Regulatory and Legal User Guide

Contents

What is Regulatory and Legal Risk?

Regulatory and Legal risks are those that can have a material impact on the operations and financial position of a Community Scheme as a result of a breakdown in documentary and contractual controls, compliance, legal claims, fines and penalties, and the inability to enforce contracts/agreements/arrangements/terms and conditions.

The management of Regulatory and Legal risk will ensure that the Community Scheme is better equipped, and in a position to effectively control its contractual operations, service and supplier arrangements, regulatory compliance, and legal risks.

Community Schemes operate in a highly regulated, ever-changing, and complex environment, making full compliance with applicable regulations difficult and demanding.

Non-compliance with regulations and legal requirements can result in fines, penalties, damages, and litigation.

In the case of a Community Scheme, they will need to primarily comply with The Community Schemes Ombud Service (CSOS) Act and Sectional Title Schemes Act.

As a core requirement, all Community Schemes are required by law to register with the Ombud. They will be given a CSOS registration number and be required to pay the 2% of monthly levy income over to the Ombud. The CSOS levy component should be annotated as such on monthly invoices sent to owners/lessees/shareholders.

Over and above the general regulatory requirements, different industries are subject to regulatory requirements. In the case of Community Schemes, these could include the following acts and registration requirements:

Labour Relations, Basic Conditions of Employment, Occupational Health and Safety, Tax, National Credit, Environmental, Disaster Management, Promotion of Access to Information (PAIA), Protection of Personal Information (POPI) regulations as well as Company Registration (memorandum of association and/or Business and/or Liquor License registration requirements where required.

Other required registrations and regulatory requirements could include employee registration, registration for tax, and unemployment insurance, and the submission of annual returns and audited financial statements to various authorities, etc.

Terms and conditions of the sale or use of services or facilities, the terms of the extension of credit, fair treatment of customers, consumer protection, confidentiality, documentation, and contractual requirements all require compliance. Changes to rules are a specific area where very strict processes and procedures need to be followed. With social media and consumer watchdogs, unfair treatment of owners, residents, or customers/visitors, can have a very rapid impact on a Community Scheme's reputation. Owners of registered Community Schemes also enjoy the support and protection of CSOS.

A Community Scheme will also be required to comply with any new and changing regulations.

In this regard, the Sectional Titles Amendment Bill will have some impacts.

Checklist – Core Regulatory and Registration Requirements for Community Schemes

1. Specific Community Scheme compliance requirements: Sectional Titles Schemes Management Act (STSMA) No 8 of 2011, Community Schemes Ombud Services Act, Sectional Title Amendment Bill, The Housing Development Schemes for Retired Persons Act, Older Persons Act, Retirement Villages Act of 2016, Retirement Villages Regulations 2017, Share Blocks Control Act, Schedule of Levies & Fees.
2. Other Regulations and Acts: Labour relations, Basic Conditions of Employment, Occupational Health and Safety, Taxation, Environmental, Disaster Management, Protection of Personal Information (POPI), Promotion of Access to Information (PAIA), and National Credit.
3. Registration of entity with CIPC- appointment of Directors/Trustees
4. Registration of Community Scheme with CSOS.
5. HOA - There are two types of legal structures that are used to create or establish an HOA: A non-profit company or a common law association. Each owner must be a member of the HOA so that they are bound by the governance documentation. Where a HOA is incorporated as a common law association, its primary governance documentation is a written constitution. The common law also has detailed rules that apply to such associations. Where an HOA is incorporated as a non-profit company, its primary governance documentation is the memorandum of incorporation (MOI).
6. Monthly payment of 2% of levy income to CSOS.

