

Panel discussion on the topic of Voting and the use of Voting Cards at AGM's and SGM's

Presenters:

Rudi Heerschop, Schuler Heerschop Pienaar Attorneys

Zerlinda van der Merwe, TVDM Consultants

Poena le Roux, MeetingPal

Willie Roos, Stratafin



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MEETING | PAL

Our Panelists

- ❑ Willie practiced as a property attorney for over 20 years
- ❑ He was involved in Sectional Title management for over 8 years
- ❑ Willie started Stratafin in 2014 with the goal of assisting Bodies Corporate with their funding without catching them in a debt trap.
- ❑ Stratafin strives to be a fair and equitable money provider for the Sectional Title industry.
- ❑ Willie built up Stratafin from inception to today where it has debtors under management of over R300 Million
- ❑ Stratafin partnered with Medu Capital, and the PIC has invested with a 45% ownership



Willie Roos
CEO of Stratafin



Our Panelists

- ❑ Zerlinda lives and breathes all aspects of community scheme living, both personally and professionally, having pursued her passion at Stellenbosch University, graduating Cum Laude with her LLM thesis on the Constitutionality of sectional title rules.
- ❑ Zerlinda's academic pursuits was followed by some time in the trenches as a managing agent and specialist community schemes attorney with Pam Golding Property Management Services, BBM and Paddocks.
- ❑ TVDM Consultants serves the community of managing agents, trustees, directors, estate managers, developers, conveyancers, owners and occupiers as community schemes consultants, offering legal advice and consultations, CSOS dispute resolution, amendment of governance documentation, compliance, meeting attendance and relationship building.



Zerlinda Van Der Merwe
Owner at TVDM Consultants

Our Panelists

- ❑ Rudi holds an LLB and has been practicing as an attorney for more than 10 years.
- ❑ In 2011 Rudi started Schüler Heerschop Pienaar Inc Attorneys, which has developed into a now medium sized law firm with offices in Johannesburg, Cape Town, and Pretoria.
- ❑ Rudi manages SHP's team of candidate attorneys in the firm's magistrates and regional court litigation division. In his personal capacity, he specialises in the law surrounding community schemes, High Court litigation, and Collections.
- ❑ In addition, and in honouring his commitment to community upliftment and education, Rudi is actively involved in community advisory services relating to the law surrounding community schemes.



Rudi Heerschop
Director at Schuler
Heerschop Pienaar Attorneys

Our Panelists

- ❑ Poena is an IT Professional with ± 35 years experience
- ❑ He has been involved in Sectional Title management for over 20 years as owner, Trustee and Chairperson for a 50-unit self-managed complex
- ❑ Poena completed 5 Paddocks Courses
- ❑ Poena is the owner of a software development company founded in 1992.
- ❑ Poena designed MeetingPal in 2017 based on the voting to be done in number and value.
- ❑ Poena was Chairperson in Apr 2020 with lockdown and assigned his team to the development of MeetingPal to ensure that he can run remote meetings as Chairperson that complies to the Act
- ❑ MeetingPal has been used by more than 500 BCs/HOAs, Pensionfund Administrators and Companies across 1000's of meetings



Poena Le Roux

Owner at MeetingPal

Definitions

(Zerlinda)

- ❑ Motion / Resolution
- ❑ STSMA - Sectional Titles Schemes Management Act 8 of 2011
- ❑ PMR - Prescribed Management Rules
- ❑ Value / PQ - Participation quota
- ❑ Ordinary resolutions
 - ❑ Majority
 - ❑ Value
 - ❑ Approval of budget / MR&R plan, election of trustees, determination of FYE, installation of meters
- ❑ Special resolutions
 - ❑ 75%
 - ❑ Value and number
 - ❑ Amendment of conduct rules, approving extension of section
- ❑ Unanimous resolutions
 - ❑ 100% of 80% quorum
 - ❑ Value and number
 - ❑ Amendment of management rules, approval of registered EUA's

