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Body Corporate decision making and meetings transcript

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Welcome to the presentation about Body Corporate decision making and meetings.

Topics

Today we will be going through the following topics:

- Firstly we will go through the role of the committee (#role)
- I will then talk about committee meetings (#meeting)
- Next I will explain voting outside of a committee meeting (#voting)
- Then finally general meetings (#general)

We will go over things such as meeting attendance, quorums, voting and other procedural matters. Please note that the information that I will be providing is in relation to the Standard Module regulation. Although there are similarities between the modules, if your scheme is registered under another regulation module, you should refer to that particular module.

What we won't not be talking about today in detail is committee and body corporate spending limits, however you can access our previous webinar about 'body corporate financial management' via our website.

Role of the committee

So, onto the first topic – role of the committee. So what is the role and the purpose of the committee? The committee looks after the general day to day running of the body corporate.

Decisions that the committee make are decisions made on behalf of the body corporate which is referred to in section 100 of the body corporate Act.

Section 101 of the Act also states that the committee must act on the lawful decisions of the body corporate.

It is important to note that decisions are made by the committee, not by an individual committee member. No single person in the committee has the power to make a decision on behalf of the body corporate, nor do they have a deciding vote on any motion.

Types of decisions a committee can make

Here are some examples of the types of decisions that a committee can make on behalf of the body corporate. Firstly we have authorising improvements to common property by lot owners and the body corporate. A committee can authorise an improvement to common property by a lot owner if it is within the minor improvement limit. So for example, if an owner wanted to build a garden bed on the common property outside of their lot, or perhaps attach a shade sail to a common property wall, the owner could seek approval and the committee could grant that approval.

The committee can also authorise improvements to the common property by the body corporate, that is – using body corporate funds, if it is under the basic improvement limit.

The committee can also authorise applications in relation to its by-laws. For example, if the by-law allows for a person to park their car on common property with approval of the body corporate, the committee could grant this approval. And similarly, if the by-laws allows for pets on approval, the committee could approve the pet application.

As well as approvals in relation to by-laws, the committee can enforce the by-laws for the scheme. They can vote to issue a contravention notice to a person who is breaching a by-law and they can take the matter further if the person does not comply with the notice.

If you missed our last webinar about enforcing by-laws, this will be available on our website in the coming weeks.

Types of committee meetings

Now there are two ways that a committee can make a decision, either at a committee meeting or a vote outside of a committee meeting, which is otherwise known as a VOC or a 'flying minute'.

There are no other ways under the Act and regulation modules which allow the committee to make a decision.

Some body corporate committees have what they call informal meetings. The legislation does not recognise such meetings and the validity of decisions made at them may be challenged.

Committee meetings – calling the meeting

So how is a committee meeting called? A committee meeting can be called by the secretary, or the chairperson if the secretary is absent, or by enough members of the committee to form a quorum if the secretary or chairperson are absent or refuse to call the meeting.

A quorum is at least half of the number of voting members of the committee. For example, if your number of committee voting members is 4, then 2 forms a quorum. If your number of voting committee members is five then a quorum is 3.

The committee must give at least 7 days' notice, and the notice calling the meeting must include an agenda which states the substance of the issues that will be considered at the meeting. However the committee can also decide to consider other issues at the meeting that were not included on the agenda.

The committee can reduce the notice period down to 2 days if all voting members agree in writing or vote in favour of the reduced notice period at the committee meeting prior to the one with the reduced notice period. An example of this could be the committee deciding that one member will obtain some quotes for them to vote on. They could then vote to reduce the notice period to 2 days for the next committee meeting so that the decision can be made as soon as possible.

Committee meetings – holding the meeting

This next slide takes us through important information about holding the committee meeting.

So firstly, the chairperson must chair all committee meetings, however if they are absent another member of the committee can chair the meeting with agreement of the rest of the committee who are present at the meeting.

To hold the meeting they must have a quorum, as mentioned on the previous slide, which is at least half of the voting members of the committee.

A common question of the commissioner's office is who can attend a committee meeting. Keep in mind that the body corporate manager and caretaking service contractor are automatically non-voting members of the committee.

Apart from the committee, a non-member of the committee can attend if they are invited by a majority of the committee. Also, an owner in the body corporate can attend if they provide advice in writing to the secretary at least 24 hours before the meeting.

