

Topic 3 - Holding a general meeting and voting

Quorum and meaning of "voter"

A **voter** for a general meeting is an individual who is a lot owner, or the representative of a lot owner, and whose name is entered on the body corporate roll. A voter may also be a nominee for a corporate owner; a subsidiary scheme representative; or a nominee of a corporation which itself is entered on the body corporate roll as the representative of a lot owner. (SM. S83(1))

There must be a **quorum** present in order to hold a meeting. A quorum for a general meeting is at least 25% of the number of **voters** for a meeting. (SM. S82(2)). In calculating the 25%, voters who may be disqualified from voting are counted as "voters" in a general sense. (Barard Management Pty Ltd v Tracey Carmont and the body corporate for Tudor Rose Court - (unreported) BD 552/03 District Court (Brisbane) and Order 0097-2002 Panorama Heights CTS 26748).

A representative of a voter is a person who is a guardian, trustee, receiver or other representative, or someone who is authorised to act on the voter's behalf by a power of attorney, provided that such attorney can not be the body corporate manager, service contractor or letting agent.

A representative must give to the secretary a copy of his or her authorisation, or must satisfy the secretary of his or her genuine representative capacity and provide the secretary with an address for service. A nominee for a company must also provide the secretary with a notice of the nomination under the seal of the company or corporation.

Two or more co-owners of a lot are counted as one voter. (SM. S82(6)).

Being "Present" at a meeting

Owners or authorised representatives are taken to be present for a general meeting if they either:

- attend personally; or
- send in a written voting paper; or
- send a proxy to vote on their behalf; or
- if the scheme has facilities and the body corporate has previously passed a resolution to allow electronic voting, by sending in an electronic voting paper, e.g. by email. (SM. S82).

However, before there is a quorum present, AT LEAST TWO voters must attend in person where the scheme has 3 or more voters.

In very small schemes, where the number of voters is fewer than three, AT LEAST ONE voter must be present personally before there is a quorum present.

If sufficient numbers to make a quorum are not present within 30 minutes of the time scheduled for the start of the meeting, the meeting must be adjourned to the following week at the same time and place, unless this is not practicable and all lot owners are advised personally or in writing of the new venue before the start of the adjourned meeting. (SM. S82(5)).

Adjourned meeting.

At the adjourned meeting, if a quorum is still not present within 30 minutes of the start, those persons present IN PERSON OR OTHERWISE form a quorum provided that the chairperson is present personally or the body corporate manager who is authorised by the body corporate to exercise the powers of the chairperson, is present personally.

The legislation requires the body corporate to hold an AGM. It is therefore imperative that the body corporate has the power to pass motions including adopting budgets, even though a quorum is not present at an adjourned meeting.

Who chairs the meeting?

The chairperson must chair all general meetings at which he or she is present. If the chairperson is not present, or the office of chairperson is vacant for any reason, those present at the meeting may elect any person with a right to vote, to chair the meeting.

A body corporate manager (who has been authorised to exercise the powers of the chairperson) may chair the meeting only if elected to do so by the persons present at the meeting, or if the body corporate manager is the only person forming a quorum at an adjourned meeting. The body corporate manager may otherwise advise and help the person chairing the meeting.

The chairperson does not have any more voting power at a general meeting than he or she has as a lot-owner of a particular lot or lots. A body corporate manager acting as a chairperson with the authority of the body corporate is not empowered to vote.

Power of the person chairing meeting to rule a motion out of order (SM. S81)

The person chairing the meeting has the power to rule a motion out of order. The chairperson must rule a motion out of order if:

- the motion (if carried) would -
 - conflict with the Act;
 - conflict with the regulation module governing the scheme;
 - conflict with a motion already voted on at the meeting;
 - be unlawful, or unenforceable for another reason; or
- the substance of the motion was not included in the agenda of the meeting (excepting a procedural motion for the conduct of the meeting or a motion to correct minutes).

If a motion is ruled out of order, the person chairing the meeting must give reasons for the ruling, and in respect of the first four points set out above, must explain that those present at the meeting and entitled to vote on the issue, may overrule and reverse the ruling if they wish to, by passing an ordinary resolution to do so. The reasons of the person chairing the meeting must be recorded in the minutes.

Losing the right to vote

If the owner of a lot owes a body corporate debt at the time of the meeting, he or she does not have the right to exercise a vote for a particular lot unless the motion requires a resolution without dissent (SM. S84). A mortgagee in possession also displaces the right of the registered owner to vote if the mortgagee advises the secretary in writing.