Voting according to the STSMA

(Zerlinda)

- ❑ Voting cards
 - ❑ PMR 17(6)(a)
 - ❑ Physical - records
 - ❑ Electronic (MeetingPal)
 - ❑ What happens if none? (Rudi example)
- ❑ Show of hands - no!
- ❑ Vote in number
 - ❑ 1 member has 1 vote irrespective of the number of units owned by that member
 - ❑ sections 1, 6(7) and (8), PMR 20(1)(b)
- ❑ Seconding of motions – no
 - ❑ PMR 20(1)(a)
- ❑ Round robin resolutions
- ❑ Trustee of trust vs beneficiaries
- ❑ Outcome announced at AGM / SGM

Notice

(Rudi)

- ❑ Rule: all persons who are entitled to attend that meeting must be given an adequate opportunity to exercise that right.
- ❑ PMR 15(1): at least 14 days' written notice of a general meeting specifying the place, date and hour of the meeting must be given to (a) all members; (b) all registered bondholders; (c) all holders of future development rights; and (d) the managing agent.
- ❑ Notice must include: PMR15(3)(a)-(c)
 - ❑ the agenda;
 - ❑ a copy or comprehensive summary of any document that will be considered or tabled for member approval; and,
 - ❑ a proxy form
- ❑ Notice must be delivered to members at their service address – PMR 4(5) and 15(6)(1) / by hand or pre-paid registered post – STSMA Section 6(3) and (4);
- ❑ Notice Period:
 - ❑ At least 14 Days – AGM / SGM / Ordinary Resolutions
 - ❑ 30 Days – Special or Unanimous Resolutions
 - ❑ Exception?
- ❑ Can the set date of the meeting be changed?
- ❑ Failure to give proper notice of a general meeting to a person entitled to receive notice does not invalidate a vote taken at the meeting, as long as the body corporate made a reasonable attempt to give the notice.



Proxies

(Rudi)

❑ Proxies

- ❑ A proxy is appointed by a member to attend, speak and vote on their behalf at a general meeting of the scheme
- ❑ a person cannot hold more than 2 proxies – STSMA section 6(5)
- ❑ the managing agent or an employee of the managing agent or body corporate cannot be a proxy – PMR 20(6)
- ❑ a Proxy Form must be in the prescribed format – PMR 20(5) – Form C
- ❑ A Proxy must – PMR 20(5);
 - ❑ (a) delivered to the body corporate 48 hours before the time of the meeting; or
 - ❑ (b) handed to the chairperson before or at the start of the meeting
- ❑ Joint owners?
- ❑ Revoking a proxy?

Conflict of interest in general meetings

(Willie)

- ❑ A situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.
- ❑ Law prohibits secret commissions/profits from agreements.
- ❑ Disclosure is required
- ❑ Non-participation in discussions and decisions

Conflict of interest in general meetings

(Willie)

□ AGM/SGM

- Members do not have a general duty towards a Body Corporate
- Perceived conflict of interest vs actual conflict of interest
- It is best practice to disclose if you as a member will be contractually involved with the Body Corporate.
- When contract is discussed, excuse yourself from meeting and not take part in the discussion or vote – no legal requirement
- The decision to contract lies with the trustees/employees/directors of BC and HOA
- A member may vote on any matter, irrespective of any perceived conflict of interest, e.g., vote for yourself on the appointment of trustees or to approve a contract by the members
- Conflicts of interest can be included in the AGM/SGM agenda or at a committee meeting

Conflict of interest in general meetings

(Willie)

❑ Trustee meeting and resolution

- When a trustee resolution is tabled for consideration and approval, any trustee with a direct / indirect personal interest in the matter must not be present at or play a part in such consideration or decision – PMR 6(3)

❑ Duties of chairperson

- Surrender the chair if he/she wishes to engage in the debate – PMR 18(3)(i)
- Must not attempt to influence members views on any business - PMR 18 (4)

Resolutions

(Rudi)

Ordinary Resolution

- Default Position
- Adopted by a simple majority of more than 50 percent of the value of the vote of members present and voting at the meeting in favour of the resolution.