7. Submission of annual return to CSOS on prescribed form CS2 along with a copy of the latest financials within 4 months of the financial year-end.
8. Registration of Community Scheme with SARS – including employees/ UIF/ Workmen's compensation.
   Taxation - A Community Scheme must register as a taxpayer albeit that certain income is deemed automatically exempt from tax by SARS i.e. levy income of a body corporate. A Home Owner's association or Share block company would have to apply for an exemption when registering as a taxpayer, albeit the memorandum of incorporation or the constitution provided that surpluses were not paid back to members. All income other than levies, earned by a Community Scheme, such as interest (including interest and penalties on late payments), as well as rentals, such as those from cell phone companies (masts) and advertising companies (billboards), clubhouse and restaurant facilities and interest income earned, is taxable. A 2008 amendment to the Income Tax Act made the first R50,000 earned from sources other than levies exempt.
   All employees and/or contractors deemed employees should be registered for taxation/UIF/workman's compensation as required by SARS.
9. Appointment of a Public Officer.
   A public officer who is an individual residing in South Africa and who must be a registered taxpayer with SARS must be appointed. The individual representative who is approved by SARS must be a senior official/office bearer of the Community Scheme. Should the Community Scheme not have a senior official residing in South Africa, then any suitable person can fulfil this role.
10. Contracting with reputable Managing Agents (optional) who are ideal members of The National Association of Managing Agents (NAMA).
11. Where Managing Agents let/buy/sell property, they need to be registered as Estate Agents in terms of the Estate Agency Affairs Act, members of the Property Practitioners Act (PPA), and Debt Collectors in terms of the Debt Collectors Act and must hold a valid Fidelity Fund Certificate.
12. Where the Community Scheme trades it should hold the required trading/business or liquor license as applicable.
13. Bank Accounts - Conducting of Trust Accounts where required as well as a separate bank account for Community Scheme reserves.
14. Appointment of registered auditors.
15. Confidentiality and protection of personal information – Appointment of Information Officer (Trustee/Director/Office Bearer/Managing Agent) in terms of Protection of Personal Information (POPI) Act.

16. Lodgement of POPI and PAIA manuals with the Information Regulator and the South African Human Rights Commission respectively along with payment of the required fees.
17. Lodgement of required documents with CSOS – house/conduct/management rules, filing of annual financial statements, and annual budget. Community Scheme must be issued by the Ombud's (CSOS) Office with a certificate of approval of its phase 2/discretionary rules as contemplated in section 10 of the Sectional Titles Schemes Management Act.
18. Reserves – retention, and maintenance of required levels in line with levy income and as laid down in STSMA regulations:

In terms of the STSMA, the following are prescribed:

- Less than 25%

If the body corporate reserve fund at the end of the financial year is less than 25% of the levy income generated during that year, the body corporate must provide for a reserve amount equal to 15% of the levy income for the new financial year.

- Equal to or more

If the body corporate reserve fund at the end of the financial year is equal to or more than the levy income generated during that year, the body corporate is not obliged to make provision for a reserve amount in the new budget.

- More than 25%

If the body corporate reserve fund at the end of the financial year is more than 25% but less than 100% of the levy income in that year, the body corporate must make provision for a reserve amount equal to the repairs and maintenance items provided for in the new budget.

19. Reserves - Ensuring that any expenditure from reserves (both in MMR plan and outside of this) is approved by resolution of Trustees/Directors and at AGM. Prescribed Management Rule ("PMR") 24(2), contained in Annexure 1 of the Regulations to the Act. PMR 24(5)(b) sets out the circumstances in which Trustees may utilise funds from the reserve fund for expenses not included in the MR&R plan.
20. Meetings – AGMs – within 4 months of financial year-end, Chairmanship of meetings, Quorums/registration, PQ – Participation Quotient, results announcements, Attendance – Management Rule 17(10) (a)(b)(c) of STMA by any means open to all so long as confirmation of attendance can be given by the

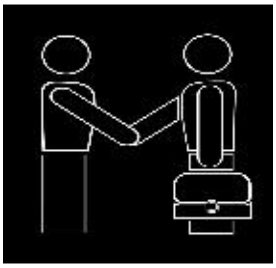
Chairperson, Minutes - taking and distribution within 10 days of meetings duly signed and dated, SGM's – notice and quorums, Adjournment/postponement/re-convening of meetings.

21. Quorums - A quorum is the minimum number of members of an assembly or society that must be present at any of its meetings to make the proceedings at that meeting valid.

PMR 19(1) states that no business can be transacted at a general meeting unless a quorum is present or represented, for example by proxies.

PMR 19(2) states that a quorum is constituted when:

- A body corporate that has less than 4 primary sections or members (only 3 or fewer primary sections or members), two-thirds of the total value of votes must be present or represented;
- In any other scheme, one-third of the voting values are required.



The reduction of the quorum requirement to one-third of the voting values, for all but very small schemes, has the virtue of simplicity and will make it easier for schemes with between 4 and 50 units to achieve quorums. However, for schemes with above 50 units, the quorum requirement is effectively increased from one-fifth to one-third of the total voting values.

