THE POWER OF ONE

The Queensland strata legislation, like other States' legislation, includes varying motion types which necessitate different levels of voting support in order to become resolutions. Each State has unique categories of motions and different threshold voting requirements for such motions to be approved. Whilst there is some overlap, a special resolution in one jurisdiction may have a different meaning in another (at least in terms of the way votes are calculated).

In Queensland, the *Body Corporate and Community Management Act 1997* prescribes the following resolution types (for general meetings):

- Ordinary resolution
- Majority resolution
- Special resolution
- Resolution without dissent

The most common resolution type is an **ordinary resolution**. Such a resolution is calculated quite simply in terms of a majority *of those voting*. The motion passes if there are more votes in favour than against. The qualifying aspect to this is if somebody (anybody entitled to vote) requests a 'poll'. In such circumstances, the motion is passed if the total contribution lot entitlements in favour of the motion are more than the total contribution lot entitlements against the motion. An ordinary resolution is the only resolution type where a poll can be requested.

One infrequently used resolution type is a **majority resolution**. Because they are rarely required, there seems to be a tendency to assume (incorrectly) that a majority resolution is the same as an ordinary resolution – after all, it talks about a 'majority' doesn't it? However, they are quite different things. A majority resolution is calculated based on the total number of lots in the scheme. The resolution carries only if the votes in favour of the motion are more than half of the lots *entitled to vote* on the motion. Given the general apathy and low voting turnout at general meetings, obtaining the required support for a majority resolution can be quite difficult.

Another misconception that owners and others in the strata sector frequently seem to have is the voting requirements for a **special resolution**. There appears to be a common assumption that such a resolution requires a simple 75% majority. Whilst perhaps that might be useful as a 'rule of thumb', the counting of votes for a special resolution is quite different. The test is a three-tier one, and requires all of the following requirements to be satisfied:

- At least two-thirds of the votes cast are in favour of the motion.
- The votes counted against the motion are not more than 25% of the number of lots in the scheme.
- The contribution lot entitlements for lots voting against the motion are not more than 25% of the total contribution lot entitlements for the scheme.

That brings us to the final resolution type and the purpose of my commentary in this newsletter – the **resolution without dissent**. Such a resolution quite simply requires that no vote is cast against the motion. What's more, this resolution type does not prohibit owners who owe a body corporate debt at the time of the meeting from voting on the motion. Accordingly, a single owner (financial or unfinancial) can ensure that such a motion does not carry – and this frequently occurs.

It holds true that there will be very serious decisions that a body corporate will need to make from time to time that should require strong majority support – even beyond the requirements of a majority or special resolution. However, the question arises as to whether a unanimous voting requirement is a step too far?

Of course, there will be those that point out that any failure of a resolution without dissent to pass can be the subject of challenge in the Commissioner's Office – the relevant test being whether it failed to pass '*because of opposition that in the circumstances is unreasonable*' – a test for which we have High Court authority (*Ainsworth v Albrecht* [2016] HCA 40).

However, that still means that valuable time and resources are consumed in seeking to have an unreasonable vote overturned in the Commissioner's Office. Conversely, if one or two votes were insufficient to prevent the passing of the motion, it would be up to those 'aggrieved' owners to take the initiative and commence dispute resolution proceedings to challenge the passing of the motion. Without good cause and reasons for their dissent, most owners will probably not take up this option – particularly as frivolous or vexatious applications can be dismissed with costs.

That brings us to another question about whether the current statutory maximum of $2,000.00 is sufficient to discourage the lodging of frivolous or vexatious applications. Certainly not in my opinion. However, that is a debate for a different day – and a different newsletter!

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