

## *Managing property properly*

### **Invalid Trustee Consent**

In our experience, most permissions given by trustees are not valid. The Sectional Titles Act, 1986 ('`the Act`') and the prescribed rules specify that trustee consent is required for several processes and that consent must be in writing. These written consents must be signed by two trustees or one trustee and the managing agent, but are dependent on a trustee resolution authorising the consent.

Be binding on the body corporate, a document must be signed by two trustees or by one trustee and the managing agent. The sole exception to this requirement is the levy clearance certificate, which can be signed by two trustees or by the managing agent alone.

The purpose of this rule is to ensure that a single trustee is not authorised to sign any document that might materially affect the body corporates interests. This provision is an example of the '`two man`', or '`four eyes`' principle. It is important to understand this basic purpose, so that trustees can identify the documents that really need two signatures.

There is a distinction between the decision that authorises a contract or other binding agreement and the actions, such as signatures, that set it in motion. A resolution of the trustees may be the decision that authorises the agreement, but it is the signing of the contract document that brings it into operation. While it seems difficult to see why it is necessary to have two authorised people sign a binding document when the correct process of authorising the undertaking of a body corporate obligation or the conclusion of a body corporate contract has been followed, this provision stops one individual purporting to enter into a contract or giving a consent or permission that has not been approved by the trustees generally.

The most obvious documents that fall into the category of those binding on the body corporate are contracts and cheques. But there are other documents that bind the body corporate in significant ways that are quite common and not nearly so obvious. Examples are consents for keeping a pet or installing a Wendy House in an exclusive use garden.

Once written consent has been given, the community has to live with the consequences and it is common for members who don't like the consequences to challenge the validity of the consent. As long as the trustee decision was based on a proper application of their minds in the light of all the relevant circumstances and the consent document is signed as required, challenges are unlikely to succeed.