

## **Special Resolutions and Written Ballots.**

**A compilation of personal opinions of some RVRA Committee Members - edited by Bill Plant Nov 2011.**

There is a need to clarify the varying requirements for voting by residents for matters requiring majority consent and special resolutions. It is necessary to refer to the Act and Regulation and desirable to refer to the OFT model rules for practical expansion.

### **1.0 I will start with Special Resolutions.**

1.1 Firstly in my opinion the basis of special resolutions has a flaw in the Retirement Villages Act because the ballot papers **must** be sent out with the notice, and can be lodged in a ballot box before the meeting. Then any debate at the meeting is superfluous. There is no requirement under the Act and Regulation for Residents to discuss the resolution before it is sent out.

1.2 There are two options necessary to ensure that time is given for discussion and consideration of these resolutions. Ideally they should be in the Retirement Villages Act or Regulation, but can be included in a Residents Committee Rules or constitution.

1.2.1 Prior to the issuing of the Notice of Motion and ballot papers, a general meeting of residents should be called to discuss the matters surrounding the calling for the special resolutions.

1.2.2 At the above, the general meeting should debate the issues for the special resolutions being put forward, then compile a document for and against the issues to be included with the Ballot paper. This is necessary as Residents not attending meetings still are sent a ballot paper without having the benefit of discussion.

### **2.0 Matters that require consent by special resolution under Schedule 7. 2 of the Regulation**

- (a) proposed variations in services or facilities [section 60(3)];
- (b) a proposed amendment to the village rules [section 51(3)];
- (c) a request for the operator to provide a village emergency system [section 59(1)]; and
- (d) a request for the operator to pay from the capital works fund for any other purpose than capital maintenance or distribution to residents. [section 99(5)Regulation 30(2)];

### **3.0 Notice of special resolution**

3.1 If a measure or action requires a special resolution:

- (a) a resolution concerning the action or measure must be put to a meeting of residents of the retirement village, and
- (b) at least 21 days' written notice of the meeting must be given to all residents of the village, and
- (c) the notice **must**:
  - (i) set out the resolution, and
  - (ii) specify that the resolution is to be put as a special resolution, and
  - (iii) specify that residents of the village may submit their vote prior to the meeting in writing (and give directions as to the manner in which such a vote is to be recorded and submitted), and
  - (iv) be accompanied by a ballot paper initialled by the returning officer

3.2 Whilst there are differing opinions on this, an envelope with the Residents name shown on the outside can accompany this notice for sealed return of the ballot. This is not essential.

#### **4.0 Quorum required for special resolution**

- 4.1 A special resolution submitted at a meeting of the residents of a retirement village must not be considered unless there is a quorum present to consider and vote on the resolution.
- 4.2 There is a quorum for considering and voting on such a resolution only if:
  - (a) a minimum of 5 qualified voters, or 25% of qualified voters (whichever is the greater) attend, or
  - (b) where the village has fewer than 10 occupied residential premises, the qualified voters from a majority of the occupied residential premises are able to vote on the resolution at the meeting, either personally, by prior vote, or postal vote or by proxy.
- 4.3 As votes are circulated to all residents of a village, Proxy votes would be limited to former occupants. A 'former occupant' is a resident who is no longer living in the village, but who continues to have rights or liabilities under a village contract.

**5.0 Secret Ballot** There is nothing in the Act or Regulations that require a special resolution to be a secret ballot, however if the ballot is carried out in the following way it automatically becomes a secret ballot.

- 5.1 The returning officer must be supplied with a list of village residents eligible to vote on the issue.
- 5.2 The returning officer initials the ballot paper and has it inserted into an envelope with the resident's name and address on the outside.
- 5.3 The envelope is then delivered unsealed to the resident in whatever way is the most convenient and effective, generally insertion into the letter box of each resident.
- 5.4 If voting prior to the meeting the ballot paper should be folded and lodged in the sealed envelope with the residents name on the outside to be marked off the list of eligible residents. The ballot paper would be removed folded and placed with other votes to be counted.
- 5.5 No further ballot papers would be distributed. Lost ballots would not be replaced. Voting by show of hands is not permitted as would duplicate issued ballot papers.**
- 5.6 If a qualified voter has submitted a postal vote, this includes a vote submitted prior to the meeting, that voter may not change or withdraw his or her postal vote in person or by proxy at the meeting in respect of the special resolution.**
- 5.7 There should be a procedure to accept votes on the day but they can be added to those pre-counted under the procedure advised by the Returning Officer.**
- 5.8 Reasons for and against the resolution/s could be distributed either with the ballot paper or separately.

Note: It would be possible to place two ballot papers in the one envelope where there are two occupants eligible to vote.

