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# How to Take Trustee Decisions via Email

By Jennifer Paddock

## **Trustee decisions can be taken in one of two ways:**

- 1) At a **meeting** of trustees, **by majority vote**.
- 2) By **round robin resolution** – a **written** document **signed by all the trustees in South Africa** at the time, but not less than the number required to form a quorum (ie. 50% of all trustees at the time) and not less than 2.

The Sectional Titles Act and prescribed rules do not specifically state that trustee decisions can be taken via email, but in practice this is how many trustees choose to make decisions.

The trap that many trustees fall into is they think that they can take decisions on email by majority vote... WRONG!

Trustee decisions can be taken by majority vote at a *meeting* of trustees, but a series of separate email exchanges is not considered a meeting in terms of the South African common law, which requires a meeting to be synchronous (existing or occurring at the same time).

Therefore, the only way for trustees to properly take decisions over email is to consider each decision taken this way as a round robin resolution of the trustees.

This means that the requirements for a round robin resolution of the trustees needs to be met:

- 1) **A written document:** In terms of section 12 of the Electronic Communications and Transactions Act, a requirement that a document or information be in writing is met if it is in the form of an email. So this requirement is not a problem.
- 2) **Signed:** Section 13 of the Electronic Communications and Transactions Act provides that where the signature of a person is required by law, that requirement is met if an advanced electronic signature is used. If the trustees don't have advanced electronic signatures, a proposed resolution can be emailed to all trustees and they can print, sign by hand and fax/scan and email this back.
- 3) **By ALL the trustees present in the Republic:** All trustees present in South Africa must "sign" this "written" document ie. write in their email that they are in favour of a particular decision being taken. This is the problematic requirement because it means that approval by the majority of trustees in the country is not sufficient. ALL the trustees in SA need to agree via email before this requirement is met.
- 4) **Being not less than the number required to form a quorum (ie. 50% of all the trustees at the time) and not less than 2:** All the trustees in the country must total at least 50% of the total number of trustees for the time being, and that number must not be less than 2 for this requirement to be met.

So there you have it.

If the trustees of a scheme want to take decisions via email they should ensure that they meet all four of the requirements for a trustee resolution taken by round robin procedure as set out above.