

Topic 8 - The annual general meeting

The legislation requires that certain additional procedures and motions are covered at the annual general meeting.

The annual general meeting must be held within 3 months after the end of the scheme's financial year. (SM. s66)

What is the date of our financial year?

It is essential for the body corporate to know when its financial year ends. The calculation is taken from the date of the first Annual General Meeting (AGM) unless another date has been fixed by the referee (a referee under the *Building Units and Group Titles Act 1980*) or by adjudicator's order.

For a scheme that was in existence at 13 July 1997 (the commencement of the Act):

- the financial year **ends** on the last day of the month **in which** the first annual general meeting was held for the existing plan* (for example, if the first annual general meeting was held on 10 May 1993, the financial year will be 1 June to 31 May); **or**
- the financial year **ends** on the last day of the month in which the anniversary date for the first annual general meeting was fixed by an order of the referee under the *Building Units and Group Titles Act 1980*. (s330(9)(a) and s330(9)(b) of the Act: Transitional provisions)

For a scheme which was established after 13 July 1997:

- the financial year **ends** on the last day of the month **immediately before** the month when the community titles scheme was established (for example, if the scheme was established on 10 May 1998, the last day of the financial year is 30 April each year, therefore the financial year will be 1 May to 30 April); **or**
- an adjudicator may make an order changing the financial year under the dispute resolution provisions of the Act ("financial year" defined in the Dictionary, Schedule 6 of the Act)

***Note:** An existing plan is a "building units plan" [BUP] or "group titles plan" (GTP) to which the Building Units and Group Titles Act 1980 applied before the commencement of the Act.

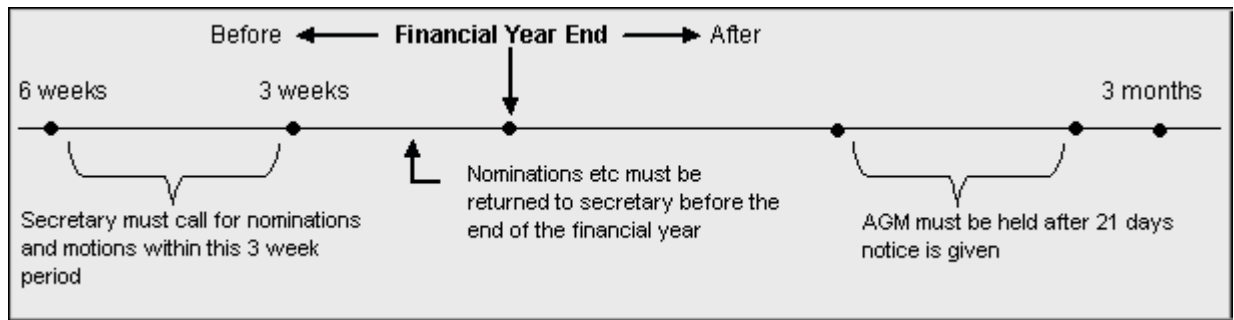
To find out when the scheme held its first annual general meeting you may need to check the body corporate records, or to find out when the scheme was established you may need to check the Community Management Statement (CMS). A copy of the CMS should be held in the records of the body corporate.

Changing the financial year or holding a meeting "out of time"

The financial year may only be changed by making an application to the Commissioner's Office (A s.283). Equally, a valid AGM may only be held in excess of three months after the end of the financial year by a declaratory order of an adjudicator.

Once the financial year is changed by declaratory order, the body corporate must register the change by recording a new community management statement (CMS). (A. s62(4)(b)).

Preparing for the AGM - before the end of the financial year



-Refer to the above diagram-

Since members of the committee must be chosen at each AGM, the secretary must seek nominations for committee membership at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate's financial year. (SM. s16(4))

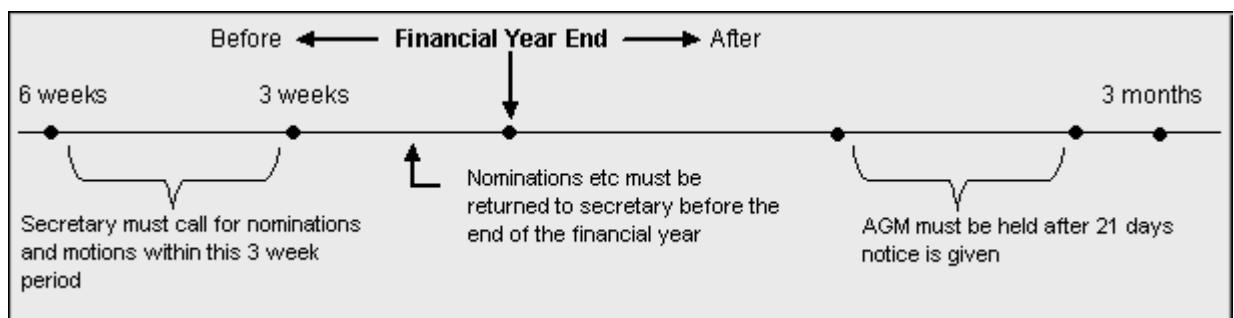
At the time the secretary sends out the notice to all lot owners inviting nominations for committee, lot owners must also be invited to submit motions for inclusion on the agenda for the AGM. (SM. s69(5))

