

**STBB’s REFERENCE GUIDE TO THE SECTIONAL TITLES SCHEMES MANAGEMENT ACT
For Managing Agents, Trustees, Owners and Property Practitioners**

In this, the twenty-seventh set of notes for your STSMA Reference Guide, Prescribed Management Rule 6 is discussed.

	<u>PRESCRIBED MANAGEMENT RULE 6 – REQUIREMENTS FOR OFFICE AND DISQUALIFICATION</u>	<u>REFERENCES & SEARCH WORDS</u>
PMR 6(1)	<p>To be nominated or voted as a trustee, a person need not be an owner of a section in the scheme.</p> <p>This includes units held in the names of entities such as companies or trusts – a person nominated or voted as trustee does not have to be a representative of such company or trust.</p>	Trustee need not be owner (member)
PMR 6(2)	<p>However, you MUST be an owner of a section if you are nominated or appointed as a trustee and you are also the managing agent, or an employee of the managing agent or the body corporate.</p> <p>So whereas generally ownership in the scheme (membership of the body corporate is not a requirement to be a trustee, there is an exception.)</p>	Exception where trustee must be owner (member)
PMR 6(3)	<p>When in a meeting and matters are discussed amongst trustees, a trustee who has any personal interest in a matter (whether direct or indirect) may not be present or play any part in the consideration or decision of the matter concerned.</p> <p>Two things are of particular importance here. The first is that the trustee mat not be present in such an instance. Where trustees are meeting in someone’s home, for</p>	Trustee with personal interest in matter

example, the trustee with the interest should excuse himself from the room or home when the matter is considered and it will not be compliant if the trustee remained in the meeting but remained silent and abstained from voting. This is obviously to avoid possibilities of undue influence.

The second important thing is that trustees must be honest and transparent where they have any interest in a matter discussed at a trustee meeting.

PMR 6(4)

A trustee will no longer be a trustee (“ceases to hold office as a trustee”) if any of the following happens:

(a) He/she resigns from the position on written notice to the body corporate.

(Note that an oral resignation is therefore not adequate.)

(b) He/she is declared by a court to be of unsound mind.

(c) He/she is or becomes insolvent and his/her estate is sequestrated.

(It appears that the fact that a trustee is insolvent does not disqualify him/her – the requirement is insolvency and a court order to that effect.)

(d) He/she is convicted or has a criminal conviction relating to theft, fraud, forgery, perjury or any other offence involving dishonesty.

(e) He/she is sentenced to imprisonment without the option of a fine.

(f) He/she is removed from an office of trust on account of misconduct in respect of fraud or the misappropriation of money.

(g) He/she is removed from office by ordinary resolution of a general meeting of the body corporate.

(Note that to pass such a resolution, the intention to vote on the proposed removal must be specified in the notice convening the meeting);

Disqualification as trustee

- (h) He/she is or becomes disqualified to hold office as a director of a company in terms of the Companies Act, 2008.

(These grounds are listed in section 69(8) of the Companies Act and include similar grounds as the ones listed in the Rule under discussion – i.e. disqualification on the grounds of dishonesty or financial disability.)

- (i) He/she fails or refuses to pay the body corporate any amount due by that trustee after a court or adjudicator has given a judgment or order for payment of that amount.

(Read this carefully as the disqualification only kicks in when there is a court order to the effect that the trustee owes money to the body corporate and not before, i.e. when demand for monies is made or even when a dispute is declared in this regard.

See also Rule 20(2) which prescribes similarly that a person may not vote at a general meeting if there is an unsatisfied court order relating to monies owing to the body corporate. Up until the court order, the owner may vote.)

Note that the words “ceases to hold office” imply that the disqualification follows automatically if one of the stipulated events occur. No separate vote or decision by the other trustees or body corporate is required.

When disqualification kicks in

Voting by trustee allowed until court order granted

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