How an open vote is cast

One vote only may be exercised for each lot included in the scheme. For a vote to be recorded on a motion, the motion must be present on the agenda and stated in a voting paper accompanying the notice of the meeting (unless it is merely a procedural motion, a motion to correct minutes, or a motion to amend a motion).

A voter may vote on an open motion personally, by proxy, by casting a written vote, or by casting an electronic vote (e.g. by email) if the body corporate has decided that voters may record votes electronically. (SM. s86). However, there are some restrictions on the types of open motion which may be voted on by proxy.

Hands up!

Unless a ballot is required by the legislation or by-laws for the scheme, or the person chairing the meeting decides that a ballot is necessary to ensure an accurate count of votes, voting is by:

- a show of hands by those persons present, or;
- giving completed voting papers not later than the start of the meeting to the secretary or to the person chairing the meeting, if the secretary is not present.

A voter cannot give the completed voting paper to another person to hand to the secretary or chairperson.

The body corporate may decide by special resolution that voting is to be done another way. (SM. s87). Where there is one or more, but not all, co-owners of a lot present, the co-owner who is present votes as the owner of the lot. If there is a conflict between the votes of the co-owners, no vote is counted.

Written and electronic votes

A voter casts a **written vote** by completing the voting paper and giving it to the secretary by hand, by post or by fax before the start of the meeting. A voter casts an **electronic vote** by completing and signing the electronic form voting papers and sending the voting papers electronically (e.g. by email) to the secretary. Both written and electronic votes may be withdrawn by a voter (but not his proxy) at any time before the motion is declared.

How a secret vote is cast

One vote only may be exercised for each lot included in the scheme. For a vote to be recorded on a motion, the motion must be present on the agenda (Topic 2: Calling a general meeting, The Agenda) and stated in a voting paper (Topic 2: Calling a general meeting, The Voting papers) accompanying the notice of the meeting (unless it is merely a procedural motion, a motion to correct minutes, or a motion to amend a motion).

A secret vote can only be cast by running a secret ballot. Some motions are required by legislation to be held by secret ballot. The committee can recommend that a motion is decided by secret ballot, or the body corporate can decide by ordinary resolution at a general meeting that a motion or particular type of motion is decided by secret ballot. The decision of the body corporate to require certain resolutions by secret ballot lasts only until the end of the next AGM held after the general meeting at which the resolution is passed.

A voter who is present at the meeting may ask the secretary to provide him or her with a secret voting paper and secret voting paper envelope or particulars tab envelope, (Topic 2: Calling a general meeting, Secret voting papers and envelopes) and may withdraw a prior written vote and replace it, if the prior vote can be readily identified. (SM S89).

Written and electronic votes

A voter may vote on a motion decided by secret ballot by casting a **written vote** or an **electronic vote** (by email) if the body corporate has by ordinary resolution decided that electronic votes may be cast. A body corporate can only decide this if a system is in operation:

- to allow electronic votes to be received without disclosing the voter's identity, and
- reject a vote by someone who is not a voter for a general meeting.

A written vote is cast by marking the secret voting paper, "yes", "no" or "abstain", then placing the secret voting paper into the secret voting paper envelope (Topic 2: Calling a general meeting, Secret voting papers and envelopes) supplied by the secretary and sealing it.

Then the secret voting paper envelope is either placed into a "particulars" envelope, or there will be a "particulars" tab on the secret voting paper envelope. The voter must fill in the "particulars" tab or complete the "particulars" envelope by providing the following information:

- the number of the lot for which the vote is exercised;
- the name of the owner of the lot;
- the name of the person having the right to vote; and
- the basis on which the person has a right to vote (e.g., as a member of the body corporate).

Then the voter gives the completed particulars envelope or envelope with particulars tab to the returning officer (SM. S90), or forwards it to the returning officer so that it arrives before the votes are counted at the general meeting. The envelope must be received and held by the returning officer directly with no intermediary having access to the envelope. Voting papers sent via an intermediary have been held to be invalid (Orders 0409-2005 and 0536-2004).

Motions which may be by secret ballot

The body corporate may decide by resolution at a general meeting that a particular motion or motions on a particular subject must be decided by secret ballot. In that event, such a resolution applies for the period stated in the resolution, ending no later than the end of the next AGM held after the general meeting at which the resolution is passed. (SM. S88(3)(b))

If the committee recommends that a particular motion be decided by secret ballot, then sufficient time must be given for the required voting material (Topic 2: Calling a general meeting, The Notice of general meeting) to be prepared and sent out to lot owners. (SM. S88(2))

Note: Certain motions must be resolved by secret ballot (see Topic 2 - Calling a General Meeting, Secret voting papers and envelopes)

Voting on a motion with alternatives

When a number of motions about the same subject are proposed they must be dealt with as a **motion with alternatives**. Topic 2 - Calling a general meeting explained how the voting paper for a motion with alternatives must be prepared. We will now look at how the vote is counted.

