

# Proposed motions

## FOR INCLUSION ON THE AGENDA OF A GENERAL MEETING

Strata Schemes Management Act 2015 ("SSMA")  
Strata Schemes Management Regulation 2016 ("SSMR")

### COVID-19 PANDEMIC EMERGENCY MEASURES NOTICE

To eliminate the risk of transmission of the COVID-19 virus, no physical meeting will be conducted. All the items of business on this agenda will be dealt with **wholly by pre-meeting electronic voting** according to the procedure explained in this agenda.

*[\*\*An explanation of the procedures adopted for pre-meeting electronic voting must be included]*

### Motions

#### 1. Electronic voting

The owners corporation RESOLVES that, for the period commencing immediately prior to the making of this resolution, a vote at a meeting by a person entitled to vote or by a proxy may be cast only by pre-meeting electronic voting by a means to be determined by the Secretary (including by instructions included in the meeting notice), including, without limitation:

- (a) On this motion, despite the fact that notice of this motion was given prior to the passing of this resolution.
- (b) On each subsequent motion on this agenda.

Sch 1 cl 28 (1) SSMA 2015, cl 14 (1) SSMR 2016

**Explanatory note.** The intention of this motion is to require all determinations at general meeting to be considered only by means of pre-meeting electronic voting. Note that a motion to be so determined cannot be amended at the meeting to which it is put.

Comments (not to be included on agenda):

1. This motion purports to adopt pre-meeting electronic voting, **including** for the agenda on which it is placed (and as to its own adoption). Nothing in the legislation expressly says that an owners corporation cannot make a retrospective determination to adopt pre-meeting voting, however it is most likely implied. In our view, however, the Act should not be interpreted as expressing the intention that a motion resolved in this manner be treated as a nullity. There is of course a risk, which can be eliminated by instead first holding a separate meeting to resolve to adopt pre-meeting electronic voting for all matters.
2. In our view, clause 28 (2) (c) of Schedule 1 of the *Strata Schemes Management Act 2015* provides sufficient power for a regulation to be made to mandate that all matters for all general meetings of all strata schemes must be decided only by pre-meeting

electronic voting, or other remote means. There is therefore the prospect of a government fix being introduced, and a risk that such a fix may contradict, and perhaps render a resolution in the form of this motion invalid or ineffective.

3. Clause 14 of the Strata Schemes Management Regulation 2016 does not permit pre-meeting voting on an election of the strata committee. Clause 9 of that Regulation imposes a strict process for such an election, which can only be conducted at a meeting. Remote participation in the meeting would be permissible. A suggested solution to the approach to elections of the committee electronically is set out later in this motion pack. Otherwise the existing committee remains in office until replaced or otherwise vacated. It is therefore possible to conduct all general meetings purely by pre-meeting electronic voting, if no owner exercises their right to require an item to elect the committee to be placed on an agenda, and if the below approach is adopted to committee elections.

## 2. Motion for appointment of the strata committee by electronic means

The owners corporation SPECIALLY RESOLVES in accordance with section 35 (1) (e) and section 35 (3) of the *Strata Schemes Management Act 2015* to determine that the office of each member of the strata committee is immediately vacated and further RESOLVES, in accordance with its power under section 29 (1) of that Act and sections 47 and 48 of the *Interpretation Act 1987* to immediately appoint a strata committee by pre-meeting electronic voting on this motion as follows:

- (a) Each person entitled to vote on this motion may vote for any one or more of the following nominees for appointment by the owners corporation to membership of the strata committee (and by doing so records their vote in favour of this motion as a whole):
  - (i) [Insert name]
  - (ii) [insert name]
- (b) Members of the committee are appointed, beginning with the nominee who received the most votes, and ending when either no further nominees received votes, or when the number of members of the committee reaches 9.
- (c) The size of the committee is resolved to be the number of members appointed in accordance with this motion.

Ss 29, 35 SSMA 2015, ss 47, 48 *Interpretation Act 1987*

**Explanatory note.** This motion proposes to vacate the previous committee's positions and appoint a new committee in a manner that permits that process to occur by way of pre-meeting electronic voting.

