Sectional title AGMs for dummies
By Jennifer Paddock

In this article we set out the management rules prescribed by the regulations to the Sectional Titles Act 95 of 1986 which govern sectional title Annual General Meetings (AGMs).

When must the AGM be held?
In terms of prescribed management rule ("PMR") 51, the AGM must be held within four months of the end of each financial year. The financial year runs from the first day of March to the last day of February unless otherwise decided at a general meeting of owners or by the trustees.

How much notice must owners be given of the AGM?
In terms of PMR 54 at least fourteen days notice of the AGM must be given to all persons entitled to attend, unless all of these people agree to a shorter notice period.

Why is the AGM so often held later than it should be?
Only after the end of the financial year can the trustees or managing agent start the process of getting the audit done. Assuming two to three weeks to get the books and records together and delivered to the auditor and notice of at least 14 days, but perhaps 30 if there is a special or unanimous resolution on the agenda, that only leaves two clear months to complete the audit. From March to June, most auditors are really busy. And, finally, body corporate audits are not auditors' most profitable work.

To whom must notice be given?
PMR 54 provides that notice must be given to all owners, all holders of registered mortgage bonds over units who have advised the body corporate of their interest and to the managing agent.

Where must the AGM be held?
According to PMR 54 the AGM must be held at a place within the magisterial district where the scheme is situated or such other place determined by special resolution of the members of the body corporate.

What documents must be delivered to owners/mortgagees before the AGM?
In terms of PMR 39 the trustees must ensure that copies of the following documents are delivered to owners and mortgagees who have advised the body corporate of their interest:

a. the **insurance schedule** setting out estimates of the replacement values of the buildings and all improvements to the common property; as well as the replacement value of each unit;
b. the **annual financial estimate** (or budget) setting out an itemized estimate of the anticipated income and expenses of the body corporate during the ensuing financial year;
c. the **audited financial statement** which fairly presents the state of affairs of the body corporate and its finances and transactions as at the end of the financial year concerned; and
d. a **report by the trustees** reviewing the body corporate's affairs over the past financial year.

Delivery of these documents is deemed to have been effected if the documents are send by prepaid post addressed to the owner at his domicilium citandi et executandi (each owner's default domicilium address is the address of the section registered in his name) and to any mortgagee at the address as reflected for that mortgagee in the records of the body corporate.

Quorum requirements
In terms of PMR 57 no business may be transacted at any general meeting unless a quorum of persons is present in person or by proxy at the time when the meeting proceeds to business. The number of persons present or represented differs depending on the number of units in the scheme:

i. if there are 10 units or less: 50% of the owners, present or represented, constitute a quorum;
ii. if there are between 11 and 49 units: 35% of the owners, present or represented, constitute a quorum; and
iii. if there are 50 or more units: 20% of the owners, present or represented, constitute a quorum.

Adjournment due to lack of quorum
According to PMR 58, if within half an hour of the time appointed for a general meeting a quorum is not present then the meeting must stand adjourned to the same day in the next week at the same place and time. If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the owners present in person or by proxy and entitled to vote form a quorum.

Compulsory items of the AGM agenda
In terms of PMR 56 the following business must be transacted at the AGM:

1. the consideration of the financial statement and the trustees' report;
2. the approval with or without amendment of the insurance schedules and the annual budget;
3. the appointment of an auditor or accounting officer;
4. the determination of the number of trustees for the ensuing year;
5. the election of trustees for the ensuing year;
6. any special business of which due notice has been given;
7. the owners' giving of directions and imposing of restrictions on the trustees;
8. the determination of the domicilium citandi et executandi of the body corporate; and
9. the confirmation by the auditor or accounting officer that any amendment, substitution, addition or repeal of the scheme's rules have been submitted to the Registrar of Deeds for filing.

Voting
In terms of PMR 60 a resolution put to the vote of the meeting must be decided on a show of hands, unless prior to or on the declaration by the chairman of the result of a show of hands, a poll is demanded by any person entitled to vote at that meeting.

According to PMR 62 on a vote by show of hands the owner of a section or sections has one vote for each section owned.

In terms of PMR 66 when two or more persons are entitled to exercise one vote jointly that vote must be exercised by only one person (who may or may not be one of them) jointly appointed by them as their proxy.

No vote in certain circumstances
According to PMR 64 an owner is not entitled to vote at a general meeting, except in the case of a unanimous or special resolution, if:

a. any contributions payable by him in respect of his section and his undivided share in the common property have not been duly paid; or
b. he persisted in breach of any of the conduct rules notwithstanding written warning by the trustees or managing agent to refrain from breaching such rule.

However a disqualified owner's bondholder is entitled to vote as his proxy.

Jennifer Paddock is a sectional title expert and the Course Convener of the **Law of Sectional Title Meetings**, which is due to start on the 15th of March 2010. For further details regarding this course please contact Kate: 021 685 4775 or kate@paddocks.co.za. Alternatively, go to www.paddocks.co.za

Article reference: Paddocks Press Volume 4, Issue 2, Page 2.