

## *Managing property properly*

### **Muddled Meetings: Are the resolutions valid?**

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Confusion, uncertainties and disputes about quorums, proxies and voting procedures are not rare episodes at general meetings. Take the following course of events as an example:

During an annual general meeting disputes arise regarding the validity of certain proxies and because some attendees objected that they had not been notified of the meeting and had not received the documents attached to the notice.

These owners, led by a certain Mr Jeremiah Jackson, feel that the meeting is null and void and should be adjourned and postponed to a later date. Others feel that the meeting should continue. The chairman decides to proceed with the meeting and the first business is concluded. Subsequently the aggrieved objectors leave the venue, but the meeting is nevertheless continued with.

The absence of the absconders results in a quorum no longer being present. At this point the managing agent points out that the meeting is unlawful, not being in compliance with the quorum requirements of the rules, and he also leaves.

Irrespective of the above, trustees are elected, the budget approved and all other business of the annual general meeting is dealt with, as per normal.

The objectors subsequently maintain that the resolutions passed at the meeting are invalid and refuse to pay their levies. They furthermore dispute the authority of the newly elected trustees. As a test case the trustees take Jeremiah Jackson to Court for his unpaid levies. What will happen there if the magistrate is up to speed with sectional title law?

Let us first look at the question regarding notice. Management Rule 54(5) states that *inadvertent* omission to give notice, or failure to deliver the relevant documents, will not invalidate the proceedings. If Jeremiah wishes to defend himself successfully, he will accordingly first have to prove that the omission was deliberate and not inadvertent - a very difficult burden of proof.

At the meeting it had been within the powers of the members to resolve that the meeting be adjourned and postponed. But this would have required a majority decision. No such motion was proposed and the matter was not submitted for voting. Such proposal, if made, would have required the support of the majority of the meeting in order to be valid.

What about Jeremiah and others having left the meeting and a quorum no longer being present?

Here too, Jeremiah and company were at the short end. Upon reading Management Rule 57(1) he should have noticed that the requirement is that a quorum must be present '*at the time when the meeting proceeds to business.*' This provision prevents disgruntled owners from undermining the proceedings by leaving. The resolutions adopted at the meeting with abbreviated attendance, including the election of the trustees and adoption of the budget were accordingly valid and enforceable.

The trustees should accordingly succeed with their action against Jeremiah and this should hopefully motivate the other recalcitrants to pay their levies and comply.

The managing agent may have to field some awkward questions from the trustees.

Managing agents and trustees will be concerned to see that the above situation will play out entirely differently if the new proposed Management Rules are adopted as is. New Management Rule 15(8) states that –

*Failure to give proper notice of a general meeting to a person entitled to receive notice does not invalidate a vote taken at the meeting, as long as the body corporate made a reasonable attempt to give the notice.*

This provision swings the burden of evidence to the trustees, who will now have to prove that they had made a reasonable attempt to give notice. It is also a substantially heavier burden because mere accidental omission will not be sufficient to obtain a judgment against Jeremiah. There is a huge difference between 'inadvertent omission' and '*reasonable attempt.*'

The next sub rule 15(9) is also not of much assistance:

*Voting at a general meeting may proceed despite the lack of notice as required by this rule, if all persons entitled to receive notice, in writing waive their right to notice.*

This provision is clearly not aimed at a situation such as with Jeremiah, who will obviously refuse to sign.

These proposed rules, if adopted, will make things at meetings much harder for trustees. Taken together with the quorum problems which are sure to arise due to proxies being limited to two, problems such as presented by Jeremiah may become insurmountable.

### ***Footnote from Compeg:***

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