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PROXY APPOINTMENTS



Article by
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In the ever changing times we live in, electronic communication has become a big part of everyday living and also the manner in which organizations conduct the administration of their affairs.

In this regard, the question has been asked whether proxy appointment by e-mail or sms is valid.

Before I answer the question, let's consider the requirements for the appointment of a proxy.

Management Rule (PMR) 67(2), Annexure 8 under the Act, 1986, deals with proxies.

In terms of the aforesaid rule, a proxy appointment must be made **in writing** and **signed** by either the owner or his agent duly appointed in writing, and shall be **handed to the Chairman prior to the commencement of the meeting, unless** it is a **bondholder's proxy** in a mortgage bond which is produced at the meeting.

In terms of **PMR 67(3)**, the **Managing Agent**, any **employee of the Managing Agent** or any **employee of the Body Corporate** cannot act as proxies for owners in sectional title schemes.

In terms of **PMR 66(1)**, when two or more persons are entitled to exercise one vote jointly, that vote shall be exercised only by a person (who may or may not be one of them) jointly appointed by them as their proxy. The Act does not prescribe a certain "proxy form" but each proxy should be considered by the Chairperson in respect of any specific instructions or limitations on the representative's rights to exercise the owner's

rights at the meeting. Since the proxy appointment must be in writing and handed to the Chairperson before the meeting starts, unless it is a bondholder's proxy in a mortgage bond which is produced at the meeting, it is save to accept that the legislator envisaged a physical piece of paper.

The instrument of proxy must be signed by either the owner or his agent duly appointed in writing by the owner, which in my view would not require a physical signature.

In terms of **Section 13** of the **Electronic Communications and Transactions Act, Act 25 of 2002**, one can argue that an electronic signature or the expression of interest is legally enforceable in an electronic format. In my view the typing of one's name at the end of the e-mail should also be considered to be a valid signature.

An owner should be able to appoint a proxy by e-mail subject thereto that the e-mail is printed and handed to the Chairperson before commencement of the meeting.

As an example and in the e-mail the owner should identify him or herself as being the registered owner of Unit 1 of the Body Corporate of Digital Skies, that Meeting Dumisani is appointed as his/her proxy to vote at the annual or special general meeting to be held on 15 February 2016 or as postponed and if so elected to provide for any specific instructions or restrictions on the rights of Meeting Dumisani to exercise the owner's rights at the meeting. An electronic signature can be used or the e-mail can end by stating: *Signed by me Izak Du Pisanie on this 1st day of February 2016.*

Proxy appointment by SMS sent to the Chairperson's cell phone for example prior to the commencement of the meeting would not be valid.

Although not applicable on the appointment of proxy by e-mail, the amendment of **PMR 39(2)** is a step in the right direction to keep up with the changing times. **PMR 39(2)** deals with delivery of the annual financial estimate, financial statements and Trustees' report to owners and bondholders in advance of the AGM.

PMR 39(1) obliges the Trustees to have these

documents delivered to each owner and bondholders who have advised the Body Corporate of their interest at least 14 days before the AGM.

PMR 39(2) was substituted by GN R291 of 16 April 2010 and the reference to "prepaid post" was inter alia removed and not replaced with another mandatory method of delivery, and as such it seems that the annual financial estimate, financial statements and Trustees' report can be sent to owners and bondholders by e-mail, fax and by hand for example. In terms of **PMR 39(2)**, delivery of the aforesaid documentation shall be **deemed** to have been effected if the documents referred to are sent to the owner referred to in Rule 3(2), (*domicilium citandi et executandi* of each owner) and to any mortgagee at the address of such mortgagee as reflected in the records of the Body Corporate.

PMR 39(2) further provides that delivery of the annual financial estimate, financial statements and Trustees' report shall also be deemed to have been effected on the owner if the said documents are transmitted by facsimile or electronic mail to a facsimile number or electronic mail address specified by such owner in writing for the purposes of receiving such documentation.

These documents can consequently be sent to an owner that has selected an e-mail address or fax number as his or her service address for the purpose of **PMR 3(2)**, but subject thereto that the owner has notified the body corporate thereof in writing at its *domicilium*.

There is currently no limit on the number of proxies that one person can hold at a Body Corporate meeting.

Although not yet in operation, Section 6(5)(a) of the Sectional Titles Schemes Management Act, Act No. 8 of 2011 stipulates:

"A member may be represented in person or by proxy at such meeting: Provided that a person must not act as a proxy for more than two members."

It has been suggested by Mr. EY Stuart, from EY Stuart Inc. Attorneys, that this Section is open for more than one interpretation.

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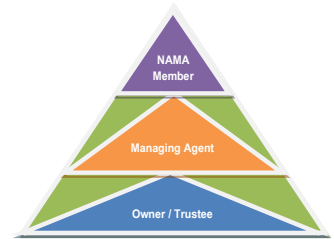
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NAMA EVENTS

NAMA National AGM

12/02/2016 – Emperors Palace Convention Centre, Kempton Park
Contact : coenie@nama.org.za for more information

Gauteng North Region

10/02/2016 – Regional AGM and 120 Breakfast Seminar
Topic : New Legislation on CSOS Act and Regulations – uncertainty and new challenges facing the industry presented by Elmo Stuart (EY Stuart Inc.)
17/03/2016 – Charity Golf Day, Silver Lakes Golf Estate, Pretoria
Contact : namanorth@nama.org.za for more information

Kwa-Zulu Natal Region

12/02/2016 – Regional AGM and 120 Breakfast Seminar
Topic : The NEMBA Act presented by Brian Dickinson (Peacock Liebenberg and Dickenson Inc.)
Contact : namakzn@nama.org.za for more information



Gauteng West Region

17/02/2016 – Regional AGM & 120 Breakfast Seminar
Topic : The news braking and benchmark judgement regarding disconnection of electricity and the collection of arrear levies presented by Cilna Steyn, MD SSLR Attorneys and Peter Mennen, Director SSLR
Contact : namawest@nama.org.za for more information

Western Cape Region

12/02/2016 – Regional AGM and 120 Breakfast Seminar
Topics : Sectional Title Insurance and the Proposed New Regulations presented by Mike Addison (Addsure) and Illegal Extension presented by Judith van der Walt (J van der Walt Attorneys)
Contact : namawc@nama.org.za for more information

Eastern Cape and Border Regions

25/02/2016 – ST Training Seminar, Newton Park Library, PE
Various Sectional Title topics presented by Dr Gerhard Jooste
Contact : namanorth@nama.org.za for more information

MANAGING AGENT INFORMATION

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