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A Strata Manager's Questions on the New NSW Strata Law

... and Amanda's Answers...

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Question: committees approving training services

[Section 57 of the new Act](#) states that a strata manager must not request or accept a gift or other benefit from another person in connection with the provision of their services as a strata manager. There is an exception in relation to (among other things):

“(c) a training service provided to, or paid for, a strata managing agent, if it was related to strata management functions and the provision or payment is in accordance with the terms of appointment of the strata managing agent by the owners corporation or has been otherwise approved by the owners corporation...”

Does this mean that a committee can approve this or only the owners corporation can approve this at a general meeting, if it is not included in the agency agreement?

Answer:

The committee can approve, as a decision of the committee is taken to be decision of OC ([see section 36 of the new Act](#)), save for the exceptions in section 36. As long as none of these exceptions apply, the committee can approve.

Question: including written nominations in agenda of general meeting

[Clause 8 in Schedule 1](#) provides that the following matters must also be included in, or accompany, the notice given of annual general meetings:

- a) *a copy of the last statements of key financial information for the administrative fund, the capital works fund and any other fund prepared by the owners corporation and any relevant auditor's report,*
- b) *a form of motion for adoption of the financial statements,*
- c) *a form of motion to consider the appointment of an auditor and the taking out of insurance of the kind referred to in section 165 (2), if insurance of that kind has not already been taken out,*
- d) *particulars of each insurance policy taken out by the owners corporation (as required to be specified in the strata roll),*

- e) a form of motion to decide the number of members of the strata committee,
- f) a form of motion for the election of the strata committee, including the names of any persons nominated for election before the notice is given,
- g) if there is a strata managing agent, a form of motion to consider the report by the agent as to whether, and what, commissions or training services have been provided or paid for or are likely to be so provided to or paid for the agent for the following 12 months,
- h) a form of motion to decide how to deal with any overdue contributions payable to the owners corporation,
- i) a form of motion to decide if any matter or type of matter is to be determined by the owners corporation in general meeting.

For part (f) does this mean you need to include in the agenda the names of written nominations received before the agenda was issued?

Answer:

Yes. It is probably unlikely there will be any.

Question: mixing pre-meeting electronic voting with in-person voting

[Schedule 1, clause 28](#) deals with the 'manner of voting' as follows:-

- (1) A vote at a meeting by a person entitled to vote or by a proxy must be cast in person unless the owners corporation, by resolution passed at a general meeting, determines that a vote may be cast by some other specified means.
- (2) The regulations may make provision for or with respect to the following:
 - a) the means of voting (other than in person) that may be adopted by an owners corporation,
 - b) without limiting paragraph (a), procedures for voting by those means,
 - c) prohibiting or requiring the use of specified means of voting.

Does this mean that everyone has to vote that way? For example - pre-meeting voting - or can there be a mix of those voting in person who are present and those voting by pre-meeting voting for those that can't attend? I also assume this would have to be passed at a general meeting before the new means was adopted, so would have to be implemented for the following general meeting.

Answer:

I find the new legislation very vague on how electronic voting is supposed to work.

It says "may be cast by some other specified means" not "must be cast" so in my view, yes you can have different methods of voting at/before the same meeting.

Yes, you would have to have at least one general meeting the 'old way' to resolve to adopt the 'new way'.

Question: using secret ballots

[Schedule 1, clause 29](#) provides:

- (1) Voting on a motion or for an election at a meeting may be carried out by a secret ballot if:
 - a) the strata committee determines that the motion or matter is to be so determined, or
 - b) at least one-quarter of the persons entitled to vote on the motion or election agree that the motion or matter is to be so determined.

(2) *The regulations may make provision for or with respect to the procedures for a secret ballot.*

Does part (a) mean the committee has to have a meeting and resolve to have a motion dealt this way? For part (b) I assume that someone who is eligible to vote puts this to the vote from the floor?

Answer:

It says the committee 'determines', so in my view that gives it the flexibility to 'determine' this just prior to the motion being put. It doesn't say 'resolve'.

Part (b), yes, I agree with you.

Question: can paper ballots be secret ballots?

[Clause 15\(5\) of the Regulation](#) provides:-

- (5) *If the ballot is a secret ballot, the secretary must ensure that:*
- a) *the identity of the voter cannot be ascertained from the form of the electronic ballot paper, and*
 - b) *the declaration by the voter is dealt with so that it is not capable of being used to identify the voter.*
- (6) *An electronic ballot paper and the form of declaration must be sent to the secretary of the owners corporation no later than the close of the ballot.*
- (7) *The secretary of the owners corporation must ensure that all electronic ballot papers are stored securely until the counting of the votes begins.*

Can you have secret ballots for physical paper ballots where the person is not identified? The Regulations only seem to deal with electronic ballot papers.

Answer:

Yes. See Schedule 1 to the Act, clause 29 (linked above).

It's just that the Regulations don't set out any procedure. They only set out a procedure for electronic voting. So you can do it for non-electronic voting, however you like.



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