

Managing property properly

The Chairman – King of the castle or just another knight at the round table?

A phrase commonly used by many a rule breaker and approval seeker in sectional title is: “but the Chairman said it’s OK!” When interacting with some owners and tenants living within sectional title schemes the picture often painted of the chairman is one of a powerful leader, mighty decision-maker and almost Hollywood-like “ruler over all the land” (maybe not in the kingdom, but certainly within the sectional title scheme). In this article, I will unpack just how accurate a portrayal this picture is. Is it based wholly or even partially on the truth, or does it quite simply depict a fictional character?

As a point of departure, let’s consider 10 responsibilities placed squarely on the chairman’s shoulders by Prescribed Management Rule 18 (“PMR”) of Annexure 1 of the Regulations to the Sectional Title Schemes Management Act. According to this rule, the chairman must:

1. chair the general meeting (unless otherwise resolved by the members at the meeting);
2. maintain order, regulate the orderly expression of views and guide those in attendance through the business of the meeting in accordance with the common law of meetings;
3. make sure that all motions and amendments proposed by those in attendance are within the scope of the notice and powers of the meeting;
4. make sure that the scheme’s management and conduct rules, minute books and other documentation relevant to the items of business on the agenda, are available at the meeting;
5. act fairly, impartially and courteously to all those in attendance at the meeting;
6. ensure that all those entitled to speak are able to express their views without unnecessary disturbance or interruption;
7. adjourn the meeting if it is not able to complete or continue with its business;
8. make decisions on points of procedure;
9. settle disputes by giving rulings on points of order; and
10. Surrender the chair to a temporary chairperson whenever he/she wishes to engage in the debate of any item of business.

Upon reading these responsibilities, one cannot help but notice the emphasis on fairness and impartiality throughout. Then, as if to italicise these core values, the legislature expressly prohibits the chairman from:

- attempting to influence members’ views on any item of business from the chair; and
- Disclosing in advance of the casting of votes how he/she intends to vote on any item of business.

The latter brings us to the matter of voting and the question that so often arises – does the chairman have the same voting power as his fellow trustees or does he have a veto right?

According to PMR 14(1)(b) and 14(2) a motion at a trustee meeting must be determined by a resolution adopted by the majority of the trustees present and voting. Each trustee, including the chairman, is entitled to **one vote**. The only instance where the chairman will have one additional vote is if the votes cast by all the trustees result in a deadlock. Therefore, the chairman has no veto right. He does not have the ability to overrule his fellow trustees. The only power he does have is that of tie-breaker and this power is strictly reserved for trustees' resolutions. When it comes to votes cast by the members in order to pass ordinary, special or unanimous resolutions the chairman's vote carries the exact same weight in number as that of any other member.

With this being said, the aim of this article certainly is not to undermine the role of the chairman within the sectional title scheme's management structure. In fact, from the ten responsibilities set out above, it is abundantly clear that the chairman's role is one of extreme importance. The aim of this article is rather to emphasise that the chairman's role should be to see that meetings are run in a manner that is procedurally fair, that all facts are considered without bias and that ultimately, democracy reigns. Therefore, the picture one should have of a chairman should not be that of a power hungry and authoritative king on his throne, but rather one of a responsible and fair leader, discussing and making decisions together with his fellow knights at the round (boardroom) table.

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