

inbrief

GLAISTER ENNOR BODY CORPORATE UPDATE

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DO YOU HAVE A QUORUM?

Who gets counted when establishing whether a general meeting has a quorum?

This question was considered by the High Court in *Singh v Body Corporate 207650* [2018] NZHC 2872. The case relates to an application for leave to appeal a decision relating to unpaid body corporate levies (in earlier judgments, Body Corporate 207605 successfully sought to recover unpaid levies from Ms Singh, a unit owner). As part of her application for leave to appeal, Ms Singh argued that one of the unpaid levies was unlawful because the resolution to raise the levy was made at a general meeting without the appropriate quorum.

Under section 95(1) of the Unit Titles Act 2010 (UTA), a quorum for a general meeting of a body corporate is established if the persons entitled to exercise the voting power of not less than 25% of the principal units or their proxies are present. For completeness, we note that a meeting may proceed without a quorum, under regulation 13(1) of the Unit Titles Regulations 2011, if the persons who have cast postal votes together with those present at the meeting (in person or by proxy) are entitled to exercise the voting power of not less than 25% of the principal units in the unit title development.

The persons entitled to exercise voting powers are owners of principal units (see section 79(c) of the UTA). And, section 96(1) identifies a person eligible to vote at a general meeting as someone who is at least 16 years old and who is:

- listed on the register of owners as the owner of a principal unit (or their representative)
- the nominee of a company listed on the register of owners as the owner of a principal unit; or
- a subsidiary body corporate representative.

But, section 96(3) provides that an eligible voter may not vote unless all body corporate levies and other amounts owing to the body corporate have been paid.

The primary issue that the High Court dealt with was whether eligible voters who were not entitled to vote under section 96(3) because of unpaid levies could be counted towards the quorum or not.

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Body Corporate 207650 took the position that the 25% calculation is applied to the total number of eligible voters who do not have outstanding levies; that is, that section 95(1) should be read as follows: “...persons entitled to exercise the voting power in respect of not less than 25% of the principal units entitled to vote...”. The effect of this interpretation would be that if only 24 units out of a total of 30 units were financial, the quorum for a general meeting would be reduced to 6 units (rather than 8).

While Hinton J commented at paragraph [31] that section 95(1) is “not well-worded”, she did not accept the Body Corporate’s interpretation.

Her Honour agreed with Ms Singh’s view that a quorum required eligible voters representing at least 25% of all principal units who are able to vote to be present at a general meeting. The effect of this interpretation is that a 30-unit development will require at least 8 units who are financial to be present at a meeting for there to be quorum under section 95(1) of the UTA (noting that the meeting may still proceed if there are postal votes in accordance with regulation 13(1) of the UTR):

“By requiring at least 25 per cent of the total principal units to be present (and for that 25 per cent to have voting power), the Act ensures that a meeting cannot be passed by an extremely small number of voters, at least without delaying the meeting in accordance with [regulation] 13(2) in order to give other potential voters the opportunity to correct their disenfranchisement to vote.” Paragraph [34], footnote excluded

This case, therefore, confirms that:

- the total number of principal units in the unit title development is the starting point for a quorum
 - at least 25% of all principal units who are entitled to vote must be present at the meeting or represented by proxy for there to be a quorum; and
 - the meeting may continue without a quorum under regulation 13(1) if when postal votes are added to those persons present at the meeting at least 25% of the voting power of all principal units is accounted for.
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CONTACT US

For specialist legal advice and assistance, please contact Vicki Toan.



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LAND TRANSFER ACT 2017

The Land Transfer Act 2017 came into force on 12 November 2018. It repeals and replaces the Land Transfer Act 1952. The 2017 Act updates and modernises the earlier legislation.

The key changes for bodies corporate and unit owners are:

- new terminology, “record of title” replaces certificate of title and computer unit title register unique identifier, “burdened land” and “benefitting land” replace servient tenement and dominant tenement respectively. This may affect some statutory forms in the Unit Titles Regulations 2017; and
- amended identification requirements when signing authority and instruction forms, which will affect unit owners selling their units and new purchasers buying units.

MATTERS ADVISED ON

We have recently advised bodies corporate, unit owners, body corporate managers, and developers on:

- governance and decision-making at general meetings and by the committee
- operational rules for mixed use and commercial developments
- redevelopment options as a means of raising capital
- making submissions on a notified resource consent application; and
- debt recovery.



SEASONS GREETINGS

Our offices will be closing on 21 December 2018 and will fully reopen on 14 January 2019. The partners and staff of Glaister Ennor wish you all the very best for the festive season. Our next Body Corporate Update will be issued in February 2019.

Glaister Ennor
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