

QUORUMS AND THE VALUE OF VOTES PROPOSED CHANGES TO PRESCRIBED MANAGEMENT RULES 53, 57 AND 64

I was recently requested to chair the Annual General Meeting of a local KwaZulu-Natal sectional title body corporate. The members wanted a reliable and independent person to guide the meeting through some contentious issues and I was happy to assist. The proceedings at the meeting focused my attention on what I consider to be the inadequacies in the current prescribed management rules 53, 57 and 64.

At the meeting it was soon evident that my understanding of the minimum quorum requirements for the scheme, in terms of PMR 57, differed to that of the managing agent. My view is that minimum quorum requirements in terms of PMR 57 have to be achieved on the basis of the required percentage of the total participation quotas allocated to sections owned by members present or represented, alternatively on the basis of adjusted voting values in terms of section 32(4) of the Act. The managing agent believed that the correct basis was a one-for-one head count.

This was not the first time I have encountered a difference of opinion on this particular point. It may sound like an odd pastime, but I collect sectional title general meeting notifications prepared by others whenever I can. These often make for interesting reading and in many cases illustrate similar confusions. Some specify a particular number of owners who must be present or represented, with no reference to number of units owned or voting values. On my interpretation of PMR 57, this makes no sense unless all the sections in the scheme are the same size, the value of owners' votes have been adjusted so that they are all of equal value or the scheme has amended PMR 57.

After the AGM I checked all my reliable reference material and realised that the wording of PMR 57 is arguably capable of supporting different interpretations. The important part of the text, for this discussion, is "*A quorum at a general meeting shall be the number of owners holding at least (number) per cent of the votes*". It is not clear from this wording whether the votes are to be counted, for this purpose, in number or value. If one looks for guidance to PMR's 60 to 67, dealing with owner voting one sees that in the default voting process, the 'show of hands', votes are valued according to the number of sections owned while on a poll, which is always available, votes are valued according to their values, either according to participation quotas or adjusted values in terms of rules made under section 32(4). In my view this very important provision should be worded in a way that leaves no room for the confusion that currently exists in regard to interpretation.

PMR 57 also provides that owners, either present in person, or by proxy, or by representative recognised by law, must be "*entitled to vote*". PMR 64 is the only provision that removes an owner's entitlement to vote at a general meeting. This applies to voting for ordinary (not special or unanimous) resolutions when levies are not duly paid and when, despite a written warning from the trustees or managing agent, an owner persists in breaching a conduct rule. The provision allows a bondholder to exercise the defaulting owner's vote.

I see no reason why an owner who is not entitled to vote but remains entitled to attend and to speak at a meeting should not be included in the calculation of the quorum. And how does one deal with the situation where the trustees consider that an owner has not "duly paid" a levy, but the owner believes that the levy was not correctly raised. What if the owner has been given notice to stop breaching a conduct rule and he argues that he has not breached the rule in the first place or that he has not persisted in the breach, while the trustees are satisfied that there was a breach and are not satisfied that the breach has been cured? ("Forget the past! Can you see any washing on my balcony now?")

Any managing agent will have many examples of situations where owners have what they consider to be a legitimate reason for withholding a levy payment and in which there is disagreement as to whether an owner is in breach of a scheme conduct rule. It is not sensible to exclude these owners from the meeting or deny them a vote when their presence and participation may be the only thing that can cure the

problem. The meeting, rather than the text of lawyers' letters, is the place for trustees to explain their view of the matter to the owner concerned. If the necessity for a special levy or the problem being caused by a dog is to be debated, it makes no sense to put one of the parties to the dispute at a substantial disadvantage in the context of a scheme meeting.

In my opinion some of the items on an AGM agenda are so important that no owner should be excluded from voting, even if the owner is alleged to be in arrears or in breach of a conduct rule. Items such as the election of trustees and the approval of a budget are examples of issues where all owners should be entitled to vote whether the body corporate considers that they are "in good standing" or not. In fact all the mandatory business of the AGM fall into this category.

The only time I have seen bondholders attend a general meeting and exercise their right to vote on behalf of owners is where the scheme overall is in financial trouble, never where a particular owner is hit by the provisions of PMR 64.

An owner who is alleged to be in arrears with levies is not prevented from being nominated for election as a trustee and from accepting that nomination, but he will be prevented from voting in the election. A number of owners who are alleged to be in persistent breach of the conduct rules can request a general meeting in terms of PMR 53. And if the trustees fail to call the meeting those owners are entitled to call it themselves, but they will not be allowed to vote at the meeting, even if it has been called specifically to remove from office the current trustees with whom the owners are in dispute. Where the obligation to pay a levy or the ongoing breach of a conduct rule is in dispute, the owner should not be disqualified from voting until the matter has been resolved.

Based on these criticisms, I suggest that the prescribed texts for Management Rules 53, 57 and 64 should be amended as follows (proposed deletions are bracketed and insertions are underlined):

PMR 53

The trustees may whenever they think fit and shall upon a request in writing made either by owners entitled to 25 per cent of the total values of the votes allocated to [of the quotas of] all sections or by any mortgagee holding mortgage bonds over not less than 25 per cent in number of the units, convene a special general meeting. If the trustees fail to call a meeting so requested within fourteen days of the request, the owners or mortgagee concerned shall be entitled themselves to call the meeting.

PMR 57

- (1) No business shall be transacted at any general meeting unless a quorum of persons is present in person or by proxy at the time when the meeting proceeds to business.
- (2) A quorum at a general meeting shall be-
 - (a) the number of owners holding at least 50 per cent of the value of the votes, present in person or by proxy or by representative recognised by law and entitled to vote, in schemes where there are ten units or less;
 - (b) the number of owners holding at least 35 per cent of the value of the votes, present in person or by proxy or by representative recognised by law and entitled to vote in the case of schemes with less than 50 but more than 10 units; and
 - (c) the number of owners holding at least 20 per cent of the value of the votes present in person or by proxy or by representative recognised by law and entitled to vote, in the case of schemes with 50 or more units.

PMR 64

Except in cases where a special resolution or unanimous resolution is required under the Act and in respect of any business that must be transacted at an annual general meeting, an owner shall not be entitled to vote at any general meeting if-

- (a) any contributions payable by him in respect of his section and his undivided share in the common property have not been duly paid; or

- (b) he persisted in breach of any of the conduct rules referred to in section 35 (2) (b) of the Act, notwithstanding written warning by the trustees or managing agent to refrain from breaching such rule:

Provided that any mortgagee shall be entitled to vote as such owner's proxy at any general meeting, even though paragraph (a) or (b) [the foregoing provisions of this paragraph] may apply to such owner; provided further that the sanction provided in this rule shall not apply to an owner who has given notice to the body corporate in terms of PMR 71(2) of a dispute in regard to the relevant payment or breach.

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The author acknowledges with sincere thanks the contribution of Prof. Paddock who commented on the first draft of this article.