

Understanding the legal requirements of an ST scheme AGM: What executives must know

An AGM is one of the most crucial aspects of proper management within a sectional title scheme. Pearl Scheltema, CEO of Fitzanne Estates, and Johlene Wasserman, manager of governance, compliance and enforcement at the Community Schemes Ombud Service, explain that it's also the only way to protect yourself against badly run schemes.



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While an AGM could seem like an unnecessary formality, it is actually one of the most crucial aspects of proper management within a sectional title scheme. Pearl Scheltema, CEO of Fitzanne Estates, and Johlene Wasserman, manager of governance, compliance and enforcement at CSOS (Community Schemes Ombud Service), explain that it's also the only way to protect yourself against badly run schemes.

What is expected at an AGM?

"It is essential that scheme executives familiarise themselves with the requirements and regulations of an AGM to ensure that a meeting is called and convened correctly," says Scheltema.

These regulations include the following key considerations: an AGM must be held at least once a year, within four months of the end of the financial year; the date, time and venue of the AGM must also be reasonably communicated to all owners.

"It's so important for owners to be present at the AGM. Remember that as long as there was a proper notice sent to members, decisions made at the meeting are valid even if you weren't there," Scheltema cautions.

Wasserman emphasises: "The Prescribed Management Rules of the Sectional Titles Schemes Management Act goes so far as to decide what is to be discussed at the AGM, and specifies that all these topics must be covered, decided upon and ultimately executed by the scheme executives of the scheme."

What happens if you can't attend an AGM?

Due to the nature of an AGM, it's crucial for enough scheme executives to be present in order for the decisions made to be

enforceable.



Pearl Scheltema, CEO of Fitzanne Estates

That's where quorum requirements come in. Scheltema explains: "For schemes with less than four primary sections, two-thirds of the total votes in value and eligible to vote must be present for the meeting to be valid." In schemes where there are four or more, at least one-third must be present.

If a member is unable to attend, they can be represented by proxy. This essentially gives another member voting rights on behalf of the absent member. It's important to note that a person cannot act as a proxy for more than two members.

When this isn't possible, the meeting must be adjourned and rescheduled for the same time and place the following week.

"Sufficient attendance and observing of all rules in terms of the STSMA is crucial for the long term health of a scheme. The CSOS makes it easier for schemes to abide by the rules," Scheltema explains.



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What you can do if the rules aren't followed

The CSOS was formed to regulate the conduct of parties within community schemes. Wasserman emphasises that the CSOS can only enforce existing legislation.

This has real implications for owners who are unhappy with the state of their scheme: "Dissatisfied members must be able to prove their case when raising a dispute. All AGM prescriptions must be followed in order for owners to have a leg to stand on, should any issues arise."

Arming yourself with the necessary knowledge of the AGM process within your scheme is crucial to protecting your investment and equipping yourself for success. As a scheme executive, it can be easy to feel overwhelmed by the requirements and guidelines.

Education is key

While there's much uncertainty about what 2021 will hold, one thing that remains abundantly clear is that property professionals need to stay informed and at the forefront of the knowledge pool. You can't afford to fall behind on property trends and legislative requirements, least of all if you're a trustee or scheme executive, so make sure you equip yourself in every possible way, says Scheltema.

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