



Owners calling a Special General Meeting – It's lockdown, what now?

By Marina Conostas, Director BBM Attorneys

I have always been excited to tell my clients about a gem of a clause in the Sectional Titles Schemes Management Act 8 of 2011 which provides owners who are united in a cause with power. In certain schemes Trustees may rule with an iron fist and will go to extreme lengths to keep owners away from the decision-making circle. Of course, Trustees do need to be afforded flexibility in the daily operational running of the scheme and cannot be held to ransom by each individual owner with differing views. However, where you do have owners entitled to 25% of the total quotas of all sections who urgently wish to address an issue at a Special General Meeting, that gem of a clause, Management Rule 17(4)(a) can be utilized to reign the Trustees in.

Management Rule 17(4)(a) says that:

*“The Trustees may by resolution call a general meeting whenever they think fit and **MUST** do so if members entitled to twenty percent of the total quotas of all sections deliver to the body corporate a written and signed request for a Special General meeting; provided that if the Trustees fail to call a meeting thus requested within fourteen days of delivery of the request, the members concerned are entitled to call the meeting.”*

That's all very well and good, but what happens where the Trustees and the Managing Agent refuse to call a meeting within fourteen days. They indicate that they are in the process of planning an online Annual General Meeting on a date to be determined, and consequently will not look at the separate meeting called for by the owners. In this event, the Rule is clear-it says that the members are entitled to call the meeting. Accordingly, the members will direct a letter to the Managing Agent and Trustees requesting a list of the members and their addresses in order for a meeting to be called. This is a perfectly legal and valid request in terms of Section 3(1)(n) of the Sectional Titles Schemes Management Act 8 of 2011 and does not breach the POPI (Protection of Personal Information) Act 4 of 2013 as it is a reasonable request.

Section 3 (1)(n) says:

*“A body corporate’s functions include complying with any **REASONABLE** request for the names and addresses of the persons who are the Trustees of the body corporate in terms of the rules or who are members of the body corporate.”*

The upshot is that the Trustees are not entitled to fob off a request for a meeting from owners in terms of the Management Rule 17(4)(a) simply due to an imminent Annual General Meeting. The owners can definitely proceed; however I wouldn’t hold my breath for the support of the Managing Agent as they take instructions from the Trustees. The owners will be entitled to call an in person meeting as long as the numbers comply with the Lockdown Regulations at that time. Practically and in smaller complexes, owners have been known to go door to door for e-mail details of their fellow owners in which case it would be easier and preferable to arrange an online meeting.

Make no mistake, many a Trustee has been caught on the back foot, not knowing that owners can wield this kind of power in their scheme. In fact, many of the meetings called in this way have been in order to take a vote of no confidence in the Trustees, in which case, upon obtaining a quorum, the owners can, by a simple majority, fifty one percent, vote the entire committee of Trustees out. Life at Sectional Title complexes is moving forward even during a pandemic and all owners need to keep up with their rights and responsibilities.



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