## 6. BALLOT PAPER

- 6.1 To be initialled by the returning officer
- 6.2 As the initialled ballot paper is given to each resident entitled to vote, there is no need to have the residents name appear on the ballot paper.
- 6.3 The Resolutions to voted on clearly stated
- 6.4 Clear provision for voting “yes” or “no” on each resolution
- 6.5 Clear indication as to when and where the ballot closes
- 7.0 It is recommended that the ballot close some days before the date of the meeting so that all the votes could be counted in advance.
- 8.0 It is quite within the power of the committee to close the ballot early in this way as OFT has advised that so long as the requirements of the Act and Regulations are adhered to as regards the 21 days notification of the meeting, then it is appropriate for the committee to make whatever arrangement suit their particular circumstances.
- 9.0 Following this procedure the returning officer is to count the votes as soon as possible and announce the result and prepare a written report and have the written report placed upon the notice board.
- 10.0 The holder of a proxy would be entitled to complete a ballot for each proxy held ( a maximum of 2 proxies are allowed).
- 11.0 If a postal ballot is not held for a special resolution, the ensuing meeting would be quite a long affair and difficult to administer particularly in a large village if residents had to produce a initialled ballot paper, have it marked off the roll, have discussions about the ballot paper that was left at home and then have to count the votes while the residents are waiting.
- 12.0 Clause 30 - The use of clause 30 to spend money on Capital items should only be used for new capital items, excluding buildings, which are at resident’s request for residents benefit. The Act specifies that the operator is responsible for all replacements of capital items.

### 13.0 Written Ballots

The above applies only to a “Special Resolution”, the holding of a written ballot at a general meeting on an “ordinary” resolution is quite different and is covered by **Clause 5 and 6** of Schedule 7 of the Regulations as shown below.

**Quorum** The Residents of the Village are taken to have given their consent if more than 50% of Residents who vote (whether personally or by proxy) on the motion or proposal consent to it. For matters of majority consent, a quorum of not less than 25% of Residents is required to vote. In the event of a tied vote, the Chairman shall have the casting vote.

### 14.0 When a written ballot is required.

- (1) *The residents of a retirement village may decide, by a show of hands at any meeting at which a particular measure or action is discussed, whether or not the vote on the measure or action concerned is to be taken by means of a written ballot.*
- (2) *If 50% or more of the residents present at the meeting decide that the vote is to be taken by means of a written ballot, the vote must be taken by those means.*

## **16.0 Elections for Residents Committee.**

- (1) Elections for office bearers and committee positions should always be by written ballot.
- (2) Pre meeting voting in accordance with the Residents Committee Constitution or rules is desirable with appropriate procedures set by the Returning Officer

## **17.0 Conduct of written ballot**

- (1) If a vote is to be taken by means of a written ballot (including a vote on a special resolution), the returning officer must cause sufficient ballot papers to be prepared so that a ballot paper can be given to each qualified voter.
- (2) The ballot paper must contain details of the measure or action requiring a vote and directions as to the manner in which a vote is to be recorded and returned to the returning officer.

**Note.** For example, the ballot paper may have the question to be answered, followed by a yes box and a no box and instructions that the voter clearly mark one of the boxes with a tick or a cross.

- (3) The returning officer must provide to each qualified voter (or if the qualified voter has a proxy, to the voter's proxy) at the meeting, a ballot paper initialled by the returning officer.
- (4) In order to vote on the resolution at the meeting, a qualified voter (or if the qualified voter has a proxy, the voter's proxy):
  - (a) must record a vote on the ballot paper in accordance with the directions shown on it, and
  - (b) must fold the completed ballot paper so that the vote cannot be seen, and
  - (c) must place the ballot paper in the ballot box.

## **Schedule 1 of the Act Matters which require residents' consent under Retirement Villages Act 1999**

### **1.The following matters require majority consent under the Act :**

- (a) establishment of a Residents Committee [section 70];
- (b) allowing persons other than residents to attend or remain at meetings [section 75(2)];
- (c) proposed variations of recurrent charges otherwise than by a fixed formula, if the variation exceeds the variation in the Consumer Price Index since the recurrent charges were last varied [section 107(1)];
- (d) proposed annual budgets, unless the recurrent charges have not varied or if the variation does not exceed the variation in the Consumer Price Index since the recurrent charges were last varied [section 114(1)];
- (e) a proposed amendment to an approved annual budget [section 117(1)];
- (f) the appointment of an auditor if audit fees are paid by residents and the auditor to be appointed did not audit the accounts for the previous year [section 118(2)];
- (g) for the operator to distribute the whole or part of any budget surplus to the residents [section 120B(1)]; and
- (h) whether the whole or part of any surplus portion of the capital works fund should be distributed to residents [section 99(5)];
- (i) whether or not the vote on the measure or action concerned is to be taken by means of a written ballot. [regulation 59(1)(2)]