

Voting rights and how it works



In New South Wales (NSW), Australia, the Strata Schemes Management Act 2015 outlines the eligibility criteria for voting in strata meetings. According to the Act, the following individuals are allowed to vote at strata meetings:

- Any person who is an owner of a lot in the strata scheme is eligible to vote at strata meetings. The voting rights of owners are generally determined by the unit entitlements of their lot, which are calculated based on the size and value of their lot.
- An owner may appoint a proxy to vote on their behalf at a strata meeting. The proxy must be an eligible individual who can vote at the meeting (i.e. an owner or a company nominee). The appointment of a proxy must be in writing and must be given to the secretary of the owners corporation before the start of the meeting.
- If a lot is owned by a company, the company may nominate an individual to vote at strata meetings on its behalf. The nominee must be a natural person who is authorized by the company to vote at the meeting.

It's essential to note that tenants and other occupants of lots in the strata scheme generally do not have voting rights at strata meetings. However, they may attend the meeting as observers and may be permitted to speak if the chairperson allows it.

There are different types of proposals that can be voted on at a meeting. Some common examples include approving the amount of levies to be charged, approving plans for repairs, or approving a change to a by-law.

Different proposals will require a different number of owners to vote in favor, based on their unit entitlement:

- A general resolution (also called a simple majority vote) doesn't use unit entitlement. Each owner has one vote per property they own. Over 50% of people must vote for the motion for it to pass.
- A special resolution is a vote by unit entitlement. For a proposal to be approved, no more than 25% of the vote can be against the proposal.
- A unanimous resolution means that there must be no votes against the proposal for it to be approved.
- A sustainability infrastructure resolution is a vote by unit entitlement. For the proposal to be approved, those against it must make up less than 50% of the votes. You can learn more about sustainability infrastructure on the relevant page.

Any voter can call for a 'poll' before or just after a vote takes place. Calling for a poll changes a vote by a general resolution so that it uses unit entitlement, instead of one vote per lot.

HOW TO VOTE

Voting by electronic vote

If electronic voting has been authorised by the owners corporation, owners can vote on owners corporation matters by teleconference, email, or other electronic means.

As of 5 June 2020, due to the Public Health Order relating to the COVID pandemic, all strata properties and community associations can now meet and vote electronically at general and committee meetings. Previously, strata properties could only meet and vote electronically if the owners corporation or strata committee had adopted a resolution to allow it. Community schemes laws did not previously provide for electronic voting.

2. Pre-meeting electronic voting

This method involves voting by email or other electronic means before the meeting. Both the owners corporation and strata committee can use this method of voting. However, this method cannot be used for elections.

3. Voting by poll vote

When using a poll vote to vote on owners corporation matters, votes are worked out by counting the unit entitlements rather than counting each vote for and against the motion.

4. Voting by way of secret ballot

This can occur if a minimum of one quarter of those entitled to vote on the motion (or election) requires a secret ballot to be conducted. Alternatively, the strata committee has the power to require that a motion (or election) is to be determined by secret ballot.

5. Priority vote

A mortgagee or covenant chargee registered on the strata roll can cast a priority vote. A priority vote on owners corporation matters may be cast on any of the following motions:

- A motion that relates to insurance, budgeting or the fixing of a levy
- A motion on owners corporation expenditure of an amount that exceeds that prescribed by the regulations
- A motion that requires a special resolution or unanimous resolution.

A vote by an owner does not count if a priority vote is cast for the lot concerning the same matter.

Voting rights, including a priority vote, cannot be exercised if the lot was unfinancial on the date notice of the meeting was given and did not pay the amounts owing before the meeting (with the exception of motions requiring a unanimous resolution).
proxy appointment

A proxy voter is somebody who can attend and vote at a meeting on your behalf. To appoint a proxy voter, complete a proxy appointment form and give it to the secretary.

For large schemes (with more than 100 properties), you must give the form to the secretary at least 24 hours before a meeting. In other schemes, you can hand it over before the meeting starts. Also, in a large scheme, the person you nominate can't already hold a proxy vote for more than 5% of the total number of properties.

If you are in a scheme with 20 properties or less, the person you nominate can't already hold a proxy vote for someone else. If you own more than one property in the scheme, you can nominate a proxy for each property. Or, you can nominate just one proxy for all of your properties.

Who can be appointed as my proxy?

You can appoint anyone over the age of 18 years to be your proxy. A spouse, a family member, a friend, a solicitor, another lot owner or the chairperson of the meeting.

What voting rights does a proxy have at a general meeting?

A duly appointed proxy has the same voting rights as the owner(s) they represent. Another owner in that scheme may be appointed as a proxy. In that situation that person has multiple votes – their own lot vote and one for each proxy they hold. A proxy has the right to request a poll vote if they consider it appropriate. Limitations may be imposed by the owner appointing the proxy. This should be noted on the proxy form.

A proxy cannot vote on any motion if:

- a) The owner who appointed them is present at the meeting and votes on the motion.
 - b) That will confer a pecuniary or other material benefit on the proxy.
 - i. If the proxy is a strata managing agent, building manager or on-site residential property manager they are prohibited by the SSMA 2015 from voting on that matter. ii. Likewise, if a service provider to the O.C. is appointed as an owners proxy they cannot vote on any motion that would provide them with a material gain (e.g. a submitted quote; preferred provide status or such like)
 - c) The right to vote on any such matter is limited by the proxy form.
- What is the procedure to appoint a proxy?

A lot owner must complete and sign the prescribed proxy form (usually sent out with the notice). The completed form must be submitted prior to the meeting starting. It must be dated and signed by the owner to be valid.

The form must indicate the duration of the appointment; i.e. 1 meeting, one week 1 month, 1year. For a large scheme (over 100 lots) the proxy form must submitted no later than 24 hours prior to the commencement of the meeting to the Secretary/ Strata Manager. For schemes under 100 lots the form may be presented to the chairperson or Secretary just prior to the meeting starting.

What happens if one person hold more than the maximum number of proxies allowed?

If a person holds more than the total number of proxies permissible, the person cannot vote using any additional proxies. The person will need to determine which proxy or proxies they will not represent. If they fail to identify the proxy or proxies they will not represent it becomes an obligation of the Chairperson to so determine. The chairperson has a duty of care to protect the Owners Corporation from possible legal action.

What happens if I appoint a proxy and then I attend the meeting?

You assume your full rights and your proxy cannot participate in the meeting. However, if you wish, you can be an observer and still have your proxy speak and vote on your behalf. It is one or the other situation. The role should not be exchanged back and forth within a meeting.

What is the situation of multiple proxies existing for one owner?

The Chairperson is responsible for determining the validity of proxies. However, the SSMA 2015 directs that the most current dated proxy is the rightful instrument.

How long does a proxy appointment last?

The proxy takes effect from the date the form is signed and may be for:

- a) One meeting (should be noted by the date of the meeting)
- b) A specified period – from one particular date to a concluding date.
- c) A maximum of 12 months or at the end of the 2nd AGM held after the signing date (whichever occurs first)

Can I appoint the strata manager as my proxy?

This is not recommended and the legislation specifically precludes a strata manager from voting on an issue in which there is a pecuniary interest. This is not to say you cannot appoint your strata manager, but you need to be mindful of the legislative requirements.

CONTACT US

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