A non-member cannot be prevented from attending a meeting if they have given the written notice. However they can only speak if the committee invites them to speak and must leave for a discussion or vote about certain issues if the committee decides they must leave. You can refer to Section 51 of the Standard Module for more information.

Committee meetings - voting

So a meeting has been called, how are decisions made at the meeting?

A motion is passed at a committee meeting by a majority of votes of the voting members who are present and entitled to vote. As an example, if you have 7 committee members and 4 show up to the meeting, you have reached a quorum.

Now, if of those 4 people who show up, one person has declared a conflict of interest and abstains from voting leaving three entitled to vote, the motion could pass if 2 of the 3 committee members vote in favour of the motion.

Each voting member only has one vote, even if they hold more than one position on the committee. So if for example, one person holds the position of secretary and chairperson, they can still only vote once for the motion unless they hold the proxy of another member. A committee member can only hold 1 proxy at a time, so they can cast a maximum of 2 votes.

A committee member may appoint a proxy to vote for them, however the proxy can only be another voting committee member and it's only valid for that particular meeting. Also, a committee member can give a maximum of 2 proxies in one year.

Now if there is an equal number of votes for and against the motion, then the committee has not made a decision and the motion has failed, as a majority of those able to vote has not agreed to the motion. As mentioned earlier, no individual member on the committee has the deciding vote.

Voting outside committee meeting (VOC)

Another way that a committee can make a decision is by a vote outside committee meeting. This can particularly be helpful where you have committee members that do not reside at the scheme, or who live interstate.

A vote outside committee meeting is also known as a VOC or flying minute. It is also sometimes referred to as a "voccom" (VOCM) or an OCM.

A VOC is conducted by giving written notice to all members of the committee or in an emergency, as many that it is practicable to contact. Now for the motion to pass, a majority of all voting members of the committee entitled to vote must agree to the motion. Note that this is different to how a motion passes at a face to face committee meeting.

Now using the same number of committee members as the example in the previous slide, if there are 7 people on the committee and one abstains from voting due to a conflict of interest, the motion would pass if 4 out of the remaining 6 committee members voted yes to the motion.

Notice of the meeting and the agreement to the motion must be given in writing. Or in an emergency, notice and agreement may be given orally or in another appropriate form of communication.

Advice of the motion must also be given to lot owners at the same time that notice is given to the committee members.

The outcome of the VOC must also be confirmed at the next meeting and included in the minutes of that committee meeting.

Voting outside of a committee meeting is referenced in section 54 of the Standard Module Regulation.

Committee meetings – general information – conflict of interest & restricted issues

The next three slides cover other general information about committee meetings.

So firstly we have conflict of interest. A committee member must disclose if they have a direct or indirect interest in the issue being considered or about to be considered if the interest could conflict with the appropriate performance of the member's duties about the consideration of the issue. If a committee member discloses a conflict of interest they are not entitled to vote on the issue.

A very general example of where this may apply is if the committee is considering a motion from a lot owner to authorise an improvement. So if the lot owner was the chairperson then you might expect that the chairperson abstains from voting on the motion, as the outcome of the motion directly impacts and benefits them. Another thing to note here is that conflict of interest only applies at committee meeting level, and doesn't apply at a general meeting of the body corporate.

Next we have restricted issues. The committee can't make all decisions on behalf of the body corporate. Section 42 of the standard module outlines the types of things the committee can't vote on. So for example fixing or changing contributions, changing the rights, privileges or obligations of owners and a decision that must be made by ordinary, special or majority resolution, or resolution without dissent are all restricted issues for the committee.

Committee meetings – general information – minutes and records

Next we have minutes and records. The committee must keep full and accurate minutes of its committee meetings and full and accurate records of a vote outside of a committee meeting.

These minutes and records must be provided to lot owners within 21 days after the holding of the meeting or the decision of the motion, either by hand, by post, by fax or electronically.

You can read section 55 of the Standard Module regulation for the meaning of full and accurate minutes and records.

Apart from this being a requirement in the legislation, it is important that these records are kept and distributed so that owners are aware and informed of the decisions that the committee is making on behalf of the body corporate. To make it clear, there is not a single decision the committee can make without owners being notified of it – no matter how small the cost or how "unimportant" the matter might seem.

Committee meetings – general information

Before moving on to the slides about general meetings, I'd just like to remind you that the body corporate Act states that a body corporate must act reasonably in anything that it does including making and not making a decision.