Where there are 2 or more members, at least 2 persons must be present to form a quorum unless all the units are registered in the name of one person.

There are two categories of vote values that are not taken into account when calculating a quorum:

Firstly, the voting values of units registered in the developer's name are not considered when calculating the value of votes required to constitute a quorum. The fact that the value of the developer's votes is not considered in calculating the quorum, is designed to ensure that developers do not arrange for the body corporate to take important decisions, without the presence of a reasonable number of other owners. This provision could cause difficulties in cases where developers choose to retain a substantial number of units in a scheme.

The new PMR also provides for situations where a quorum is not present. PMR 19(4) states that if within 30 minutes from the time appointed for a general meeting, a quorum is not present, the meeting stands adjourned to the same day in the next week at the same place and time. If, on the day to which the meeting is adjourned, a quorum is still not present within 30 minutes from the time appointed for the meeting, the members entitled to vote and present in person or by proxy constitute a quorum.

22. Nomination of Trustees/Directors 48 hours before the meeting and formal election at the meeting, the election of Trustees/Directors including resignation/expiry of terms, the election of Chairman, Trustee/Director meeting attendance-minimum of two Trustees/Directors.
23. Background vetting of Trustees post nomination.
24. Provision of details of Trustees/Directors (CSOS/CIPC) – ongoing.
25. Insurance valuation of property/fixed assets – every three years. PMR 23
26. Insurance - review of the property and fixed assets, disclosure of cover in terms of the Sectional Title Schemes Management (STSM) Act in the Financial Accounts i.e., type of insurance held, premiums, valuations, claims settled, excesses applicable to owners/lessees or the Community Scheme. PMR 23
27. Fidelity and related Insurance cover - Protection for office bearers - holding of Professional/Personal Indemnity/liability cover for Trustees/Directors/Estate Management, fidelity cover for employees.
28. 10-year maintenance, repair, and replacement plan ("MR&R plan") PMR 22 – finalised and presented for approval at the AGM.
29. Changes to the Management rules – members can propose and vote for them at a special general meeting. Voting is decided by unanimous resolution, as long as 80% of the members are present at the meeting and 100% of the members (present in person or represented by proxy) vote in favour of the proposed changes.
30. Changes to Conduct rules – these can be amended or changed by special resolution. A minimum of 33,33% of the members must be present at the meeting and 75% of the members (present in person or represented by proxy) must vote in favour of the proposed changes.
31. Establishment of an Internal Dispute Resolution process (larger Community Schemes – particularly HOAs).
32. Levies – notification, fair, justifiable, non-discriminatory, limitation to the level of increases to owners/lessees less than 10% annual increase.
33. Advice of the domicilium address of the Community Scheme furnished to the local municipality and local registrar of deeds.
34. Local bye law compliance – noise, overcrowding, illegal trading.
35. Disallowing of any criminal activity from within the Community Scheme.

36. Compliance Certificates (COC) – Gas and Electric fences (every 2 years).

In terms of the Occupational Health and Safety Act, every homeowner must have a Certificate of Compliance (CoC) for the property's complete electrical system, which will be needed before transfer can take place to a new owner. An electrical CoC is only valid for two years. Only a certified electrician may issue the certificate and there is a strict code of practice. Electrical CoCs are required for both the individual sections and for the common property, with unit owners being responsible for compliance within their own sections and the body corporate being responsible for any electrical installations on the common property, such as the outdoor lighting, electric fence, gate motors, a CCTV system, and any other security apparatus.

Legal Risk Assessment

A key area of good governance is the management of legal risk arising out of contracts and terms and conditions of agreements. Legal risks, if managed correctly, will shift legal responsibility and liability to third-party service providers. Legal risk considerations need to be embedded within risk management processes and governance structures.

Legal risk management is the act of identifying and solving potential legal risks defined as anything that has the legal potential to affect a Community Scheme negatively. Consequently, Community Schemes either take measures to mitigate their legal risk or accept the consequences for not doing so, many of which can be very costly.

- You need to start by assessing the Community Schemes' attitude and vulnerability to legal risk from exposure to contracts and agreements.
- Where a constitution is in place, it is important that this is comprehensive, and regularly reviewed and that the terms and conditions contained therein are strictly adhered to. This is particularly important to ensure that good governance and best practice are followed e.g. election and terms of service of Office bearer.
- All your agreements and contracts should be formally drawn up to ensure that they give you the required legal protection and ensure that they reflect current regulatory requirements, e.g.

consumer, labour, employment, health and safety, and credit/loan-related regulatory requirements.

