

Sectional Titles Schemes Management Act 2011 and Regulations

General Meetings - Quorum, Voting and Proxies

Meetings of a Body Corporate are governed by the STSMA Section 6 which deals with the calling of meetings, the requirements for a special general meeting for the passing of special and unanimous resolutions, proxies and the value of votes, and the provision that a Body Corporate or an owner who is unable to obtain a special or unanimous resolution may approach the CSOS Chief Ombud for relief (STSMA Section 6.9)

QUORUM

MR 17 (6) Requires that the first two orders of business at a general meeting are

- (a) Confirm proxies, nominees and other persons representing members and issue voting cards
- (b) Determine that there is a quorum

MR 19 (1) States that Business must not be transacted at any general meeting unless a quorum is present or represented

STSMA Section 6.5 a person may be represented in person or by proxy at such meeting provided that a person may not act as proxy for more than 2 members.

A person may represent a member that owns a number of sections such as a property- owning company, and that person attending the meeting as a duly authorized representative of the member, would hold the sum total Participation Quota (PQ) value of the individual PQ value of each section (both the primary sections and utility sections as defined in STSMA Regulations Annexure 1 Management Rules) owned by the company – **STSMA Section 6. 6 (a & b)** (the PQ value being as shown on the approved sectional plan for the sectional title scheme). The total of these PQ values is used for the quorum calculation, unless the member is the developer in which case they are not to be included. (**PMR 19.2(b) below**)

However, where a **vote in number** is an additional requirement for the passing of a special or unanimous resolution for the quorum and for the voting on the resolution, that person representing the member would only have one vote in number as per **STSMA Section 6.7**.

PMR 19(2) makes the quorum provision as **applying only to members entitled to vote at the meeting**

- (a) For schemes with fewer than 4 primary sections, or fewer than 4 members, the quorum requirement is members holding at least 2/3 (66,67%) of the total vote values.
- (b) For any other scheme, by members entitled the proportion is members holding at least 1/3 (33.333%) of the **total vote value**

Provided that at least 2 persons must be present unless all the units are registered in the name of one person and

*Provided that calculating the value of the votes required to constitute a quorum, the value of votes of **the developer** must not be taken into account.*

PMR 19 (3) - deals with the value of votes - *For the purpose of establishing a quorum and for the purposes of section 6 of the Act, the value of votes of any sections registered in the name of the body corporate must not be taken into account and the body corporate must not be considered to be a member.*

When calculating the quorum, count the total PQ vote values of the members that are present and the proxies PQ vote value held by that member present, which may not exceed 2 proxies per member. (remember that a proxy may include a number of sections with a total PQ value). If members and legal proxies holding the required proportion of the total vote values in the

scheme are present, you have a quorum. The Developer's units and any Body Corporate owned sections do not count for the determination of the quorum requirement.

Note : It is important to distinguish between **the developer** (as defined in the STSMA – Definitions Section 1) being **the person** (or company? – legal question as to whether the use of the word person includes a company) **who is the registered owner of the land** on which the buildings for the establishment of a sectional title scheme are built, and sections that may be owned by a member who may have played a part in the development, but not been a registered shareholder of the developer as defined in the STSMA, or may have a separate property owning entity that owns sections in the scheme. Ie In the case of Balwin - Balwin is the developer but Steve Balwin can, as an owner of sections in a scheme be a member whose Unit's PQs are used in value for the Quorum calculation.

MR 19 (4) - If no quorum within 30 minutes of the starting time of the meeting, the meeting stands adjourned to the next week at the same place and time, and the members present in person and proxy constitute the quorum

A spreadsheet indicating primary section numbers and utility sections, the owner's name and details and PQ vote value assigned to the sections and number vote value assigned to the member would be helpful at a meeting.