If the committee makes a decision which an owner or occupier finds to be unreasonable, that owner or occupier may choose to dispute the committee's decision by making a dispute resolution application with our office.

Lastly, a decision of the committee is a decision of the body corporate.

General meetings – types of meetings & calling a meeting

Next I will be talking about how the body corporate can make a decision. The body corporate being all owners of the lots in the scheme.

So if the committee cannot make a decision about an issue, then the body corporate can make a decision on the matter by holding a general meeting.

There are two types of general meetings, an annual general meeting and an extraordinary general meeting.

A general meeting can be called by a member of the committee if they are authorised by a committee decision. An owner can also request a general meeting, however this process is very specific. For an owner to call a general meeting they must put their request in writing with the proposed motion and they must also obtain the signatures of the owners of at least 25% of the lots in the scheme. This request must then be given to the secretary. If an EGM is requested in this way the meeting must be held, the committee must call the meeting within the time frames.

General meetings – notice and motions

Now both an EGM and an AGM require 21 days written notice to lot owners. The notice must include the agenda for the meeting, proxy forms and voting papers plus all attachments such as quotes, contracts and explanatory material.

An AGM must be held within 3 months of the end of the body corporate's financial year and motions must be received by the secretary by the end of the body corporate's financial year.

So to remind owners of the opportunity to submit motions for the AGM, the secretary must send a letter to all lot owners 3 to 6 weeks before the end of the body corporate's financial year inviting them to submit motions and ask for committee nominations.

Throughout the year lot owners can also submit motions to be included at the next general meeting of the body corporate. If they don't want to wait until the next AGM they could consider calling an EGM by following the requirements that we have discussed on the previous slide.

As an example, if a lot owner wanted to install air conditioning units on common property and the AGM wasn't until the end of summer, the lot owner might want to arrange the installation of the air conditioning earlier, by seeking approval of the body corporate at an EGM.

Now unlike committee meetings, if a motion is not on the agenda for the general meeting, the body corporate cannot vote on the motion, even if the body corporate has allowed for 'general business' at the meeting.

General meetings – motion with alternatives

So next we have motions with alternatives. If two motions are received about the same issue, the voting papers must list them as alternatives under the same motion.

So an example for this one, if a lot owner and the committee each submit motions to a general meeting to engage a different body corporate manager. As both motions deal with the same issue, it is the committee's responsibility to list them as a motion with alternatives on the agenda for the meeting.

This motion could be that the body corporate engage a body corporate manager for a period of 1 year commencing 1 June 2019. Alternative A could be to engage ABC Company at a cost of $5000 on the terms set out in the attached draft agreement. Then alternative B could be to engage XYZ Company at a cost of $2000 on the terms set out in the attached draft agreement.

So if the motion passes, the votes for the alternatives are then counted and the alternative with the highest number of votes wins. If there 2 or more alternatives that receive an equal highest number of votes, the decision must be made by chance, for example flipping a coin.

Now, all motions dealing with the same issue that are listed on a voting paper but not put into a motion with alternatives are void.

For suggestions and guidance on how to write motions you can visit the drafting motions page of our website.

General meeting quorum

To hold a general meeting, there must be a quorum, or the meeting is adjourned. To know if there is a quorum, you need to work out 25% of the number of voters (not the number of lots) for the body corporate.

Before the meeting can start there must be at least 25% of the voters present at the meeting.

There are a few ways a person will be counted as being present at a general meeting: in person, by proxy or by written or electronic voting paper. Part of that 25% must also include:

- when there are 3 or more voters for the body corporate, at least 2 of those voters must be present in person
- when there are less than 3 voters for the body corporate, at least 1 voter must be present in person

A voter is a person whose name is on the body corporate roll as the owner, representative, corporate nominee or representative of a subsidiary scheme.

A person who owes a body corporate debt will still be counted as a voter for working out 25% of the total voters. They are still a voter for the general meeting as their name is listed on the body corporate roll.

However, if they owe a body corporate debt, they cannot be counted as a voter who is present at the meeting for the quorum. This is because they cannot cast a vote at the meeting unless it is a vote for a motion that must be decided by resolution without dissent.

If you own or represent more than 1 lot, you are counted as 1 voter when working out 25% of the total voters for the body corporate. You still have 1 vote for each lot you own when voting on a motion.

If you hold 1 or more proxies to vote for another lot, you will be counted as 1 voter when working out 25% of the total voters for the body corporate.