- Your documents and agreements should all be standardised, consistent, fair, and easy to understand. You need to ensure that contracts and agreements are in place for all the Community Scheme's critical operational areas, e.g. HR employment and performance, loan agreements, security, garden services, contractors/service providers, suppliers, outsourcing agreements, etc.

- Legal and contract risk management needs to be a priority in a Community Scheme. You need to assess the potential financial risks in a worst-case scenario that could arise from contractual obligations, irrespective of where these arise, e.g. out-of-employment contracts, projects, contracts, contractual supply and service agreements, lease obligations, financial arrangements, loans/funding, etc. You need to walk away from potential risks that might be too big or onerous for the Community Scheme.

- Only approved and vetted versions of all legal agreements, contracts, terms, and conditions, and documentation, both paper-based and electronic/digital, should be used.
- All contracts, agreements, and critical documents should be scrutinised and vetted by your attorneys before being signed, entered, or used.
- You need to ensure tight version control and control this centrally/ensure clear responsibility for documentation and contracts.
- You need to be fully aware of the terms and conditions in all current and earlier versions of your documentation, contracts, and the potential impact of this on the Community Scheme.
- You should also never undertake or commence any work until the required contracts, agreements, terms, and conditions have been agreed upon, accepted, and signed. It is no use trying to rectify documentation shortcomings post an incident. Obtaining complete and accurate documentation up-front or before contracts or work commences is an integral part of governance and good business practice. The same applies to the keeping of source documentation, records, and files, including e-documentation/digital records.

- Allowing alterations to contracts, agreements, or standard terms and conditions to appease owners, service providers or contractors can be risky if you then leave yourself open to legal risks that were closed.

- You need to have a process in place where contracts, agreements, terms, and conditions are reviewed regularly to ensure that any gaps or loopholes are closed and that regulatory changes and contractual loss experiences are resolved.
- You need to take a lot of care before entering into any major contracts or agreements on behalf of the Community Scheme and limit these two key reputable suppliers and service providers only.
- You need to continually assess the level of contractual risk in the Community Scheme - particularly if you get involved in once-off large contracts, have ongoing contractual exposure to one specific party regularly, or are unable to perform as contracted to and are likely to get involved in lengthy litigation or arbitration.
- You need to monitor your contracts and your level of contractual exposure proactively and deal with any disputes as soon as they arise.
- You need to limit the litigation level around your contracts and look to settle disputes out of court and/or by arbitration wherever possible. You need to try to get out of those contracts that are likely to become detrimental to the Community Scheme as soon as possible, even if it involves paying reasonable penalties or settlements.

Key elements and considerations in the assessment and management of legal risk

Considerations to improve legal risk management are:

- You need to structure the Community Scheme appropriately to minimise the personal risk of Office bearers and the risk of financial disruption, after taking cognisance of developers' possible death or insolvency, the regulatory and tax environment, and the ease of exit/sale dimension of properties or shares.
- You need to be aware of the terms and conditions of all contracts and agreements signed on behalf of the Community Scheme or by your residents/owners/customers/users of facilities, and aware of any contracts, undertakings, agreements, or guarantees in place which could have a detrimental or material impact on the Community Scheme.
- You need to reduce the Community Scheme's vulnerability to legal risk because of non-compliance with regulatory and documentary requirements.

