

Proxy for the General Meeting of an Owners' Corporation

Guidelines

2016 Revised Edition



Introduction

It is the joint duty and responsibility of property owners to manage their buildings. The Government's policy is to facilitate effective management of buildings through multi-pronged measures including the provision of a legal framework (i.e. the Building Management Ordinance (Cap. 344) ("BMO")) for owners to form an Owners' Corporation ("OC").

We endeavour to assist owners in forming OCs to discharge their responsibilities on building management. We also encourage flat owners in building or groups of buildings ("owners") to actively participate in the management of their buildings, including attending OC meetings in person. It is understandable that at times owners may not be able to attend the meetings of the OC in person. To cater for such circumstances, the BMO provides that an owner may appoint a proxy to attend and vote at the meeting of the OC on his behalf.

The proxy should be appointed with extreme care because –

- a proxy appointed by an owner to attend and vote on behalf of the owner at a meeting shall, for the purposes of the meeting, be treated as being the owner present at the meeting.
- voting at the meeting is a crucial step in the decision making process for the management of the building. Major building management matters with significant financial implication requiring contribution of the owners (e.g. maintenance and renovation works on the common parts) are generally resolved through voting at the meeting of the OC.

In view of the significance of appointment of a proxy, it is important for the Chairman of the management committee ("MC"), the Secretary of the MC ("the Secretary") and the owners to adopt a proper practice in preparing and handling the proxy instruments.



Key:

- ✓ Requirements of the Building Management Ordinance (Cap. 344)
- 👉 Good practice recommended

For the Chairman of the MC

Paragraph 4(5)(b) of Schedule 3 to the BMO provides that the Chairman of the MC (“the Chairman”) or, if he is absent, the person who presides at the meeting, shall determine the validity of the proxy instrument in accordance with paragraph 4(4) of Schedule 3 to the BMO. Therefore, the Chairman plays a vital role in determining the validity of a proxy instrument.

Determination of the Validity of a Proxy Instrument

- ✓ In determining the validity of a proxy instrument, the Chairman shall ensure that the proxy instrument is in the form set out in Form 2 in Schedule 1A to the BMO.
 - If the instrument appointing a proxy is in the form set out in Schedule 1A to the BMO, the Chairman should not reject the proxy instrument for the sole reason that it is not the printed proxy form provided by the OC.
 - The mere act of providing additional information such as Hong Kong Identity Card number or time of signing the proxy will not render the proxy instrument invalid.
- ✓ The Chairman is required to check whether the proxy instrument has been signed by an owner; or if the owner is a body corporate, whether it has been impressed with the seal or chop of the body corporate and signed by a person authorised by the body corporate in that behalf.
- ✓ Only those proxy instruments which are lodged within the specified statutory time limit, i.e. at least 48 hours before the time for the holding of the meeting should be considered valid.

Para. 4(4)
of
Schedule 3
to the BMO

- 👉 In the normal event that there are two proxy instruments with different dates for the purpose of a particular meeting of the OC, the proxy instrument with the most recent date would supersede the proxy instrument with an earlier date. If in doubt, the Chairman should contact the owner(s) concerned to clarify which proxy instrument is intended to be used by the owner(s). If no date is marked on the proxy instruments or both proxy instruments are marked with the same date but appointment of different proxies, the Chairman should clarify with the owner(s) concerned. Both proxy instruments should be considered as invalid if their validity cannot be ascertained after the Chairman has taken some reasonable steps to ascertain the validity of the proxy instruments.
- 👉 The Chairman is advised to handle the proxy instruments in a fair and transparent manner and in accordance with the provisions under the BMO.
- 👉 If the Chairman has determined that certain proxy instruments are invalid before the meeting, he may contact the owner(s) concerned to explain the invalidity of the proxy instrument so that the owner(s) concerned may consider whether a fresh proxy instrument should be made or to attend the meeting in person. According to paragraph 4(3) of Schedule 3 to the BMO, the instrument appointing a proxy shall be lodged with the Secretary at least 48 hours before the time for the holding of the meeting.
- 👉 To announce the number of invalidated proxy instruments before the owners' meeting.
- 👉 The reasons for invalidation should be marked on each proxy instrument and the owners, owners' representatives and the appointed third party should be allowed to inspect the proxy instruments the validity of which has been determined by the Chairman and to appeal against the Chairman's determination with justifications.