The owner of the lot who gave the proxy is already listed on the body corporate roll as a voter and their lot cannot be counted twice.

However, if you hold 1 or more proxies, they are counted when calculating whether 25% of voters are present in person, by proxy or by written or electronic voting paper before the start of the meeting.

Once a quorum has been met, you can cast 1 vote for each lot that you own or hold a proxy for. A proxy can't be exercised for some types of motions such as appointing a body corporate manager, caretaker or letting agent, amending their contracts or for electing or appointing committee members.

So as you can see, calculating a quorum can be a challenging exercise, given the number of variables at play. It is not possible for us to always provide a direct answer about a quorum over the phone, as these matters are often the subject of dispute. If in any doubt, you may wish to seek legal advice.

General meetings – holding the meeting

So, once you have a quorum, the meeting can begin. If a quorum is not formed within 30 minutes of the commencement of the meeting, the meeting must be adjourned to the same time, same location and same day the following week. The legislation only requires owners to be notified of the adjourned meeting if the location of the meeting needs to be changed.

What happens if there is not a quorum at the next meeting? If at the adjourned meeting a quorum is again not present then the persons who are present form a quorum if the chairperson is present, or if they are not present the body corporate manager by authorisation of the body corporate.

Now a frequent question of our office is who can attend a general meeting. This is not specifically covered under the body corporate Act and regulation modules. If a member of the body corporate brought with them a partner, friend or family member, there is nothing in the legislation that says this cannot occur, and there is also nothing that says it can. So it may or may not be reasonable to ask them to leave the meeting. However if a member of the body corporate appoints them as a proxy, they have a right to attend and vote at the meeting. This takes us to the next slide about voting and proxies.

General meetings - proxies

A voter can appoint a proxy to act for them at the general meeting. Under the Standard and Accommodation Modules there are restrictions as to how many proxies you can hold.

If there are 20 or more lots in the scheme, the person can't hold proxies for more than 5% of the number of lots if the Standard Module applies, or 10% if the Accommodation Module applies.

For schemes with less than 20 lots, a person can only hold one proxy.

The proxy form must be given to the secretary before the start of the meeting, unless the body corporate has agreed to an earlier time. However, an earlier time must still be at least 24 hours from the meeting.

As mentioned on the previous slide, a proxy cannot be exercised for some types of motions. A body corporate can also decide by ordinary resolution not to allow proxies at all.

General meetings – resolution types

The common resolution types referred to in the Act and regulation modules are ordinary resolution, special resolution and resolution without dissent.

Ordinary resolution means more yes than no votes. Examples of motions which would be decided by ordinary resolution are motions to approve maintenance and improvements.

Special resolution means two thirds of the votes are a yes, no more than 25% of lot owners vote no, total contribution schedule lot entitlement of votes against is not more than 25% of the total contribution schedule lot entitlements for all lots in the scheme. An example of a motion to be decided by special resolution is a change to by-laws.

And finally, resolution without dissent means no votes against the motion. An example of a motion to be decided by resolution without dissent is a change to an exclusive use by-law.

General meetings – ruling motion out of order

Next we have ruling a motion out of order. During a general meeting the chairperson has the ability to rule a motion out of order. They can only do this if the motion conflicts with the Act or regulation module or is unlawful or unenforceable for another reason.

Once it is ruled out of order, this decision may be reversed by ordinary resolution by those present and entitled to vote and this must be recorded in the minutes if the meeting.

General meetings – minutes and records

Now the same as I have mentioned about committee meetings, the body corporate must ensure full and accurate minutes of each general meeting and must distribute them to lot owners within 21 days after the meeting.

Section 96 of the Standard Module regulation states what full and accurate minutes includes, such as who attended the meeting, the motions that were voted on and the counting of the votes.

Summary

So in conclusion, the Act and regulation modules set out how decisions should be made. The risk in not following the Act and regulation modules includes that a person could lodge a dispute application against the body corporate or the committee, and try to overturn the decision.

Therefore once again I remind you that the body corporate must act reasonably when making a decision and consider the best interests of the body corporate.

Also another reminder that the information provided in this presentation is for the Standard Module regulation, if your scheme is registered under another regulation module, you should refer to that particular module

Contact us & Questions

And lastly, please find on this slide details to contact the Office of the Commissioner for Body Corporate and Community Management.

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