HOW THE TRUSTEES SYSTEM WORKS: TRUSTEES DECISIONS

The Sectional Titles Act, 1986, provides that the functions and powers of the body corporate are performed and exercised by trustees. The practical necessity for having an executive committee to make the day to day decisions of sectional title co-owners is borne out by the frequent complaint that owners do not attend meetings. If owners are reluctant to attend the AGM, where vital decisions for the coming financial year must be made, imagine the difficulty getting them to meet and make routine decisions. Hence the need for a smaller group of trustees charged with overseeing day-to-day management.

However, there are some decisions that the trustees can't make. They can't make any decision that is required to be taken by resolution at a general meeting. The body corporate is, after all, the policy maker, the final decision maker in a sectional title scheme. Its members, being all the owners, must take all the really important decisions. Some of these decisions are so important and affect the scheme so fundamentally that the Act even allows them to be made outside a meeting, by written resolution.

And then, strangely, there are the decisions reserved for trustees. Both the Act and the prescribed rules allow only the trustees to make certain decisions. There is no mechanism allowing the body corporate to raise a levy, either the annual levy or a special levy. It is also only the trustees who can give certain consents, big ones like consolidating and subdividing sections, and small ones – although with a greater potential for causing unrest among owners – like keeping pets and erecting TV antennas.

Whatever the trustee decision, it must be made by the trustees acting together, either at a meeting or taken as a written resolution. While it is possible for the trustees to delegate responsibility for specific tasks to individuals, because of the requirement that two trustees – or a trustee and the managing agent – must sign any document that creates an obligation on the part of the body corporate, those individuals can't by them make and implement important decisions.

The trustees are also specifically and personally required to act in good faith and for the benefit of the scheme as a whole. They are required to avoid material conflict of interest between themselves and the body corporate and may not take part in any decision concerning a body corporate contract or litigation if they have any personal interest in the matter.

So the trustees need to have a good working knowledge of the Act and the scheme's management and conduct rules, usually based closely on those prescribed, to know what decision can only be taken by owner agreement, what they can determine at their meetings and what tasks they can delegate to a single trustee.

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