



### MATTERS REQUIRING A SPECIAL RESOLUTION AND MORE



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In terms of the definition of a special resolution as is contained in Section 1 of the Sectional Titles Act, Act 95 of 1986 (as amended) (hereinafter referred to as the "Act"), a special resolution can be obtained in one of two ways namely, either when at least 75% of all the members of the Body Corporate reckoned in number and value agreed thereto in writing or when passed at a general meeting of owners by at least three fourths of the votes reckoned in value and number of the members of the Body Corporate present or represented at the meeting.

I have received the following questions in respect of a special resolution for consideration:

1. What matters require a special resolution?
2. What is the quorum requirements to take a special resolution at a special general meeting (SGM) of owners?
3. How is the notice of the aforesaid SGM delivered?
4. What happens if a quorum is not present at the aforesaid SGM?

5. If the SGM is adjourned, is notice of such adjournment required?

Various provisions in the Act and the prescribed management rules (PMR), Annexure 8 under the Regulations to the Act, deal with matters requiring a special resolution which include the following:

- In terms of **Section 24(3)**, an owner can extend the boundaries or floor area of his section if he is authorized to do so by way of special resolution of the members of the Body Corporate;
- In terms of the **Section 29(1)**, owners may by special resolution direct the Body Corporate to execute or accept on their behalf a servitude or restrictive condition burdening or benefiting the land comprised in the Scheme;
- In terms of the **Section 32(4)**, owners may by special resolution make rules by which a different value is attached to the vote of a sectional owner or his ability to contribute to the administrative fund;
- In terms of **Section 35(2)(b)**, the conduct rules of a Scheme may only be substituted, added to, amended or repealed by a special resolution of the Body Corporate;
- In terms of **Section 36(6)(e)**, the Body Corporate is capable of suing the Developer on any claim in respect of the Scheme if authorized by a special resolution;
- In terms of **PMR 10(1)**, the owners may by special resolution authorise payment to Trustees who are owners in respect of their services to act as Trustees;
- In terms of **PMR 29(3)**, the owners may by special resolution direct the Trustees to insure against such other risks as they may determine, over and above the compulsory insurance that must be obtained by the Body Corporate in terms of PMR 29;

- In terms of **PMR 33(2)(b)**, proposals in respect of non-luxurious improvements to the common property may be approved with or without amendments by way of special resolution;
- In terms of **PMR 47(iii)**, a Managing Agent shall cease to hold office if his contract is revoked by special resolution of the Body Corporate;
- In terms of **PMR 54(1)**, the members of the Body Corporate can by special resolution determine that a general meeting can be held at a place outside the magisterial district where the Scheme is situated.

At least 30 days' notice in which the proposed special resolution is specified is necessary to convene the SGM, except in circumstances the Trustees consider it necessary to convene the SGM with less than 30 days' notice due to the urgency or specific nature of the matter.

The notice must be delivered by hand or despatched by pre-paid registered post to the address of a member's unit or to such other address as the member may have indicated in writing for the purpose of such notice.

The quorum requirements stipulated in PMR 57(2) finds application which states that a Scheme with ten units or less, a quorum is constituted if owners who are entitled to vote and holding at least 50% of the votes are present in person or by proxy or by a representative recognised by law. If the Scheme has more than ten but less than fifty units or fifty or more units, owners entitled to 35% or 20% of the total votes respectively, must be present or represented.

In terms of PMR 58, if a quorum is not present within half an hour after the time appointed for a general meeting, the SGM will stand (automatically) adjourned to the same day in the next week at the same place and time. If at the adjourned meeting a quorum is not present within half an hour after the

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appointed time, the owners present in person or by proxy and entitled to vote, but not being less than 2 persons, shall form a quorum and can proceed to carry out the business of the meeting.

The definition of a special resolution only requires that the vote must be carried with at least three fourths of the votes reckoned in value and number of persons present or represented at a general meeting and since PMR 58 finds application in this instance, a special resolution can be passed at an adjourned SGM.

As an example, if only two or three members are present at the adjourned SGM and entitled to vote, all present will have to vote in favour of the special resolution. If four members are present and entitled to vote and being mindful of the value of their votes, at least three of the members will have to vote in favour of the special resolution.

In the event that the SGM is automatically adjourned in terms of PMR 58, no notice of the adjourned meeting is required since the aforesaid rule specifies when the meeting will be continued.

Although the rules do not expressly provide for members to be formally notified of the adjournment, nothing prevents the Trustees from acting accordingly and in line with PMR 58. New items may however not be added to the agenda of the adjourned meeting.

## GENERAL NAMA INFORMATION



Please take note the NAMA offices will close on 18 December 2015 and re-open on 4 January 2016

## NAMA EVENTS



### NAMA National AGM

05/02/2016 – Glendower Golf Club

Contact : [coenie@nama.org.za](mailto:coenie@nama.org.za) for more information

### Gauteng North Region

10/02/2016 – Regional AGM and 120 Breakfast Seminar

17/03/2016 – Charity Golf Day, Silver Lakes Golf Estate, Pretoria

Contact : [namanorth@nama.org.za](mailto:namanorth@nama.org.za) for more information

### Kwa-Zulu Natal Region

12/02/2016 – Regional AGM and 120 Breakfast Seminar

Contact : [namakzn@nama.org.za](mailto:namakzn@nama.org.za) for more information

### Gauteng East Region

05/02/2016 – Regional AGM and 120 Breakfast Seminar

Contact : [namaeast@nama.org.za](mailto:namaeast@nama.org.za) for more information

### Gauteng West Region

17/02/2016 – Regional AGM & 120 Breakfast Seminar

Contact : [namawest@nama.org.za](mailto:namawest@nama.org.za) for more information

### Western Cape Region

11/02/2016 – Regional AGM and 120 Breakfast Seminar

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### Eastern Cape and Border Regions

25/02/2016 – ST Training Seminar, Newton Park Library, PE

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## MANAGING AGENT INFORMATION

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