

Managing property properly

Some Aspects on the Annual General Meeting – Part Three

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In my previous newsletters I discussed some important aspects on the annual general meeting (“the AGM”). This included the quorum requirements and the chairperson, where I covered Prescribed Management Rules 57 – 59. In this third and final AGM contribution, I will deal with voting at the AGM.

Voting procedures

PMR 60 deals with the voting procedure at an AGM. At any general meeting a resolution put to the vote of the meeting is decided on a show of hands, unless either prior to or on the declaration by the chairman of the result of the show of hands, a poll is demanded by any person entitled to vote at such meeting. If a poll is demanded, a declaration by the chairman that a resolution has on the show of hands been carried, is conclusive evidence of that fact, without proof of the number or proportion of votes recorded in favour of or against such resolution. A demand for a poll may be withdrawn.

Poll procedure

PMR 61 deals with a vote taken on a poll. A poll, if demanded, is taken in such a manner as the chairman thinks fit, and the result of the poll is deemed to be a resolution of that meeting. A poll is a vote by value, in accordance with PMR 63, as opposed to a vote by number or show of hands in accordance with PMR 62.

Voting by number

PMR 62 deals with the value of votes by a show of hands. On a show of hands, the owner or owners of a section, or proxy if the owner is a juristic person, shall have one vote for each section owned, provided that the chairman shall be entitled, in his discretion, to change the manner of voting to one by poll and not by show of hands

Voting by value

PMR 63 deals with the value of votes for special or unanimous resolutions as well as on a poll. For the purpose of a unanimous or special resolution (with or without a ballot), or on a poll, the value of the vote of the owner or owners of a section shall be reckoned in accordance with a determination made in terms of section 32(4) of the Act or, in the absence of this determination, in accordance with participation quotas.

Suspension of vote

PMR 64 deals with the circumstances in which an owner is not entitled to vote. An owner is always entitled to vote on a special resolution or unanimous resolution. An owner is not entitled to vote at any general meeting if any contributions payable by him in respect of his section and his undivided share in the common property have not been duly paid; or he persisted in breach

of any of the conduct rules, and has persisted in the breach despite written warning by the trustees or managing agent to refrain from breaching such rule. It is important to note that any mortgagee is entitled to vote as such owner's proxy at any general meeting, even though the owner is in arrears with his or her levies.

Voting by trustees

PMR 65 deals with voting by a trustee for a beneficiary. When an owner of a section is as such a trustee for a beneficiary, he shall exercise the voting rights in respect of the section to the exclusion of persons beneficially interested in the trust, and such persons shall not be entitled to vote. The situation contemplated in this rule applies, for example, when a unit or exclusive use right is registered in the name of a trust, and when such a property falls into an insolvent or deceased estate. The trustee or executor must provide the chairperson of the meeting with proof of his or her appointment, preferably in the form of a certified copy of the letter of appointment issued by the Master of the High Court. In this situation the trustee or executor could appoint one of the beneficiaries, or any other third party, as a proxy.

Joint voters

PMR 66 deals with joint voters. When two or more persons are entitled to exercise one vote jointly, that vote must be exercised only by a person (who may or may not be one of them) jointly appointed by them as their proxy. Where two or more persons are entitled to exercise one vote jointly, any one of them may demand a poll.

Proxy voters

PMR 67 deals with proxy voters. Votes at a general meeting may be cast either personally or by proxy, whether on a poll or on a show of hands. A proxy must be appointed in writing under the hand of the appointer, or his agent duly appointed in writing, and must be handed to the chairman prior to the commencement of the meeting. These provisions do not apply in the case of any proxy created and contained in any registered mortgage bond, if such mortgage bond is produced at the meeting. A proxy need not be an owner, but must not be the managing agent or any of his or her employees, or an employee of the body corporate.

Footnote from Compeg:

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