

Managing property properly

Three ways for trustees to take resolutions

By Carryn Melissa Durham

Trustees, as the executive of the body corporate, are tasked with the day-to-day management of the scheme. This means that they need to **meet regularly to discuss governance issues and take resolutions**. As trustees are mostly volunteers who offer their time for free and who have their own families and jobs to consider, it is often difficult for trustees to meet regularly. Furthermore in schemes where units are owned for investment purposes, or as holiday accommodation, the trustees usually do not reside in the scheme or close to each other.

In this article, I address the issue of how trustees can take resolutions. Prescribed management rules ("PMRs") 15 to 24 deal with meetings of trustees and the rules provide two ways for trustees to make decisions:

- at a **meeting** of trustees by majority vote, or
- in **writing** by round robin.

In this blog post, **I propose that there is a third manner** for trustees to come together and make decisions. The trustees could attend a meeting and **take a resolution by electronic participation**.

1. A meeting attended in person by the trustees

The trustees may give notice to convene a meeting, meet together to deal with business, adjourn and otherwise regulate their meetings as they see fit. Such a meeting can be **convened by any trustee by giving all the other trustees not less than seven days' written notice**. The notice must **specify the reason** for calling the meeting. It is not necessary to give notice of a meeting to any trustee who is absent from the Republic (South Africa) at that time, but notice must be given to his/her alternate if he/she has appointed one. The quorum for such a meeting is 50% of the number of the trustees, but **not less than two**. All matters are **determined by a majority of the votes** of the trustees who are present and voting. The trustees **must keep minutes of their meetings and include a record of the resolutions** taken at the meeting in the minute book that is kept for this purpose.

2. A round robin resolution taken in writing

In terms of PMR 24, a trustee resolution can be taken in **writing**. It must be **signed by all the trustees** (who are present in South Africa), but must **not be taken by less than two trustees**. Such a resolution is valid and effective as if it had been passed at a meeting of the trustees duly convened and held. There are therefore **four requirements** for such a resolution to be valid:

- It must be contained in a written document
- It must be signed
- By all the trustees present in South Africa
- Being not less than the number required to form a quorum (ie. 50% of all the trustees at the time), and not less than two

The **drawback to this provision** is that it **excludes trustees who are not present in South Africa from voting**. This is not in line with the fact that the internet and email make it possible to take a written resolution from anywhere in the world. A second drawback is that a written resolution **effectively requires the support of all the trustees and not just the majority**, which is difficult to obtain.

3. A meeting held by conference call

A meeting is a gathering of people arranged to discuss various issues that affect them. A **meeting need not occur physically in person**, as long as the **attendees can be identified and can interact in real time**. Trustees could meet and make decisions by conference call, for example by Skype. The conference call would be **considered a meeting, and not a decision taken in writing by round robin**. Therefore, the decision would be taken by majority vote, and would not require all trustees to vote in favour, as is the case for resolutions taken by round robin. This method makes it possible for all trustees to **meet from the comfort of their home**. Even more convenient is the fact that trustees could **join the meeting from anywhere in the world and this would then require notice to be sent to all trustees**. In order for this to be achieved, PMR 15(1) should be amended to read that notice of a meeting of trustees to be held by conference call should be given to all trustees, and not just trustees who are present in South Africa.

Depending on the circumstances of your scheme it makes sense to use technology to the body corporate and trustees' advantage. Therefore, I recommend that the scheme's management rules should be amended by unanimous resolution of the body corporate to include provisions that allow **trustee meetings to be held by conference call, and for written resolutions to be taken by email**.