

Managing property properly

Proxies – What’s changed?

This article will look at one of the most important changes for general meetings held in sectional title schemes, namely the introduction of the limitation on the number of proxies that may be held by one person. It is often the case that the number of proxies, received by the body corporate prior to the commencement of a general meeting, can mean the difference between whether the quorum requirements of the general meeting will be met, or whether the meeting will need to stand adjourned for lack of a quorum, which can sometimes be an administrative nightmare, and have a negative effect on the body corporate should it urgently require that resolutions be passed.

A proxy is a person who has been appointed by a member to attend, speak and vote on their behalf at a general meeting of the body corporate. Members appoint proxies for different reasons, most often because they are not able to attend the general meeting in person. Depending on the nature of the general meeting and the resolutions to be tabled for member approval, a member may require a representative, such as an attorney, to attend the general meeting on their behalf, to motivate why the resolution/s tabled for approval should succeed or fail. There is no requirement that a proxy be a member, but it is specifically provided in the prescribed management rules, that a proxy must not be the managing agent of the scheme or any of its employees, or an employee of the body corporate.

Section 6(5) of the Sectional Titles Schemes Management Act 8 of 2011 (“the STSMA”) provides that a member may be represented in person or by proxy at a general meeting, but that one person may not act as proxy for more than two members of the body corporate at the same general meeting. It is important to point out that as this limitation on the number of proxies which may be held, is a requirement of the STSMA, a scheme’s rules cannot contain a rule to the contrary. In practice, this limitation is often the reason why the quorum requirements cannot be met.

It is the responsibility of the member to ensure that the person they appoint as their proxy is willing and able, to act as proxy, and attend the specified general meeting on the member’s behalf. In this regard, one of the other big changes to the provisions relating to proxies, is the introduction, in Annexure 3 of the Regulations to the STSMA, of a prescribed proxy form, known as “Form C”. This form must be completed by both the member, who appoints the proxy, and the proxy holder, who accepts the appointment. Once the appointment has been accepted, it is the responsibility of the proxy holder to notify the member if they are no longer willing or able to act as proxy. If they fail to do so, the member will not be represented at the general meeting held, sometimes without being aware of the proxy holder’s failure to attend. However, if the member is made aware

prior to the general meeting, they will need to appoint a new proxy holder, who will need to accept the appointment, and notify the body corporate accordingly.

The proxy form must be submitted in its prescribed form, which means that the information contained on the prescribed form must be completed and provided to the body corporate. It is our suggestion that bodies corporate add to the form, that is sent out with the notice calling the general meeting, a provision allowing for substitution of a proxy holder. This means that the member can appoint an alternative proxy holder in the event that the original appointed proxy does not attend the general meeting. If this route is followed, it is recommended that the member complete the form to include instructions to the proxy holder so as to ensure that their votes are cast as intended, to prevent a situation of “broken telephone”.

The prescribed form also makes provision for the appointment of the proxy to apply to more than one, or all general meetings of the body corporate. If such a proxy form is completed by a member, it is the responsibility of the body corporate to keep the appointment on record in the same fashion as they would for a Power of Attorney. However, it may be a good idea for the appointed proxy to take a copy of the completed form to each general meeting they are appointed to attend.

In terms of the prescribed management rules, the completed and signed proxy form must be delivered to the body corporate 48 hours before the time of the general meeting, but it can also be handed to the chairperson before, or at, the start of the meeting.

Article reference: Paddocks Press: **Zerlinda van der Merwe** is an admitted Attorney of the High Court, specialist Sectional Title Attorney (BA, LLB, LLM), Zerlinda brings a wealth of experience and forms part of the Paddocks Private Consulting Division.