Comments (not to be included on agenda):

1. This motion purports to adopt a procedure to appoint a new committee by means of pre-meeting electronic voting. This is inconsistent with clause 14 of the Strata Schemes Management Regulation 2016, which does not permit a committee election to be conducted by pre-meeting electronic voting. However, this motion is arguably permissible on the basis that it does not, in fact, amount to an election of the committee. It instead operates by vacating the offices of the existing committee members and exercising a direct power to replace the committee once it is vacated. Either the committee members so appointed remain in office for the balance of their predecessors' terms, or they remain in office in accordance with the other provisions of the act—being in either case the period until the next official election of the committee is conducted, or when their positions are otherwise vacated.
2. Using this approach, the committee can be vacated and re-appointed any number of times without conducting an election. However, the motion cannot prevent an election

motion being considered if it is otherwise placed on an agenda. Accordingly care would be necessary to ensure that no election motion be proposed, and if such a motion is proposed by a lot owner entitled to do so, advice be sought on how to most appropriately deal with that request (which could, for example, involve the Chairperson ruling the motion out-of-order on the basis that it cannot be decided on an agenda to be conducted wholly by pre-meeting electronic voting).

3. The legislation requires a form of motion to be included for AGMs to determine the size of the committee and conduct an election. Although this motion is not strictly an election motion, in our view it is sufficiently similar that there is no meaningful risk of the agenda being invalidated or overturned by reason of a technical failure to incorporate an express election motion. As always, there is of course a risk of dispute.
4. The motion requires a special resolution to vacate the existing committee offices. Sub-motion 2 (a) provides that if someone votes for one or more candidates, they are taken to be expressing their support for the motion as a whole, so the value of their vote counts towards the special resolution threshold.
5. The voting procedure adopted is that any person entitled to vote can vote for as many of the nominees as they wish, with the positions filled based on highest number of votes, to a maximum of nine, or less than nine where no enough nominees have received votes.
6. It would be necessary for the owners corporation to carry out a process of calling for nominations before preparing the agenda. For example, the Secretary may wish to call for nominations a week before the agenda is prepared. This step could be taken by way of issuing a notice calling for nominations.
7. In our view the owners corporation has the power to appoint replacement committee members in accordance with section 29 of the *Strata Schemes Management Act 2015*, which creates an obligation (and, therefore, a power) for the owners corporation to appoint a committee, supported by provisions of the *Interpretation Act 1987* which make clear that such a power can be exercised from time to time.
8. It is arguable that, if members of the committee are appointed under such a motion, in future the requirement of a special resolution to vacate their offices would **not** apply, as their offices might arguably be vacated by ordinary decision of the owners corporation (or even the committee itself) under section 47 of the *Interpretation Act 1987*. However, in our view, the specific requirement for a special resolution in the *Strata Schemes Management Act 2015* would be read as over-riding the general power from the *Interpretation Act 1987*.

### 3. **Motion for suspension of contributions to the capital works fund**

The owners corporation RESOLVES to repeal, with effect from the date of this meeting, any previous determination concerning estimates of how much money it will need to credit to its capital works fund, together with any previous determination of the amounts to be levied as a contribution to that fund, and further RESOLVES to revoke any notice raising such contributions with effect from the date of this meeting.

Ss 79, 81, 83 SSMA 2015

**Note.** *Any contribution that was due and payable before the date of this resolution is unaffected and therefore remains due and payable.*

**Explanatory note.** The intention of this motion is to cancel all capital works fund contributions that have not yet become due and payable.

Comments (not to be included on agenda):

1. This motion purports to repeal previous decisions to raise capital works fund contributions and revoke notices levying them on lot owners. It is structured so that only levies not yet due and payable are affected.
2. It is questionable as to whether the owners corporation has the power to revoke notices. Arguably, once issued, the notices simply take effect. Usually, notices would be issued progressively for quarterly contributions, and so there should not usually be any issue. It is unlikely that any person would contest the issue.
3. A determination of this nature is—apart from the question of revoking notices just mentioned—unquestionably valid. However, it does place the owners corporation in breach of its obligations to set and raise capital works fund contributions. An owner or other person may be entitled to seek relief, which could include Tribunal orders to, in effect, “restart” the capital works fund levies, or perhaps for compulsory appointment of a strata manager on the basis of dysfunction. In our view the risk of the Tribunal granting such orders given the broader societal circumstances is relatively low, but it does exist.

#### 4. **Motion for transfer of funds from the capital works fund to the administrative fund**

The owners corporation RESOLVES to transfer the amount of \$#.## from its capital works fund to its administrative fund.

S 76 SSMA 2015

**Explanatory note.** The intention of this motion is to transfer funds from the capital works fund to the administrative fund.