For the Secretary of the MC

The instrument appointing a proxy shall be lodged with the Secretary hence the Secretary is responsible for collecting the proxy instruments for the meeting of the OC. If the office of the Secretary is vacant, the OC or the MC may, in accordance with paragraph 6(5)(a) or (b) of Schedule 2 to the BMO, appoint a person to fill the vacancy until the next annual general meeting of the OC or the next general meeting of the OC. The appointed person shall then carry out the statutory duties of the Secretary set out in the BMO.

The Secretary is advised to pay attention to the following before, during and after the general meeting of the OC regarding the handling of proxy instruments –

The Statutory Format of an Instrument Appointing a Proxy

- ✓ The instrument appointing a proxy should be in the statutory form set out in Form 2 in Schedule 1A to the BMO (available for download on the Home Affairs Department's website on Building Management (www.buildingmgt.gov.hk)).

Para. 4(2)
of
Schedule 3
to the BMO

The Secretary is advised to –

- print the date of the meeting of the OC and a unique serial number on the proxy form to help ensure that the owner knows at which meeting the appointed proxy will exercise the voting right on his behalf and facilitate checking.
- attach to the proxy instrument a statement of purposes in respect of the collection of personal data of owners.
- attach to the proxy instrument explanatory notes to remind owners the importance of their voting right.

- ❑ attach a blank proxy instrument to the notice of meeting or make it available at the management office.
- ❑ distribute the proxy instrument with the name of the proxy left blank for completion by the owner(s).
- ❑ prepare a register for owners who do not intend to appoint proxy to register and make it available for public inspection.

Collection of the Proxy Instruments

- ✓ The instrument appointing a proxy shall be lodged with the Secretary at least 48 hours before the time for the holding of the meeting. Proxy instruments which are not lodged in accordance with paragraph 4(3) of Schedule 3 to the BMO would not be accepted.

Para. 4(3)
of
Schedule 3
to the BMO

- ❑ The notice of the meeting should state clearly:
 - (a) the specified statutory time within which the proxy instruments should be lodged;
 - (b) the method and location for lodging the proxy instruments (e.g. the exact location of proxy collection boxes); and
 - (c) the timing and location for inspecting and counting the proxy instruments.
- ❑ The timing and location for collecting, inspecting and counting the proxy instruments should be convenient to all owners.
- ❑ If the property management company or the management office assists the Secretary in collecting the proxy instruments, the Secretary should give clear instructions to the property management company or the management office on the submission deadline and the collection method.
- ❑ The Secretary is advised to remind the owners to lodge with him the original proxy instrument signed by the owner(s).

- The proxy collection boxes (if any) should be double-locked and placed in a prominent place of the building. The two keys should be held by the Secretary and a third party (e.g. a mediator, an auditor or a lawyer) respectively. The boxes should be opened by the two key holders in the presence of witnesses.
- The proxy instruments received before the close of the lodging time should be kept in a safe place designated by the MC.

Actions after Receipt of Proxy Instruments

The Secretary shall –

- ✓ acknowledge receipt of all proxy instruments received by leaving a receipt at the flat of the owner who made the proxy instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting.
- ✓ display information of the owner's flat to which a proxy has been appointed in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting.

