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What is to be done when a Sectional Title Scheme finds itself with no trustees

Let's paint a picture. At an annual general meeting of owners in June 2019, 4 trustees are determined as the number of trustees and 4 trustees are elected to office.

One month later 1 trustee resigns. Two months later 2 more trustees resign and shortly thereafter the last trustee, who was also the chairman, also resigns.

What is the scheme and the owners to do, now that there are no trustees to represent the body corporate and how is the managing agent to function without trustees to effect decisions?

The first important point to note, is that if a trustee or trustees resign and the number of trustees is diminishing and/or if there is a chance that soon the other trustees will also resign, that the remaining trustees should immediately, appoint replacement trustee/s in terms of Prescribed Management Rule (PMR) 7(5)

PMR 7(5) states

If a trustee ceases to hold office (by resigning in writing)

- (a) the remaining trustees; or
- (b) the members in general meeting,

may appoint a replacement trustee.

The question however remains, should a scenario arise like the above scheme where no trustees are in place, what is the scheme to do and how are the owners and managing agent expected to move forward?

One option, although it will require the consent of all the owners, is to determine the number of trustees and elect trustees by round robin resolution. This is provided for in PMR 17 (9)

A second option, which is practical and sensible, but not provided for in the Act and the PMR's, and hence which should only be carried out on sound legal advice, is for the owners to call a general meeting of owners on 14 days' notice for the purpose of determining the number of trustees and electing trustees.

A third option, is for the owners to act in accordance with PMR 28 (2) which states that owners entitled to 25% of the participation quota, may apply to CSOS for the appointment of an executive managing agent.

The fourth option, the owners have, is in terms of S16 of the Act, provided the additional criteria is met, is to apply to Court for the appointment of an administrator over the scheme.

In both the third and fourth options, the executive managing agent/administrator can be ordered, at a certain stage to call a meeting of owners to elect trustees and to hand the representation of the body corporate back to the trustees.

Having said all of the above, this predicament is certainly one, in respect of which the legislator should be looking at providing a better solution for in future amendments to the Act and PMR's.

*Disclaimer : The opinion expressed in this Notice Board is not necessarily that of NAMA.
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