



TYPES OF RESOLUTIONS – SECTIONAL TITLES SCHEMES MANAGEMENT ACT 8 OF 2011

TYPES OF RESOLUTIONS

- Ordinary resolutions
- Special resolutions
- Unanimous resolutions
- Written consent of a member or all members

ORDINARY RESOLUTIONS

- The principle that applies is majority rules (51%).
- Ordinary resolutions are used for instance to:
 - approve the budgets for the administrative and reserve funds for the next financial year;
 - approve the schedules of insurance replacement values referred to in rule 23(3);
 - determine the extent of the insurance cover by the body corporate in terms of rules 23(6), (7) and (8);
 - give directions or impose restrictions referred to in section 7(1) of the STSM Act;

ORDINARY RESOLUTIONS

- approve the annual financial statements;
- appoint an auditor to audit the annual financial statements, unless all the sections in the scheme are registered in the name of one person;
- if the body corporate has more than four members who are owners of primary sections and is not managed by an executive managing agent in terms of rule 28, determine the number of trustees to be elected to serve during the next financial year; and
- elect the trustees;

ORDINARY RESOLUTIONS

- remunerate trustees who are non-owners;
- appoint a managing agent;
- install separate meters.

ORDINARY RESOLUTIONS

- Previously, to pass an ordinary resolution in a general meeting usually required the matter to be proposed, seconded and agreed to by the majority of members represented.
- In terms of the new legislation, a motion no longer needs to be seconded, but must be passed by the majority of the votes calculated in value of the members present and voting. This means that all matters must be discussed and does not therefore require another member to agree in advance to the motion.

ORDINARY RESOLUTIONS

- All ordinary resolutions must be calculated in value.
- The chairperson is required to announce the voting outcomes, detailing the number of votes cast for and against each motion, which must also be recorded in the minutes.
- Anyone who has been in persistent breach of any of the conduct rules, or in arrears, and a court or adjudicator has given a judgment or order confirming this breach or arrear amount owing, may not participate in the voting process, unless a special or unanimous resolution is being tabled.
- The chairperson may not disclose their vote in advance and may not influence members' views on any item of business.

SPECIAL RESOLUTION

- In terms of section 1 of the STSM Act a special resolution is:
 - (a) passed by at least 75% calculated in both value and in number, of the votes of the members of a body corporate who are represented at a general meeting
or;
 - (b) agreed to in writing by members of a body corporate holding at least 75%, calculated both in value and in number, of all the votes.

SPECIAL RESOLUTION - NOTICE REQUIREMENTS

- The notice calling the SGM must contain the proposed special resolution, in terms section 6(2) of the Act and PMR 15(3), and be sent to all members thirty (30) days prior to the SGM.
- In terms of section 6(3)(a) – (c) of the STSM Act, the notice must be sent to all members via hand delivery, **or** pre-paid registered post to the members' sections, **or** pre-paid registered post to another address within South Africa, that the member has chosen in writing for the purpose of receiving notices. In addition, but not as an alternative, to one of the above methods of delivery, the notice can, in terms of section 6(4) of the STSM Act, also be emailed or faxed to the members.

SPECIAL RESOLUTION - QUORUM REQUIREMENTS

- At the SGM, a quorum must be present (33.3%) or represented by proxy, provided that a person must not act as a proxy for more than two members before the business of the meeting can be dealt with.
- In terms of PMR 19(2)(b), a quorum in a scheme of more than four primary sections, for the purposes of passing a special resolution, will be the members (in attendance personally or represented by proxy) entitled to vote, and holding one third of the total votes of all the members of the scheme, in value (participation quota), provided that at least two persons (members or representatives) are present at the SGM.
- In terms of PMR 19(4), if within thirty (30) minutes from the time appointed for an SGM, a quorum is not present, the meeting stands adjourned to the same day in the next week, at the same place and time.

SPECIAL RESOLUTION

- In terms of PMR 20(9), If a special resolution is passed at a general meeting by members holding less than 50% of the total value of all members' votes:
 - (a) the body corporate must not take any action to implement that resolution for one week after the meeting, unless the trustees resolve that there are reasonable grounds to believe that immediate action is necessary to ensure safety or prevent significant loss or damage to the scheme; and
 - (b) within 7 days from a resolution referred to in sub-rule 9(a), members holding at least 25% of the total votes of all members in value may, by written and signed request delivered to the body corporate, require that the body corporate hold a special general meeting to reconsider the resolution.