There are only 2 occasions when a vote in number is counted for the quorum and for a vote on a resolution

STSM Act of 2011 Section 1. Definitions - where special resolutions and unanimous resolutions are defined

When **the quorum** and the **vote for a special resolution** is counted, it is counted in number as well as vote value. At least 75% of members in number and value must vote in favour of the resolution or 75% of members agree to the resolution in writing, calculated in both number and value.

The **quorum** for a meeting at which a **unanimous resolution** is to be considered is counted in number as well as in vote value. The quorum requires 80% calculated both in value and in number of the votes of all the members of the Body Corporate to be present and represented for the resolution to be considered and then all those present must vote in favour for the resolution to pass.

PROXIES

STSM Management Rule 20 – Voting and Representatives

MR 20 (5) *A member's appointment of a proxy in terms of section 6 (5) of the Act and the proxy's acceptance of the mandate must, except in the case of an appointment in a mortgage bond, be substantially in the prescribed form and must be*

- (a) delivered to the body corporate 48 hours before the time of the meeting*
- (b) handed to the chairperson before or at the start of the meeting.*

MR 20 (6) *A proxy need not be a member (cannot be Managing Agent or employee of MA or Body Corporate)*

MR 20 (7) *When two or more persons are entitled to exercise one vote jointly, that vote may be exercised only by one person, who may or may not be one of them, jointly appointed by them as their proxy.*

STSM Act Section 6 (5) *A member may be represented in person or by proxy at such meeting: Provided that a person must not act as a proxy for more than two members.*

A member at a general meeting may not hold more than 2 proxies - if they do then they must decide which 2 proxies should be used for determination of the quorum and there after the same proxies are used for voting. The others should be discarded to avoid confusion.

If a member who is attending the general meeting is already assigned two proxies, that member should advise the 3rd member wanting to appoint a proxy that they are unable to hold more than 2 proxies, and recommending that the member who wants to give a proxy find another member who will be attending the general meeting to hold their proxy with the requisite instruction given on the prescribed form.

The Prescribed Form for a Proxy is found in Annexure 3 - FORM C of STSM Regulations.

VOTING

If a person owns a number of units under the new Acts how many votes do they get?

STSM Section 6 (6) - *When votes are calculated in value either*

- (a) *The total of the PQs values allocated to the sections registered in the name of that member. Or*
- (b) *In accordance with a rule made in terms of Section 10 (2), whichever is applicable*

STSM Section 6 (7) *“When votes are calculated in number, each member has one vote”.*

SO

- (i) Each member has only **one vote in number**, no matter how many units they own in the scheme.(as below), but this would only apply to votes for unanimous or special resolutions and
- (ii) each member's **vote in value is calculated** in terms of the value of the section PQ's that they own (primary section PQ value + utility section PQ value) as found on the PQ schedule of the Sectional Plans or the total of the quotas allocated to the sections registered in that member's name or in accordance with any rule made in terms of Section 10.2, whichever is applicable.

PMR 20(1) – A motion at a general meeting (a) does not need to be seconded and (b) all votes for ordinary resolutions are taken in **vote value**, so there is no longer provision for poll votes, which was a vote in value only.

PMR 20 (2) (a)&(b) - deals with situations when members are not entitled to vote.

Except for special and unanimous resolutions, a member is not entitled to vote if (a) a member fails or refuses to pay the body corporate any amount due by that member after a court or adjudicator has given a judgment or order for payment of that amount; or

(b) that member persists in the breach of any of the conduct rules of the scheme referred to in section 10(2)(b) of the Act after a court or an adjudicator has ordered that member to refrain from breaching such rule.

PMR 20 (3) *For the purposes of any vote, the values of votes of any sections registered in the name of the body corporate are considered abstentions*

PMR 20 (4) *Where a member is as such a trustee for a beneficiary, that member exercises voting rights to the exclusion of persons beneficially interested in the trust and such persons are not entitled to vote.*

PMR 20 (8) *The outcome of each vote, including the number of votes for and against the resolution, must be announced by the chairperson and recorded in the minutes of the meeting.*