

*A free newsletter to the sectional title community by
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LATEST RULE AMENDMENTS

Trustees take note!

A number of amendments to the standard Management Rules have been published in the Government Gazette, taking effect on 1st August 2015.

Management Rule 7

The first change relates to the nomination of trustees, regulated by MR 7, correcting an error and adding the following additional proviso:

'Provided further that an owner in breach of rule 64 may not nominate any person as a trustee.'

The error that has been rectified is the removal of the reference previously made to non-existent sub-clauses (1) and (2) of Rule 64. The full reach of Rule 7 now entails the following:

- (a) Nominations for trustees together with the nominees' acceptances must be made in writing and must be received at the domicilium address of the body corporate not later than 48 hours before the AGM.
- (b) Should the above deadline not be reached, further nominations may be submitted, and consented to at the AGM, but only if an insufficient number of nominations had been received – being a number less than the number of trustees determined by the members in terms of MR 4(1).

- (c) A person being in arrear with payment of his levies, or remaining in breach of the Conduct Rules, despite written warning to comply, may not be nominated for election as a trustee.
- (d) A member being in arrear with payment of his levies, or remaining in breach of the Conduct Rules, despite written warning to comply, may also not nominate a person for election as a trustee.

Management Rule 15

The next amendment is to Rule 15, and it is a fundamental one. The wording of sub-rule (5) has been replaced by the following:

'An owner shall be entitled to attend, on invitation, any meeting of the trustee, but shall not in his or her capacity as such be entitled to vote thereat.'

The word 'trustee' should of course be plural – probably a printing error in the gazette.

The provision sweeps away the 'innate' right of owners to attend trustees' meetings, (which right was given recognition in 1997), and has even removed their right to speak at such meetings. A non-trustee may only attend a meeting if invited to attend and, due to the explicit removal of the words 'and speak at' may not even speak, if so invited.

This amendment represents a return to the pre-1997 situation and although I do understand the reasons, it is nevertheless a severe intervention in the rights of owners.

Management Rule 31

The next amendment is an insertion of sub-rule (4Aa) after sub-rule (4A) of Rule 31. However, sub-rule (4A) was deleted in 2013 and the correct number for the newly inserted provision should therefore have been (4A).

The new insertion seeks to rectify a rather grim error, being the removal the earlier and very important provision providing for continuation of the levies after the financial year-end. The new sub-rule now reads as follows:

'After the expiry of a financial year and until they become liable for contributions in respect of the ensuing financial year, owners are liable for contributions in the same amounts and payable in the same instalments as were due and payable by them during the expired financial year: Provided

that the trustees may, if they consider it necessary and by written notice to the owners, increase the contributions due by owners by a maximum of 10 per cent excluding capital expenditure to take account of the anticipated increased liabilities of the body corporate. Such increase shall be ratified or changed after the Annual General Meeting by the trustees once the body corporate has approved or amended the schedule of income and expenditure.'

I have three problems with the wording of this sub-clause. First, the term 'capital expenditure' is not found anywhere else in the rules and is nowhere defined. Although it can be guessed at, its meaning is not sufficiently clear. In addition, the meaning of an increase 'by a maximum of 10 per cent excluding capital expenditure' is also vague. May capital expenditure not be included in the increase or may it be added to the levies over and above the 10% increase?

The third problem is the last sentence of the provision. It seems to allow the trustees a discretion to ratify or change the increase after the budget had been approved, whereas they have (or should have) no such discretion and must only determine and allocate levies according to the amount of the approved budget.

I am afraid that the wording of this provision will probably give rise to uncertainties and disputes. It certainly does not simplify matters for trustees and managing agents.

Management Rule 70

The last change is to MR 70 and seeks to introduce a new responsibility for owners, namely to maintain improvements on their exclusive use areas.

This provision fails to take account of the provisions of Section 44(1)(c) in terms of which it is the duty of an owner to –

'repair and maintain his section in a state of good repair and, in respect of an exclusive use area, keep it in a clean and neat condition.'

According to the latter it is (much as we may want it to be) not the duty of an owner to maintain his exclusive use area or any improvement thereon. It remains a duty of the body corporate, which is allowed to require from the holders of exclusive use areas to make such additional contribution to the fund as is estimated necessary to defray the costs of insurance **and maintenance** in respect of any such areas in terms of Section 37(1)(b). This remains the situation and it is not possible to amend a statutory provision with a rule. Before a rule such as this can be ordained, S 44(1)(c) must first be appropriately amended. This will

bring section 44(1)(c) in line with the apparent purpose of section 37(1)(b) to make the holder of responsible for the payment of expenses incurred by the body corporate in maintaining an exclusive use area. it remains to be seen what our courts will make of this one.

The situation is further aggravated by a piece of fluff added to the core of the rule:

'and any such failure persists for a period of thirty days after the giving of written notice by the trustees or the managing agent to repair or to maintain, as the case may be, the body corporate shall be entitled to remedy the owner's failure and to recover, subject to section 37(1)(b), the reasonable cost of doing so from the owner.'

What is the intended purpose of the underlined reference? Is it that the costs to the body corporate to do the work may be recovered from contributions paid by the owner in respect of the exclusive use area? In which case it is poorly phrased and unnecessarily confusing. A more acceptable reading would have been 'in terms of section 37(1)(b).'

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