Trustee nominations and election
By Jennifer Paddock

Prescribed management rule ("PMR") 7 requires nominations by owners for the election of trustees at any annual general meeting ("AGM") to be given in writing, accompanied by the written consent of the person being nominated at least 48 hours before the meeting. If insufficient nominations are received before the AGM, then further nominations can be given, with the nominee's consent, at the meeting.

It is only at the actual AGM that the number of trustees for the ensuing year is decided upon and therefore it will not be clear whether or not the nominations received before the meeting are sufficient to fill the number of trustee positions until this decision has been made. If the number of nominations received before the AGM equals the number of trustees decided upon at the AGM then there will be no need for a vote at the meeting, as the duly nominated persons will simply fill these positions. However, PMR 5 requires that the majority of trustees be owners or spouses of owners and therefore if amongst the nominations received before the meeting there are more non-owners than owners or spouses of owners, further nominations may need to be called for at the meeting so as to comply with this requirement.

A student recently raised the following interesting scenario which takes the matter further:
If four trustee nomination forms are received 48 hours before the AGM, three of which are for non-owners and one for an owner, and if the meeting then decides there will be seven trustees, can the chairperson ask the meeting for only three more nominations, insisting that all further nominations be of owners - or must the chairperson accept all further nominations from the floor?

The answer is that all further nominations must be accepted from the floor, regardless of whether these are for owners or non-owners. If the chairperson limits the further nominations to only three persons who must be owners then s/he would be prejudicing all the other potential nominees. The argument that only three owners should be nominated at the meeting to fill in the vacant trustee positions presupposes that the four persons nominated before the meeting will fill positions as trustees. The persons who were nominated before the AGM are not in a privileged position due to the fact that their nominations were lodged earlier than those persons nominated at the meeting. If there are insufficient prior nominations to fill the number of trustee positions decided upon at the meeting or the number of owner trustee nominations is not sufficient to form a majority of the total number of trustees the members have decided will be elected, the chairperson must call for further nominations and all the nominated persons in the category of owners (or their spouses) and non-owners, regardless of when they were nominated, must be given an equal opportunity to be elected.

Once all the nominations have been given, the meeting must vote. Once the votes have been tallied, the chairperson must check how many of the trustee candidates are owners or spouses of owners and how many are non-owners. If the number of non-owners outweighs the number of owners or spouses of owners then the non-owner trustee candidate with the lowest number or least value of votes must be eliminated and this process must be repeated until the correct number of trustees is achieved with the majority being owners or their spouses.

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