

Minutes

Kevin – ODCE – Corporate Governance

Slide

- There has never been an AGM held and I am an owner for the last 5 years. What should I do?
- I wanted to sell my apartment however I found out that my Management Company was struck off 6 months ago. What should I do?
- My Management Company was struck off 4 years ago. How do I go about having the company reinstated and how much roughly would it cost?

There has never been an AGM held and I am an owner for the last 5 years. What should I do?

You should have an AGM once a year - it's against the law not to. You must be informed that the meeting is taking place and given 21 days notice of it. You are entitled to see the company accounts before the meeting as well. If this has not happened you can complain to the Office of the Director of Corporate Enforcement (O.D.C.E.) who can ensure companies comply.

I wanted to sell my apartment however I found out that my Management Company was struck off 6 months ago. What should I do?

Your solicitor should not let this happen. You are going to have to pay a late filing penalty (€100). As it is within one year you can ask the Companies Registration Office to re-register the company.

You will need to include audited accounts etc with your request. But you need the Directors to do this, as a shareholder you don't have the power to do this.

You can also report the company if it's been struck off. If the Directors are reluctant to help it may be worth remembering that they personally can be banned from holding any other Directorships for five years. This can be especially effective when dealing with Developers who are Management Company Directors as it will affect their ability to conduct their own personal business (in which they are likely to be Board Directors).

My Management Company was struck off 4 years ago. How do I go about having the company reinstated and how much roughly would it cost?

This is a much more serious issue. After one year, you will have to go to the High Court to get your company registered. It's a messy and expensive process. Your apartment isn't sellable until this is resolved. You will need to audit all the years outstanding and sort out accounts. This will probably involve high audit fees, and legal fees. At least a five figure sum will be needed to resolve this issue. Other company members may be unwilling to pursue this in which case you will need to resolve yourself and pay personally for all the costs. Log onto www.cro.ie to check to see if your company has been struck off.

Supplementary comment from Solicitor: Legal Costs for reinstating struck off Management Companies within 12 months are manageable. But for those struck off over one year - it's a lengthy process and costly. You cannot do it for less than €10k.

Questions from the Floor

Q: I need to file our accounts by March 2008, 2 out of 3 developer Directors have been sacked and Owners have now taken over the Board. But our Managing Agent won't release records until they get their fees paid. What should we do?

A: *These records are your property – they do not belong to the Management Agent and therefore they cannot deny you access to them.*

The solicitor added - *If they refuse to hand them over, you need to engage a solicitor. You need accounts before you can do anything else so it's imperative you regain them. You own them and should control them.*

Q: The Management Board in my development are a problem. They refused to tell us how many legally appointed Directors we have. What can we do?

A: *The CRO has a register of all Company Directors. It might not be an accurate record but it's a start. You should know where the company registered office is. It's a legal requirement that a register of Directors is held at this address. So you could try that avenue. If you still have no joy, this company can be reported to the ODCE. www.odce.ie*