- You need to have a risk management culture in the Community Scheme.
- You need to know what level of legal and/or contract risk you have in the Community Scheme and ensure you manage this proactively.
- You need to know the potential financial risk you might have in the Community Scheme arising out of legal, documentation, or contract risk.
- You need to identify all the regulatory and compliance requirements that will have to be met and complied with by the Community Scheme.
- Where a formal Constitution is put in place/is in place, this needs to be regularly reviewed and the terms strictly adhered to.
- All your key contracts and arrangements, including employment contracts, non-disclosure agreements, supply, and service level agreements, and/or supply contracts, need to be formalised and captured in signed agreements/contracts.
- You need to ensure that you do not undertake or commence any work until the required contracts, agreements, terms, and conditions have been agreed upon, accepted, and signed.
- You need to ensure that the parties who have signed agreements, contracts, and terms and conditions on behalf of counterparties are empowered and authorised to sign on behalf of their respective parties and bind them.
- You need to ensure that you have a minimal number of unsigned agreements or contracts and/or incomplete documentation.
- You need to have the required safety and related signage in place relative to your operations e.g. general disclaimer for visitors/owners/residents, use of swimming pools and play areas, speeding, bumps, use of facilities, and wet/slippery floors.
- You need to hold or have the appropriate indemnities in place or get indemnities signed where services are utilised or activities are undertaken where there is the potential of personal risk to residents, owners, customers, third parties, or visitors.
- All your agreements and contracts should be professionally drawn up and drafted so that they are robust, protect you adequately, and reflect current regulatory requirements.
- You need to ensure that no alterations are made, allowed, or permitted by employees or management to standard form agreements, contracts, or your normal terms and conditions without specific approval and consideration.
- You need to have version control of your various agreements and key documentation.
- You need to ensure that the Community Scheme's legal risk as it relates to terms and conditions in contracts, documentation, and agreements and the transfer of risk and liability is proactively managed.

- You need to ensure that contracts and agreements are in place for all business's critical operational areas. This covers not just complex legal agreements but incorporates basic documents like standard terms and conditions of sale or service, invoices, HR-employment and performance contracts, service level agreements, lease agreements, pricing letters/ quotes and proposals, non-disclosure agreements - NDAs, changes to terms and conditions, credit application and credit extension forms, delivery notes, supplier agreements, security and insurance documentation, restraints of trade, declarations of interest, conditions of hire or rental, website disclaimers, general disclaimers, visitors entry permits, tender documentation and collection advices, etc.
- You need to proactively try to formalise and rectify any historical agreements that are highly deficient or irregular or arrangements /agreements that are not currently reduced to written contracts.
- You need to be visibly security and fraud conscious.
- You need to subscribe to a set of values or principles formalised in a well-defined, documented and widely communicated code of conduct.

- You need to have zero tolerance for fraud, theft, and unethical conduct by Office bearers e.g. theft, corruption, or collusion involving the Community Scheme.
- You need to minimise the number of legal or contractual disputes, loss of claims, and loss of revenues due as a result of inadequate or weak agreements, deficient contracts, or lack of supporting documentation, e.g., employment contracts, debts/levies due, commission disputes, rebates, breach of contractual terms
- You need to minimise litigation costs by utilising arbitration/alternate dispute resolution or looking to settle out-of-court potentially long-running disputes. Larger Community Schemes should consider the establishment of a formalised Internal Dispute Resolution process to minimise legal action among residents/owners and potential CSOS involvement.
- You always need to use attorneys/in-house legal resources to review all documentation and agreements before you sign to minimise your legal or contractual risk.
- You need to review your current legal documentation regularly to ensure that the terms and conditions contained therein are still applicable and that they do not conflict with regulatory requirements.

- You need to review existing agreements, contracts, and/or your terms and conditions regularly in consultation with your attorneys to ensure that the Community Scheme is not exposed to additional, new legal, or regulatory risks.
- You need to ensure that all your documents, agreements, and contracts are standardised, consistent, fair, and easy to understand.
- You need to ensure that your agreements, contracts, terms, and conditions comply with consumer, labour, employment, health, safety, and credit regulatory requirements.
- You need to ensure that you are not heavily reliant on verbal agreements and undertakings, which could significantly impact the business if they were disputed or not honoured.
- You need to ensure that you are not heavily exposed to any potentially very adverse agreements or contracts that could have a material impact on the Community Scheme's financial position.
- You need to minimise the Community Scheme's vulnerability due to deficiencies in its contracts, poor wording in contracts and agreements, and weak terms and conditions in the documentation.

- You need to ensure that both paper-based and electronic data records and supporting documentation relative to transactions and contracts are strictly controlled, stored, archived, filed, and backed up.
- You need to ensure that there is a standardisation of contracts and your terms and conditions wherever possible.
- You need to ensure that contracts and terms and conditions comply with regulatory requirements of acts like - The Electronic Communications Privacy Act (ECPA), Consumer Protection Acts, GDPR - General Data Protection Regulation/ Protection of Personal Information (POPI) Act, Promotion of Access to Information Act (PAIA), Credit Acts, Usury Acts, Anti-Competitive Behaviour Acts, Basic Conditions of Employment Acts and Occupational Health and Safety Acts.
- You need to have a specific focus on ensuring the confidentiality of sensitive client information and data records.
- You need to assess the level of contractual risk in your business - particularly if you get involved in large contracts or tenders, have ongoing contractual exposure to one specific party, are unable to perform as contracted to, or are likely to get involved in lengthy litigation or arbitration.
- You need to maintain a record of all threats of legal action, receipt of legal summonses, and outstanding claims and litigation.
- You need to ensure that you get NDAs (Non-disclosure agreements) signed before disclosing sensitive details, information, or ideas to third parties.
- You need to ensure that all employment contracts contain a restraint of trade or non-compete clauses relevant to your business or industry.

