

## *Managing property properly*

### All Things "Special" in Sectional Title

I often receive questions on Facebook and on the Paddocks Club discussion forum relating to **special general meetings, special resolutions and special levies**. These three sectional title concepts are often misunderstood and confused with one another.

Some of these **misinterpretations** are:

1. That a special resolution is required to authorise a special levy.
2. That a special resolution is taken at a special general meeting.
4. That special levies can only be raised at special general meetings.

**Prescribed Management Rule 53** deals with special general meetings (SGMs). According to this rule trustees may convene a SGM whenever they feel it is necessary.

The trustees must call a SGM if requested in writing to do so by either owners entitled to 25% of the total of the participation quotas of all sections. They are also **obliged to call such a meeting** if requested in writing to do so by a person who holds registered mortgage bonds over not less than 25% of the total number of units in the scheme.

The trustees must call the meeting **as soon as reasonably possible** in the circumstances. They are not entitled to call the meeting and set the date unreasonably far into the future, so as to defeat the purpose of the meeting. Only if the trustees remain in breach of this obligation or attempt to frustrate it are the owners entitled to call the meeting themselves. If the trustees fail to call a SGM within 14 days of such a written request, the owners or bondholder concerned may call the meeting.

**Ordinary, special and unanimous resolutions** can be taken at special general meetings. It is important to note that 30 days' notice of the SGM must be given if special resolutions are proposed.

**Section 1 of the Sectional Titles Act** defines a special resolution, as a resolution passed by a majority of not less than three-fourths of the votes (reckoned in value) and not less than three-fourths of the votes (reckoned in number), of members of a body corporate who are present or represented by proxy or by a representative recognized by law at a general meeting. A special resolution can be taken at a special or general meeting.

There are the misconceptions that in order to take a special resolution there needs to be a **quorum of 75% of owners present or represented**. **There is no raised quorum requirement for a special resolution**, and only a normal quorum is required. All owners are entitled to vote for and against a special resolution.



The **notice that is required** to convene a meeting to vote on a proposed special resolution is 30 days' written notice, specifying the proposed resolution. Section 1(2) of the Act sets out that the notice is deemed adequate if it has been delivered by hand or it was despatched by pre-paid registered post to the address of a member's unit in the relevant scheme, or to such other address as a member may have indicated in writing for the purposes of such notice. **PMR 54(7)** allows for a shorter notice period if, in the opinion of the trustees, it is necessary due to the urgency of a matter or due to the specific nature of a matter. When a special resolution is on the agenda of a special or general meeting, the notice convening the meeting must specify the proposed resolution, failing which it cannot be discussed or voted on at the meeting.

A special resolution can also be agreed to in writing by at least 75% of all the members of a body corporate (reckoned in number) and at least 75% of all such members (reckoned in value) personally, by proxy, or by a representative of any such member recognized by law.

**Both the Sectional Titles Act and the prescribed management rules** leave the decision to raise a special levy to the sole discretion of the trustees. A special levy is not raised by a special resolution of the body corporate at SGMs. Section 37(2A) states that a special contribution becomes due on the passing of a resolution in this regard by the trustees. **PMR 31(4B)** states that the trustees may, when necessary, make special levies upon the owners. The trustees also have the discretion as to whether levies and contributions may be made payable in one sum or by such instalments and at such time or times as the trustees shall think fit.

**There are two requirements for the trustees to raise a special levy.** The first condition is contained in **PMR 31(4B)**, and states that the special levy must be necessary. A special levy cannot be raised for an expense that can wait for inclusion in the budget for the next financial year. The second condition is contained in section 37(2B), and states that a special levy cannot be raised to pay an expense that was already included in the budget approved at the last AGM. A special levy should not be used to pay a maintenance expense because maintenance must be included in the budget.

In terms of **section 37(2A)** any special contribution may be recovered by the body corporate by action in any competent court (including any magistrate's court) having jurisdiction, from the persons who were owners of units at the time when such resolution was passed. If a special levy is running at the time a unit is sold, the selling owner must complete the payment of the special levy before transfer of the unit to the new owner. This would be a condition for the issue of a levy clearance certificate. Article reference: Paddocks Press:

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

*The views in this article are those of the author and do not necessarily represent the views of Compeg. Don't forget, you can visit our website to check your latest statements and as trustees, you can view levy rolls, disbursement statements and investment statements*