Lot owners may submit motions at any time to the secretary prior to the date of the end of the financial year. All motions received by that date must be included on the agenda for the AGM (SM. s69(3)), with three exceptions:

- a motion proposing that the regulation module for the scheme be changed may only be put to a general meeting once in any financial year;
- a motion proposing that remuneration paid to a particular service contractor to be changed may only be put to a general meeting once during a financial year; or
- a motion proposing the amendment of the engagement of a person as a service contractor, or the authorisation of a person as a letting agent, if as a result of the amendment, the engagement or authorisation would include a right or option to extend or renew, may only be put to a general meeting once in any financial year.

Therefore, a second motion in any one financial year for the above items must not be included.

Preparing for the AGM- after the end of the financial year



-Refer to the above diagram-

Once nominations and motions have been received at the end of the financial year, the committee, at a committee meeting must draft an agenda for the AGM containing the motions, and set down the eligible nominees, for election to the committee. The committee may add its own motions to be put to the AGM.

The committee must draft administrative fund and sinking fund budgets for the forthcoming year to be put to the AGM, and fix contributions to be paid by lot-owners. (SM. s139(5), SM. s141)

A general meeting must be held at least 21 days after notice of the meeting is given to lot owners. (SM. s74).

The statutory motions (SM. s76(3))

The "statutory motions" concern those items that are the key administrative duties of the body corporate, and which the legislation requires be voted on by the body corporate at least once a year. The five are as follows:

1. presenting the body corporate's accounts for the financial year;
2. appointing an auditor of the body corporate's accounts for the next financial year, or not auditing the accounts;
3. adopting administrative fund and sinking fund budgets for the financial year;
4. fixing contributions to be paid by the owners of lots for the next financial year; and
5. reviewing each insurance policy held by the body corporate.

Preparing the proposed budgets

The committee must prepare two budgets - the administrative fund budget and the sinking fund budget - for adoption by the body corporate at each AGM (SM. S139(5)).

The administrative fund budget must contain estimates for the next financial year's reasonable and necessary spending for maintenance of the common property, insurance, and items of recurrent expenditure.

The sinking fund budget must allow for reasonable and necessary spending for the next financial year on items of a capital or non-recurrent nature, and must budget for a proportional reserve for the next 9 years.

The voting papers in respect of the budgets must be accompanied by an explanatory schedule which must include an explanatory note that the amount adopted as the annual budget may be more or less than the proposed budget by a variant of 10%. (SM. S140; SM. S73).

Note: The inclusion in the adopted budget of an item of expenditure does not automatically authorise the expenditure. (SM. S139(7))

Fixing contributions

The committee must propose on the basis of the budgets put forward, the contributions to be levied on lot-owners, and decide on the number of instalments and the date on which they are to be paid in the next financial year. (SM. S141)

Other documents to be sent out with the Notice for an AGM

- disclosure of insurance details (SM. S177);

- a copy of any audit (SM. S155);
- a copy of the previous financial year's statement of accounts (SM. S154);
- a copy of the Register of reserved issues (SM s201)

The First AGM

When a body corporate is established, the original owner or developer must call the first annual general meeting within 2 months of one of the following occurring:

- the sale of 50% of the lots in the scheme; or
- 6 months elapsing after the establishment of a scheme. (SM. s77)

The agenda for the first general meeting must adopt budgets, fix contributions, review insurance policies, choose committee members, provide for the custody and use of the body corporate seal, decide what by-laws should be amended or repealed, and decide whether or not to appoint an a auditor.

At the first AGM, the original owner/developer must hand over to the body corporate the documents and materials in his possession or control including:

- a register and inventory of assets;
- all plan specifications and building drawings showing pipes and wiring and other utility infrastructure;
- all insurance policies;
- the body corporate seal;
- budgets showing the estimated spending in the first year;
- estimated sinking fund forecast for the next 10 years including an estimate for painting common property;
- all relevant building contracts, and building certificates; and
- any other documents relevant to the scheme such as the body corporate roll, and correspondence. (SM. s79)

The original owner/developer must also hand over such documents at the first practical opportunity if they come into his possession after the first AGM has been held.