

High court warning for estates and complexes in South Africa



South Africa's courts are increasingly cracking down on unlawful decisions by community scheme boards.

Routine decisions taken by trustees and directors in South Africa's estates, sectional title schemes, and homeowners' associations are no longer being treated as harmless administrative matters.

This is the feedback from attorney Johlene Wasserman, Director of Community Schemes and Compliance at VDM Incorporated.

She said the courts are increasingly finding that everyday governance decisions are unlawful, which exposes schemes to serious financial risk and places trustees and directors in the firing line personally.

"Actions that were previously considered low-risk are suddenly being tested against strict legal standards," Wasserman said, who warned that the consequences are often immediate and far-reaching.

Wasserman, a governance specialist and former senior official at both CSOS and the Property Practitioners Regulatory Authority, added that community schemes have entered a period of heightened legal vulnerability.

She explained that the sector is under unprecedented pressure as legal scrutiny intensifies.

“Directors and trustees are increasingly being blindsided by risks they never realised were embedded in their everyday decision-making. Yet many of these conflicts can be avoided entirely with stronger governance oversight.”

Importantly, she stressed that most disputes are not driven by bad faith. “They arise because governance failures go unnoticed—sometimes for years—until they erupt into costly, damaging conflicts.”

By the time problems surface, the financial and emotional toll on schemes and their leadership can already be severe.

Recent High Court judgments and CSOS rulings show that trustees and HOA directors are now being held to far higher standards of accountability than in the past.

Courts are closely interrogating whether trustees and directors were properly appointed and whether decisions were taken within their lawful authority.

They are also looking at whether fiduciary duties were breached and whether governance structures comply with the Sectional Titles Schemes Management Act or the relevant HOA governance provisions.

“This intensified scrutiny is reshaping how authority, compliance, and fiduciary responsibility are being interpreted across community schemes,” Wasserman said.

Be prepared



Johlene Wasserman, Director of Community Schemes and Compliance at VDM Incorporated.

Wasserman also noted that a common mistake is that schemes only seek legal help once matters have already escalated.

“Most schemes only call lawyers when levies are challenged, CSOS applications are lodged, or trustees and directors are facing allegations of misconduct,” she said.

“By the time lawyers are called in, the question is no longer how to prevent the problem—it’s how to contain the damage. And that’s the most expensive and stressful point to intervene.”

She urged schemes to adopt governance risk auditing—a preventive approach widely used in highly regulated sectors such as finance, education, and corporate governance.

These audits assess the validity of trustee and director appointments, compliance with statutory obligations, fiduciary risk exposure, the enforceability of rules and exclusive-use arrangements, and financial decision-making from a compliance perspective.

She added that modern developments have made governance far more complex. Mixed-use properties, layered schemes, retirement developments, and unresolved developer legacy issues all require specialised legal insight.

At the same time, residents are increasingly willing to challenge decisions they believe are unfair or unlawful.

This means trustees and directors must move beyond informal practices and accept that “every decision may one day be tested”.

While governance is still seen by some as a box-ticking exercise, Wasserman argued that this mindset is outdated and dangerous.

“Lawful governance is the foundation of trust, stability, and cohesion. Trustees and directors don’t fail because they don’t care; they usually fail because nobody shows them where the real risks lie.”