- You need to ensure that food/hospitality facilities comply with the required health, safety, and hygiene requirements.
- You need to ensure that where you trade that you hold the required operating/business/trading or liquor licenses where applicable.

Insurance as a Legal Risk Mitigant

Insurance forms a key element of managing legal risk as claims against a Community Scheme and/or its owners, Office bearers could have major financial implications.

Affordability of insurance is a key consideration for a Community Scheme, as are the insurance policy excess levels that a Community Scheme believes it has the appetite for. /Can carry. The extent of possible loss needs to be assessed against the cost of the insurance to mitigate these. Specific conditions and excesses will invariably apply to most claims.

Under common law, all employers have vicarious liability for the actions of their staff while they are performing their duties. It is not practical or possible for a Community Scheme to anticipate or prevent liability, so it becomes imperative that liability insurance is taken out.

This will ensure that loss because of injury, damage, and pure economic loss is covered. Liability insurance for specific business activities can also be taken out, such as contractor's liability. You need to ensure that as a contracting party, you hold the required insurance, as parties having a valid claim will be able to sue successfully and you may well not have the financial resources to meet the claims. Most big contracts will require the provision of performance guarantees by a bank or insurance company.

Merely making use of a general indemnification or relying on indemnities to transfer responsibility and liability for the safety and well-being of employees, visitors, or third parties will be insufficient or inadequate if faced with a serious accident or incident and unacceptable from a moral perspective. All Community Scheme operators are required to take all reasonable and fair steps and measures to ensure the safety of employees, residents, visitors, and third parties.

Community Schemes cannot divorce themselves from the negligent actions of their employees or agents or not be held responsible where there is gross negligence on their part. Safety plans and emergency operational procedures should be in place in case of eventualities or disasters.

Other key elements of insurance coverage that need consideration are:

- directors and officer's liability
- fidelity insurance
- personal accident
- public liability
- civil unrest
- travel
- key man/person
- cybercrime and commercial loss

Documentary Controls and Confidentiality

Approved and vetted versions of all legal agreements, contracts, and documentation should be centrally controlled, backed up off-site, and maintained. Version control of agreements and documents must be managed to ensure that changes to agreements and documentation are managed and that the same terms and conditions apply to all contracted service providers/third parties and employees where applicable. This is particularly important where standardised letters, house/conduct/management rules, documentation, templates, and agreements are maintained or accessed via a network, website, common drive, or from a central server/database.

Electronic changes to contracts and documentation and marked-up versions need to be carefully controlled and vetted before signing.

Digital records need to be well indexed and filed in an e-library/repository to enable easy retrieval.

Record keeping should include regulatory registrations, constitutions, association membership issues, audited financials, management accounts, budgets, levy records, minutes of trustees/director's meetings, AGMs, SGM's, prevailing conduct/management rules, employee appraisals/disciplinary documents, security incident records, supporting invoices, contracts, and agreement documentation, circulars to owners as well as letters and correspondence with owners around particular issues such as levy arrears, legal action and breaches of conduct rules, etc.

Reliance should not only be placed on managing agents, lawyers, or accountants for the retention and maintenance of records and documentation.

- All contracts and agreements relative to the Community Scheme should be formalised and signed.

- All the Community Scheme’s original contracts, key documents, and agreements should be stored in fire-proof cabinets, storerooms, or secure off-site facilities.
- Soft copies of documents should be backed-up and stored off-site or in the cloud.
- Documentation should also be stored for the required periods in terms of regulatory requirements e.g. in terms of taxation requirements.
- Documents and agreements should be properly filed and indexed so that they can be easily retrieved.
- Contracts, house/conduct/management rules, and agreements should be regularly reviewed by attorneys to ensure fairness, applicability, and enforceability.

