

## Office of the Commissioner for Body Corporate and Community Management

# Practice Direction 34

## Disputing a motion which requires a resolution without dissent, on the basis of unreasonable opposition

This Practice Direction is issued pursuant to *section 233* of the *Body Corporate and Community Management Act 1997*. Its purpose is to provide further information on the procedures and content requirements for a dispute resolution application lodged with the Commissioner's Office. Nothing in this Practice Direction supersedes or overrides the requirements of the legislation. The Commissioner retains the discretion to make decisions about the case management of an individual dispute resolution application as provided under Chapter 6 of the Act.

1. The following sets out the requirements for lodging a dispute resolution application with the Commissioner's Office in which the applicant is seeking an order under Schedule 5, Item 10 of the *Body Corporate and Community Management Act 1997* (the Act), disputing a motion which requires a resolution without dissent, on the basis that the opposition to the motion was unreasonable in the circumstances.

**Resolution without dissent**

2. Under the Act and its regulation modules, a body corporate may decide certain matters only by a resolution without dissent at a general meeting.
3. An applicant may seek an order to have a resolution without dissent ruled as passed, on the basis that the opposition to the motion was unreasonable in the circumstances. An adjudicator may make an order giving effect to the motion as proposed, or a variation of the motion as proposed.
4. The Commissioner may require an applicant to provide additional information where an applicant seeks an order under Schedule 5, Item 10 and argues that the opposition to the motion was unreasonable in the circumstances.

**Requirement for self-resolution**

5. Each applicant must provide their evidence of having made a reasonable attempt to resolve the dispute before making the application. The Act refers to this as 'internal dispute resolution'. It may also be referred to as 'self-resolution'. See also Practice Direction 1: *Evidence of a dispute* and 23: *Internal dispute resolution*. This requirement will apply to an application seeking an order under Schedule 5, Item 10.
6. For such an application, the Commissioner's Office will normally expect the applicant to:
  - a. Identify the lots for which votes were cast against the motion and include the owners of those lots as affected parties on the application; and
  - b. Provide evidence of self-resolution attempts with those who oppose the motion, not just self-resolution with the body corporate, for example by contacting the dissenting voters and seeking their reasons for opposing the motion and if reasons are provided, responding to them.



7. If an applicant does not know who voted against the motion and the motion was not decided by secret ballot, the onus would be on the applicant to make attempts to identify the dissenting voters (i.e., by seeking a copy of the voting tally sheet) and then provide evidence of self-resolution with them.
8. It is acknowledged that these steps may not always be possible or practical. For example:
  - a. If the motion in question was decided by secret ballot, an applicant might not be able to identify the dissenting voters; or
  - b. If there were a large number of dissenting votes, it might not be practical to try and contact each dissenting voter and ascertain the reasons for each vote.
9. This is not an exhaustive list and there may be other instances applicable. Each application will be considered on its merits. That said, the Commissioner's Office will consider the approach outlined in paragraph 6 to be the norm in the majority of applications.

### **Submissions process**

10. For adjudication applications seeking an order under Schedule 5, Item 10 of the Act to pass a motion requiring a resolution without dissent, the Commissioner's Office will normally invite submissions specifically from the dissenting voters if they are able to be individually identified.



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**COMMISSIONER**

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