Para. 4(5)
(a)(i) of
Schedule 3
to the BMO

Para. 4(5)
(a)(ii) of
Schedule 3
to the BMO

The Secretary is advised to –

- assist the Chairman to contact the owners concerned for verification of the validity of the proxy instruments as soon as practicable, in any event no later than the time of the holding of the meeting, if there is any query or uncertainty arising from the proxy instruments.
- display the information of those flats with proxy instruments lodged in a prominent place of the building(s) in a clear and easily readable format with appropriate font size at least 24 hours before the meeting until seven days after the meeting to facilitate checking by the owners; where feasible, additional means of dissemination of the above information (e.g., posting onto the website of the OC) to facilitate checking by the owners.

- 👉 declare the number of proxy instruments received as soon as practicable after the close of the lodging time, and cause a notice of the result of counting to be posted at a prominent place in the building to ensure that no proxy instruments is to be accepted after the close of the lodging time.
- 👉 put a mark on the information against the flat of the owner concerned whose proxy instrument is considered invalid by the Chairman.
- 👉 send the acknowledgement receipt of the proxy instrument to the correspondence address provided by the owner if the owner concerned does not reside at the building.
- 👉 remind the owners to check the displayed information with a view to finding out if there is any unauthorised appointment of proxy.
- 👉 confirm the undivided shares under each of the validated proxy instrument for the purpose of vote counting unless the deed of mutual covenant specifies other mechanism for determining the owners' shares.

Actions after the Conclusion of the Meeting

- ✓ All the instruments for the appointment of proxies that have been lodged with the Secretary shall be kept by the MC for a period of at least 12 months after the conclusion of the meeting.

Para. 4(6)
of
Schedule 3
to the BMO
- 👉 It is advisable to keep the information showing the owner's flats with proxy instruments lodged for at least 12 months and make the information available for inspection by the owners of the building upon request during such period.

For Owners

thumb up For voting on important issues, consideration may be given to appointing a third party to monitor the collection and verification of proxy instruments and requiring the third party so appointed to declare his interest.

Format for the Instrument Appointing a Proxy

✓ When filling out a proxy instrument, the owners should ensure that the proxy instrument shall be in the form set out in Form 2 in Schedule 1A to the BMO. The form can be downloaded from the Home Affairs Department's website on Building Management (www.buildingmgt.gov.hk).

— Authorisation documents prepared by a lawyer (e.g. instruments creating power of attorney) are not valid instruments for appointing a proxy under the BMO

✓ Owners should fill in all the required information, particularly the name of the proxy and alternate proxy in the proxy instruments when appointing proxy.

thumb up It is not absolutely necessary to use the printed proxy form provided by the OC. The instrument for appointing a proxy is considered acceptable as long as it is in accordance with the statutory format in Form 2 in Schedule 1A to the BMO. However, where the proxy instrument issued by the OC contains the date of meeting and a unique serial number, it should be used as far as practicable to facilitate checking.

thumb up It is not necessary for the signature of the owner on the proxy instrument being identical to the signature as appeared on the deed of assignment, but it is desirable that they are.

thumb up Owners who do not intend to appoint proxy should register with the Secretary.

Para. 4(2)
of
Schedule 3
to the BMO

Persons to be Appointed as Proxy

The purpose of appointing a proxy is to facilitate the voting at the meeting of the OC where the owners are not able to attend the meeting in person. The instrument only provides that a proxy is appointed by an owner to attend and vote on behalf of the owner. The proxy can vote according to his own wish. No voting instruction is to be provided on the proxy instrument. The OC, the MC, the manager under the deed of mutual covenant or the property management company is not in a position to enforce or check any voting instruction given by the owners as the proxies have the final voting decision.

- 👉 An owner shall appoint a person aged 18 or above whom he trusts to be his proxy and can vote on his behalf.
- 👉 An owner is advised not to pass a signed proxy instrument to any person without filling in the name of the proxy in the proxy instrument.
- 👉 In the event that an owner receives a proxy instrument with a printed name of the proxy on it but the owner prefers to appoint another person to be his proxy, he can cross out the printed name on the proxy instrument and put down the name of his own proxy, with his signature beside the amendment. The Chairman should not reject these proxy instruments for the sole reason that the owner has crossed out the printed name on the proxy instruments if the owner has put down the name of his own proxy and signed on the proxy instrument.

