Review Summary

#	Theme	South Africa	International Insights
1	Ownership rights	Constitution guarantees property and housing rights, but enforcement is weak; developer dominance undermines owner participation (Ti, 2022; Sobantu and Noyoo, 2022).	Brazil: ownership rights insufficient without governance and ADR frameworks (de Camargo Cavalheiro and Abiko, 2023).
2	Governance & power dynamics	Developers and managing agents dominate schemes; poor attendance, limited owner knowledge, and complex legislation exacerbate challenges (Easthope & Randolph, 2016; Steenkamp & Lubbe, 2015a).	Australia: governance imbalances and building defect crises (Easthope, Nowelant and Thompson, 2020; Crommelin et al., 2024). Turkey: legal fragmentation undermines condominium governance (Murat Selim et al., 2021).
3	Dispute resolution institutions	CSOS offers affordable ADR but faces delays, inconsistent adjudication, and weak enforcement (Baboolal-Frank, 2021; Van der Merwe, 2019). NHBRC struggles with contractor non-compliance and defect resolution (Mazibuko, Simpeh and Smallwood, 2021; Fisher & McPhail, 2014).	Similar institutional inefficiencies noted globally, requiring stronger enforcement and consumer protection.
4	Alternative ADR approaches	Mediation and arbitration recognised as cost-effective but underutilised due to low awareness and trust (Greyvenstein, 2016; Schmitz, 2019). Innovations like blockchain contracts and online platforms show promise but need regulation (Argelich-Comelles, 2024; Mojašević and Vučetić, 2024).	Online dispute resolution platforms gaining traction internationally, though adoption varies by legal framework (Simón-Moreno, 2024).
5	African insights	Local reforms must be rights-based and context-sensitive to socio-economic realities.	Africa (Ethiopia, Kenya, Angola, Tanzania): spatial inequities, affordability challenges, reliance on rental markets (Frias and Udelsmann Rodrigues, 2018; Gulyani, Talukdar and Bassett, 2018; Teklemariam, 2023).

Appendix D: Global Comparative Insights

	Country	Act	Key mechanisms	Strengths	Challenges
1	South Africa (Van der Merwe, 2020)	<ul style="list-style-type: none"> - Sectional Titles Act of 1986 - Sectional Title Schemes - Management Act of 2011 the Community Schemes Ombud Service Act of 2011(CSOSA) 	The Community Schemes Ombud Service (CSOS) is that it offers low-cost, accessible dispute resolution through mediation, conciliation, and adjudication. The issues addressed include the governance, maintenance, levy disputes, and tenant-related conflicts.	Strengths associated with the CSOS is that it is affordable and tailored to the specific challenges of sectional title living	The challenges associated with it are the resource constraints and a backlog of cases that ultimately limit efficiency. Furthermore, awareness of CSOS services remains low among owners and tenants
2	Australia	Strata Schemes Management Act 2015 (NSW)	Mediation is a mandatory first step for most disputes, followed by adjudication or tribunal hearings through bodies like the New South Wales Civil and Administrative Tribunal (NCAT)	Emphasis on early-stage mediation helps resolve disputes amicably and efficiently. Specialized tribunals provide expertise in handling strata disputes	High legal costs for appeals and inconsistent tribunal rulings can deter stakeholders from pursuing further recourse.
3	United States	Uniform Common Interest Ownership Act (UCIOA) (Van der Merwe, 2016)	Many HOAs mandate internal resolution processes before disputes escalate to litigation. Mediation and arbitration are commonly encouraged.	Localized governance allows tailored solutions to disputes. ADR mechanisms reduce the burden on courts	Power imbalances between HOA boards and homeowners, coupled with limited oversight of private arbitration processes, can disadvantage individuals
4	United Kingdom	Commonhold and Leasehold Reform Act 2002. (Van der Merwe, 2014)	Leasehold Valuation Tribunals (now part of the First-tier Tribunal) resolve disputes related to service charges, repairs, and lease terms. Mediation is also available for resolving disputes informally	Specialised tribunals ensure that decisions are informed by expertise in housing law	Tribunal processes can be costly and time-consuming. Tenants and leaseholders often lack the legal knowledge to represent themselves effectively

5	Canada	Ontario's Condominium Act, 1998 Condominium Authority Tribunal (CAT) (Harris, 2019)	CAT provides an online platform for dispute resolution, focusing on issues like governance, records access, and rule enforcement.	The online format enhances accessibility and reduces costs	Limited jurisdiction of CAT excludes significant disputes, such as financial or maintenance issues, requiring costly litigation instead.
6	Singapore	Building Maintenance and Strata Management Act (BMSMA) (Van der Merwe, 2014)	The Strata Titles Boards (STB) mediate and adjudicate disputes concerning maintenance fees, by-laws, and governance issues.	STBs are cost-effective, with an emphasis on amicable resolutions through mediation before adjudication.	Prolonged timelines for adjudication and limited public awareness of STB procedures create barriers to justice.

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