Comments (not to be included on agenda):

1. This motion is expressly permitted by the legislation.
2. However section 76 (2) requires the owners corporation, within 3 months of the funds transfer, to determine an amount to be levied to reimburse the capital works fund.
3. A breach of that requirement would not render the transfer of funds invalid.

#### 5. **Motion for suspension of interest on unpaid contributions**

The owners corporation RESOLVES in accordance with section 85 (3) of the *Strata Schemes Management Act 2015* that, from the date of this resolution, contributions not paid when they become due and payable are to bear no interest.

S 85 (3) SSMA 2015

**Note.** *Interest that accrued on unpaid contributions prior to the passing of this resolution will be unaffected, however no further interest will accrue on those amounts from the date this resolution is passed.*

**Explanatory note.** The intention of this motion is to suspend interest accruing on unpaid contributions.

Comments (not to be included on agenda):

1. This motion is expressly permitted by the legislation and no issues should arise. It is drafted to apply prospectively so as not to require the adjustment of existing lot accounts

or affect existing enforcement action (which would create a risk of wasted and unrecoverable costs)

## 6. Motion concerning the electronic inspection of records

The owners corporation RESOLVES that, for the purposes of section 183 of the *Strata Schemes Management Act 2015*:

- (a) It does not agree to the inspection of the owners corporation's documents in person, and instead will only agree to the inspection of the owners corporation's documents by electronic access to the documents, for the purposes of section 183 (1).
- (b) Failing agreement in any case to inspection by electronic means, the owners corporation fixes electronic access to the documents as the means for such an inspection and will issue a notice to that effect in accordance with section 183 (2).

S 183 SSMA 2015

**Explanatory note.** The intention of this motion is to provide that the owners corporation's records are only to be inspected by way of electronic access.

Comments (not to be included on agenda):

1. Section 183 (3) contemplates provision of access for inspection of documents by electronic means.
2. However, to pass this motion, the owners corporation will need to be in a position to, in fact, provide electronic access.
3. This motion alone is not sufficient—the procedure in section 183 must still be followed. The owners corporation must implement the decision by not agreeing to in-person inspections, and by giving the necessary notices nominating electronic access as the means of access in a particular case in accordance with section 183 (2), which requires that notice to be given if agreement is not reached as to inspection within 3 days from receipt of the relevant notice from the applicant for inspection.

## 7. Motion to adopt an electronic seal

The owners corporation RESOLVES that the seal of the owners corporation will be of a design bearing the owners corporation's unique name, capable of being imprinted by physical or electronic means upon any document, to exist only within the custody and control of the persons or persons by whom the seal must be kept in accordance with section 272 of the *Strata Schemes Management Act 2015*.

S 272 SSMA 2015

**Explanatory note.** This motion proposes to adopt the use of an electronic seal.

Comments (not to be included on agenda):

1. Our view is that the legislation does not contemplate or permit the use of an electronic seal, nor does it permit the keeping of duplicate seals. In our view the legislation

requires the seal to be a single, physical object in the custody of a person required to keep it under section 272.

2. Whether the legislation would treat a duplicate or electronic seal as being invalid, or an act of affixing that seal as being a nullity, is a question that is open for debate. There are good reasons to believe that such a serious outcome could result, in particular that the affixing of the seal chiefly is of relevance with respect to registration of dealings with land, and allowing duplicates or electronic seals could facilitate fraudulent land dealings.
3. There are various circumstances where the affixing of the seal is not required as a matter of law and instead is just done as a matter of convention. In these cases, the owners corporation or its strata committee can determine to appoint a particular person, such as the Secretary, to execute certain documents on its behalf. Alternatively the strata managing agent may have the appropriate delegations to execute such documents on the owners corporation's behalf without use of the seal. We would encourage use of these alternative measures wherever possible.
4. There are circumstances, however, where the law requires the affixing of the seal. Chiefly these relate to dealings and plans lodged with Land Registry Services. The affixing of the seal is either required by legislation, or required by a lawful direction of the Registrar-General. In those cases, there is no work-around for affixing the seal.
5. In those cases, there is a significant risk that relying on this motion, and an electronic seal, may put at risk the validity of the dealings or documents in question.
6. It appears to be within power for a Regulation to be made making alternative arrangements for the affixing of the seal of an owners corporation by electronic means under amendments made to the *Electronic Transactions Act 2000* by the *COVID-19 Legislation Amendment (Emergency Measures) Bill 2020*. It may be that the introduction of a relevant regulation may therefore make this motion redundant, or alternatively render it void or ineffective.