Resolutions

(Rudi)

- ☐ Special Resolutions
- ☐ Adopted in 2 ways;
 - 75% in value and number of votes of members present or represented at a meeting;
 - when agreed to in writing by members of a body corporate holding at least 75 percent calculated both in value and in number, of all the votes (“Round Robin”);
- ☐ Improvements to Common Property?
 - Special Resolution at General Meeting and not by way of Round Robin Resolution
- ☐ Notice Period
 - 30 days’ Notice
 - Exception?
 - Prepaid Meters?
- ☐ CSOS’s intervention?



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Resolutions

(Rudi)

- ☐ Unanimous Resolutions
- ☐ Adopted
 - all members agreeing writing (Round Robin).
 - by all members of the body corporate at which (i) at least 80 percent 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;
- ☐ Notice Period;
 - 30 days' Notice;
 - Exceptions?
- ☐ CSOS's intervention?

Waiver

(Rudi)

Waiver

PMR 15(2)

- A person who has a right to be notified under this rule may waive that right by notice in writing delivered to the body corporate;
- A waiver may be revoked at any time and in the same way
- if two or more persons are jointly entitled to exercise a vote, all of them must waive the right to notice and any of them may revoke that waiver;

Cooling-off period

(Rudi)

Unanimous Resolution

- STSMA Section 6(8): Where the unanimous resolution would have an unfairly adverse effect on any member, the resolution is not effective unless that member consents in writing within seven days from the date of the resolution.

Special Resolution;

- PMR 20(9) and (10): If a special resolution is adopted where the quorum was less than 50% of the total PQ of the scheme, the body corporate must wait for one week before implementing the special resolution.

-  If so requested, within 7 days by members holding 25% in value, the special resolution may be reconsidered.

When can't members vote?

(Rudi)

- ❑ PMR 20(2) - Except for special and unanimous resolutions, a member is not entitled to vote if—
 - (a) a member fails or refuses to pay the body corporate any amount due by that member after a court or adjudicator has given a judgment or order for payment of that amount; or
 - (b) that member persists in the breach of any of the conduct rules of the scheme referred to in section 10(2)(b) of the Act after a court or an adjudicator has ordered that member to refrain from breaching such rule.


The effect of abstentions

(Willie)

Quorum

- A quorum needs to be established at beginning of meeting
- The quorum needs to be maintained at all times when the business of meeting is conducted
- Business must not be transacted at any general meeting unless a quorum is present or represented - PMR 19(1)

The effect of abstentions on the quorum

- No reference to abstentions in Sectional Title Schemes Management Act (STSMA)
- Reference made in the Prescribed Management Rules (PMR)
 -  All units belonging to the BC is regarded as abstentions to quorum and voting – PMR 19(3) & PMR 20(3)

The effect of abstentions

(Willie)

- ❑ Where the STSMA and the PMR's / amended MR's are silent in respect of abstentions, one would follow the Common Law of meetings in accordance with PMR 18(3)(a) which states:
- ❑ A chairperson must (a) maintain order, regulate the orderly expression of views and guide the members and other participants through the business of the meeting in accordance with the common law of meetings;
- ❑ In terms of the Common Law of meetings, Members attending a meeting and refusing to take part in the proceedings may be treated as absent or as not constituting part of the meeting for the purpose as to which they decline to interfere as stated by Arthur Lewin in the Law and Procedure and Conduct of Meetings in South Africa, 4th edition, page 100.