The storage of personal records of owners, sensitive data, and related confidential information requires a specific focus and is subject to the Protection of Personal Information (POPI) Act.

This Act requires a Community Scheme to:

1. Appoint an Information Officer and Deputy Information Officer.
2. Pass and sign the resolutions to confirm the appointments.
3. Register the Community Scheme with the Information Regulator and pay the requisite fees.
4. Register the persons appointed.
5. Prepare POPI manuals and get them completed for signature by the Information officer and then lodge them with the Information regulator.

Non-compliance with data protection regulations could cause considerable embarrassment and cost a Community Scheme significant amounts in fines as well as have an enormous impact on its reputation if owner/tenant/customer confidential information is compromised.

The Community Scheme and its Office bearers could be subject to legal action if customer confidential information is compromised, and damages are incurred. Community Schemes may only use personal data as permitted by individuals after consent/opt-in.

Financial Records and Related Statutory Compliance

Financial accounts and statements must accurately and fairly reflect the financial position of the Community Scheme. Ideally, these should be audited by objective reputable third parties. The accuracy and integrity of financial accounts are integral to trust, an extension of credit, supplier support, owner/investor confidence, and regulatory compliance.

Banks and lenders rely on the accuracy and credibility of accounts for their continued support. Lending covenants and credit limits are often based on the audited financials of a business or organisation. Defaults in these can often trigger support being withdrawn or credit lines being cut.

Highly regulated industries such as Community Schemes, are required to file regular audited accounts with authorities and controlling bodies.

Accounts need to be current and comprehensive for quality business decisions to be made based on them. Several compliance requirements e.g. submission of returns and taxation are centred around the provision of audited accounts.

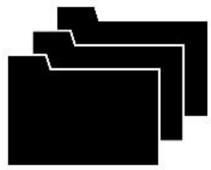
It is good practice to maintain comprehensive supporting documentation and records in support of accounts. Ethical accounting practices should be maintained.

Money laundering practices have far-reaching global implications for parties and in addition to fines and asset confiscation, parties face criminal charges. For this reason, it is important that the credentials of all service providers are established and verified before you undertake business with them. Knowing your customer or KYC needs to be an entrenched process. Not knowing the ownership details of suppliers or contractors with whom you are in a relationship with places the Community Scheme and its Office bearers at heightened risk.

The same applies to doing business with known politically connected or influential parties or where parties are not the true/direct beneficial owners of a transaction.

Approved and vetted versions of all legal agreements and documentation should be centrally controlled and maintained. Version control of documents must be managed to ensure that changes to standard documentation are managed and that the same terms and conditions apply to all customers, third parties, and staff. This is particularly important where documentation, templates, and agreements are maintained or accessed via an intranet, network, website, common drive, or central server/database.

You need to have strong audit trails, documentary controls, and archiving/record keeping in support of all transactions (e.g., signed contracts and agreements, confirmed orders, invoices, statements, credit notes, delivery notes, discounts, cash receipts, proof of payment, bank statements and/or, proof of delivery. These become important if there are disputes and you are required to litigate.



From a business continuity and disaster recovery perspective, financial documentation must be filed and archived both physically and as part of data backup. Given the turnover of Office bearers changes in estate management, changes in Accountants, and changes in Managing Agents, maintaining the continuity of the financial records for the Community Scheme is essential. The same applies to the minutes of meetings – AGMs/SGMs, conduct/house/management rule amendments, disciplinary records, fines, budgets, maintenance plans, history of levies, constitution changes, etc. The HelpOurScheme Members Repository is an ideal place to store general and Community Scheme-specific documentation both for safe record keeping and continuity.

Archiving and off-site backup are essential disciplines. Records need to be well indexed and filed in an e-library/repository to enable easy retrieval. Sensitive records and documents should be under dual control.

- All contracts and agreements relative to the Community Scheme should be formalised and signed.
- All your original contracts, key documents, and agreements should be stored in fire-proof cabinets, storerooms, or secure off-site facilities. These might be the offices of Managing Agents, Trustees/Directors offices, Estate offices, or Accountants/Lawyers.
- Soft or scanned copies of documents should be backed-up and stored off-site or in the cloud.
- Documentation should also be stored for the required periods in terms of regulatory requirements e.g. accounting records and source documents in terms of taxation requirements, and contracts from a potential litigation point of view.
- Documents and agreements should be properly filed, stored, and indexed so that they can be easily retrieved (hard and soft copies).