The motion (**original motion**) under which all the **alternatives** are listed may be as simple as "Do you want to engage a body corporate manager". The **alternatives** are listed below the **original motion**. The explanatory note accompanying a **motion with alternatives** (described in Topic 2 - Calling a general meeting) advises the voter to either vote for the motion and 1 alternative or to vote against the motion.

Example of a motion with alternatives:

Motion 3. Do you want to engage a body corporate manager? Yes No

- *ABC managers P/L*
- *MNO Body Corporate Management P/L*
- *XYZ Community Services P/L*

Counting the vote

The chairperson or the returning officer must firstly determine whether the **original motion** is passed. The engagement of a body corporate manager requires an ordinary resolution of the body corporate. If there are more "Yes" votes than "No" votes, the original motion is passed.

In the above example 10 "Yes" votes are cast and 3 "No" votes are cast for the **original motion**. The **original motion** to engage a body corporate manager is passed and the count now moves onto the number of votes for each alternative.

Voting on the alternatives

- ABC managers P/L 3 votes
- MNO Body Corporate Management P/L 4 votes
- XYZ Community Services P/L 3 votes

The alternative with the highest number of votes is the decision of the body corporate. MNO Body Corporate Management P/L with 4 votes wins.

Restrictions on proxy use

While a member of the body corporate (the member) may appoint a person to act as their proxy (the proxy), there are a number of restrictions on their use. A proxy cannot be exercised:

- if the member is present personally at the meeting, unless the member consents at the meeting;
- on a motion, if the member has exercised a written or electronic vote on the motion;
- on the election of, or for otherwise choosing a member of the committee;
- on a vote to prohibit the use of proxies in any way at committee or general meetings;
- on a vote to change the regulation module for the scheme;
- on a vote decided by majority resolution;
- on a vote to engage a body corporate manager or a service contractor or an amendment or termination of either engagement;

- on a vote to authorise a person as a letting agent or an amendment or termination of the authorisation;
- on a motion decided by secret ballot;
- for general meeting of a principal scheme in a layered arrangement;
- if the general meeting is called to fill a vacancy under SM. s33C;
- when a regulation provides that a proxy cannot be exercised for a particular vote.

The role of the returning officer

The body corporate must appoint a **returning officer** for each general meeting at which there is to be a secret ballot. (SM. S91(1)). A lot owner cannot be a **returning officer**, nor can a body corporate manager, service contractor or letting agent, or their respective associates.

The **returning officer** will have duties as set out in the appointing instrument, and these may generally include: (SM. S91(3))

- deciding questions about eligibility to vote;
- receiving secret voting papers;
- counting votes, or inspecting the counting of votes; and
- deciding whether a vote is valid. (SM. S91(3))

The duties of the **returning officer** require specifically that he or she:

- checks that the outer "particulars" envelope or particulars tab carries details of a person who has a right to vote;
- removes the secret voting paper envelope from the outer "particulars" envelope, or removes the particulars tab;
- places the secret voting paper envelope in a receptacle in full view of the meeting and mixes them up;
- takes each secret voting paper out of the secret voting paper envelopes and inspects and counts the votes.
- ensures that each electronic vote received can be viewed by a person present at the meeting, inspected and counted. (SM. S89)

In addition, for a motion which is to be decided by special resolution, the **returning officer** must, prior to placing the secret voting paper envelope in the receptacle, record on the envelope, the contribution schedule lot entitlement of the lot for which the vote is cast. Upon opening the envelope and taking out the secret voting paper, the **returning officer** must record on the voting paper the contribution schedule lot entitlement for the lot for which the vote is cast.

After the votes are counted, the **returning officer** must provide the person chairing the meeting with the following documents:

- all the written voting papers, secret voting paper envelopes and particulars envelopes or particulars tabs;
- the number of electronic votes cast for and against the motion and abstentions on the motion;
- the total number of votes cast for and against the motion;
- the total number of abstentions;
- the number of votes rejected, and the reason for any rejected votes. (SM. S89)

The body corporate must keep all voting papers and envelopes for 6 years. (SM. S202 and S203)