The effect of abstentions

(Willie)

- ❑ An abstention would be excluded from the quorum, however, this could cause there not to be a quorum during the meeting, and we believe that that is why the previous Act counted the vote in favour.
- ❑ Resolution tabled for approval at an AGM / SGM is calculated in value of the members **present** and **voting** - PMR 20(1)(b)
- ❑ Abstentions in HOA – depends on constitution/MOI

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FIN



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MEETING
PAL



▶ Voting via physical voting card

(zerlinda)

What does a physical voting card need to include:

- ☐ Details of meeting (AGM / SGM / Adjournment) including date
- ☐ Name of registered owner
- ☐ Name of proxy holder
- ☐ Section / unit / door number
- ☐ Voting item
- ☐ Yes or No vote (no abstain)
- ☐ Signature

Format - single sheets to be handed in to be counted during meeting



Voting via physical voting card

VOTING CARD

ANNUAL/SPECIAL GENERAL MEETING: DATE 2021

(EXTENDED TO THE RECONVENED MEETING IF NEEDED)

SCHEME DETAILS	
Name of Scheme:	
SS / Registration No.:	
Date of meeting:	

The completed voting sheet is to be handed in after vote.

Member Name/Proxy: (please append proxy form)	
Section number/s:	
Participation Quota:	

Vote in terms of a **Special/General/Unanimous** Resolution for {state decision} as contained in the **AGM/SGM** Agenda.

I hereby vote:

IN FAVOUR	AGAINST	SIGNATURE

Voting via electronic means

NAMA Voting Card Example

Attending As: poena@meetingpal.app

[Agenda](#) [Details](#) [Downloads](#)

▼ Approve 2020 AGM Minutes Awaiting Votes 3

Resolutions

Approve minutes of 2020 AGM

Approve minutes of AGM held at 19 Sept 2020 via Zoom as circulated by 24 September 2020 as a true record of the meeting.

Voting as: Unit 3;

Owner: Owner 3

☐ Yes ☐ No ☐ Abstain

Voting as: Unit 8;

Owner: Owner 9

☐ Yes ☐ No ☐ Abstain

Proxies

Voting as: Unit 1;

Owner: Owner 1

As Owner 1 - poena.leroux@sisbiz.co.za

☐ Yes ☐ No ☐ Abstain

Approve minutes of 2020 AGM

☒ Show Count ☒ Show Weight

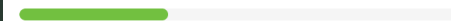
Abstained Votes:

☐ Separate Count ☐ Count As Yes ☐ Count As No ☒ Ignore

☐ Unvoted Counts as Abstained

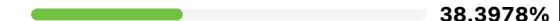
Votes Yes

2



Weighted Yes

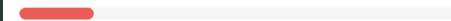
7.7572



38.3978%

Votes No

1



Weighted No

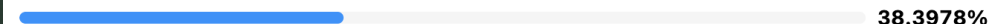
12.445



61.6022%

Weighted Yes / Total Votes Weight

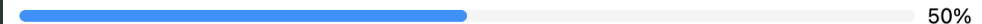
7.7572 / 20.2022



38.3978%

Total Votes / Total Owners Attending

3 / 6



50%

Total Votes / Total Owners: 3 / 11 (27.2727%)

Total Attending / Total Invites: 5 / 9 (55.5556%)

Total Owners Attending / Total Owners: 6 / 11 (54.5455%)

Total Owners Attending Weight / Total Owners Weight: 55.8259 / 100 (55.8259%)

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MEETINGPAL

Voting via combination

(Zerlinda)

- ☐ Physical and electronic
 - ☐ PMR 17(10) and (11)
 - ☐ Telephone or other method (not prescriptive)
 - ☐ Accessible
 - ☐ Communicate
 - ☐ Identity
- ☐ Considered to be present in person

Real life examples

- ❑ Voting for trustees as a nominated person
- ❑ Contractual agreements with chairman's company to do roof repairs at the Body Corporate
- ❑ Combination/mixed meeting – restriction on speaking via electronic meeting platform
- ❑ Voting cards – MA left with physical voting cards

Examples of HOA's

(Zerlinda)

- ❑ Constitution
 - ❑ Memorandum of Incorporation (Articles of Association) and Companies Act
 - ❑ Amendment of governance documentation
 - ❑ CSOS Practice Directive
 - ❑ Size of HOA's

Thank you



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