SPECIAL RESOLUTION

- PMR 20(10) states that if a demand referred to in sub-rule 9(b) is delivered to the body corporate, the trustees must not implement the resolution unless –
 - (a) it is again passed by special resolution; or
 - (b) a quorum is not present within 30 minutes of the time set for the meeting.
- In terms of section 6(6)(a) of the STSM Act when votes are calculated in value, the total participation quota of all sections registered in the name of a member is calculated. In terms of section 6(7) of the STSM Act, when votes are calculated in number, each member has one vote, irrespective of the number of sections owned by that respective member.

SPECIAL RESOLUTION REQUIRED

- Section 2(7)(e): Pursuing any claim against the developer;
- Section 3(1)(i): Insuring against other risks in addition to buildings' insurance (fire cover);
- Section 4(b): When essential for the proper fulfilment of its duties, purchase, acquire, take transfer, mortgage, sell, hire or let units;
- Section 4(e): Borrow moneys required by it in the performance of its functions or the exercising of its powers;

SPECIAL RESOLUTION

- Section 4(h): Let a portion of the common property to any owner or occupier by means of a lease other than a lease contemplated in section 5(1)(a);
- Section 5(1)(f): Cancelling an exclusive use right;
- Section 5(1)(g): Executing a servitude or restrictive agreement burdening the common property;
- Section 5(1)(h): Approving the extension of boundaries or floor area of a section;
- Section 10(2)(b): Substituting, adding to, amending or repealing conduct rules;

SPECIAL RESOLUTION

- Section 11(2)(a): Changing the value of any owner's vote or liability to pay levies (i.e. deciding that votes and liability will no longer be determined by PQ);
- MR 8(2): Approving reward (payment) for trustees who are members;
- MR 15(4): Changing the venue for meetings from the local municipal area where the scheme is situated;
- MR 23(8): Insuring any additional insurable interest the body corporate has in the land and buildings of the scheme, and relating to performance of the body corporate's functions;

SPECIAL RESOLUTION

- MR 28(1): Appointing an executive managing agent;
- MR 28(7): Cancelling a managing agent's agreement on two months' notice;
- MR 29(2): Approving reasonably necessary alterations or improvements, if an owner requests a general meeting to discuss the matter;
- MR 29(4): Installing separate prepayment meters on the common property to control supply the supply of water or electricity to a section or exclusive use area.

UNANIMOUS RESOLUTION

- In terms of section 1 of the STSM Act, a "unanimous resolution" means a resolution: -
 - (a) passed unanimously by all the members of the body corporate at a meeting at which
 - (i) at least 80% calculated both in value and in number, of the votes of all the members of a body corporate are present or represented; and
 - (ii) all the members who cast their votes do so in favour of the resolution; or
 - (b) agreed to in writing by all the members of the body corporate.

UNANIMOUS RESOLUTION – NOTICE REQUIREMENTS

- The notice calling the SGM must contain the proposed special resolution, in terms section 6(2) of the Act and PMR 15(3), and be sent to all members thirty (30) days prior to the SGM.
- In terms of section 6(3)(a) – (c) of the STSM Act, the notice must be sent to all members via hand delivery, **or** pre-paid registered post to the members' sections, **or** pre-paid registered post to another address within South Africa, that the member has chosen in writing for the purpose of receiving notices. In addition (but not as an alternative) to one of the above methods of delivery, the notice can, in terms of section 6(4) of the STSM Act, also be emailed or faxed to the members.

WHAT REQUIRES UNANIMOUS RESOLUTION

- Section 5(1)(a): Sell common property;
 Lease land outside the common property;
 Lease common property out for 10 years or more;
- Section 5(1)(c): Agree to extend the period of a section 25 right to extend;
- Section 5(1)(e): Create a registered exclusive use area;
- Section 10(2)(a): Amendment of the management rules;
- PMR 21(2)(a): Loan money from own account;
- PMR 29(1): Approve alterations or improvements to the common property that is not reasonably necessary;

WRITTEN CONSENT OF ALL OWNERS

- Section 5(1)(d): Purchase land to extend the common property,
- Section 5(1)(b): Sell a right of extension to third party.



THE END