Co-owners

- ✓ Co-owners of a share in the property may jointly appoint a proxy, appoint a person amongst themselves as the proxy or either one of them personally may appoint a proxy.
- ✓ If more than one of the co-owners of a share seek to cast a vote in respect of the share, only the vote that is cast by the proxy appointed by the co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid.

Para. 3(5)
(b) & (c)
of
Schedule 3
to the BMO

Body Corporate as Owners

- ✓ The proxy instrument should be impressed with the seal or chop of the body corporate and signed by a person authorised by the body corporate in that behalf.
- 👉 The body corporate shall follow its constitution in authorising a person to sign on the proxy instrument.
- 👉 The body corporate shall comply with the requirements of the BMO in appointing a proxy.

Para. 4(2)
(b) of
Schedule 3
to the BMO

Lodging the Proxy Instruments

- ✓ Owners shall lodge the proxy instruments with the Secretary at least 48 hours before the time for the holding of the meeting.
- 👉 The proxy forms lodged should be the original copy.

Para. 4(3)
of
Schedule 3
to the BMO

- Contact details (e.g. telephone number, e-mail address, etc) should be set out on the proxy instruments so as to facilitate checking by the Chairman when the validity of the proxy instrument is in doubt.
- Owners are advised to personally lodge the duly completed proxy instruments with the Secretary direct or deposit them in the ways as instructed by the Secretary and avoid giving the proxy instruments to a third party.
- Owners are advised to check whether they have received the acknowledgment receipt of the proxy instrument before the time for the holding of the meeting to ensure that the Secretary has received the proxy instruments.
- If in doubt, the owners should check with the Secretary on the handling of the proxy instrument.
- In the event that the Chairman verifies with the owner on the validity of the proxy instrument, the owner is advised to co-operate with the Chairman as far as practicable so as to ensure the proxy has been properly appointed.
- It is advisable for the owner to make a copy of his signed proxy instrument before lodging it with the Secretary.

Relevant Provisions in the Building Management Ordinance (Cap. 344)

Schedule 1A: FORMS

FORM 2

INSTRUMENT OF PROXY FOR MEETINGS OF CORPORATION

The Incorporated Owners of
(description of building)

I/We, (name(s) of owner(s)),
being the owner(s) of
..... (unit and address of building),
hereby appoint (name of proxy)
*[or failing him (name of
alternative proxy)], as my/our proxy to attend and vote on my/our behalf
at the [*general meeting/annual general meeting] of The Incorporated
Owners of
(description of building), to be held on the day
of *[and at any adjournment thereof].

Dated this day of

(Signature of owner(s))

* Delete where inapplicable.

Schedule 3: MEETINGS AND PROCEDURE OF CORPORATION

Paragraph 3

(5) (b) Where 2 or more persons are the co-owners of a share, the vote in respect of the share may be cast –

- (i) by a proxy jointly appointed by the co-owners;
- (ii) by a person appointed by the co-owners from amongst themselves; or
- (iii) if no appointment is made under sub-sub-subparagraph (i) or (ii), either by one of the co-owners personally or by a proxy appointed by one of the co-owners.

(c) Where 2 or more persons are the co-owners of a share and more than one of the co-owners seeks to cast a vote in respect of the share, only the vote that is cast, whether personally or by proxy, by the co-owner whose name, in order of priority, stands highest in relation to that share in the register kept at the Land Registry shall be treated as valid.

Paragraph 4

- (1) At a meeting of the corporation, an owner may cast a vote personally or by proxy.
- (2) The instrument appointing a proxy shall be in the form set out in Form 2 in Schedule 1A, and –
 - (a) shall be signed by the owner; or

- (b) if the owner is a body corporate, shall, notwithstanding anything to the contrary in its constitution, be impressed with the seal or chop of the body corporate and signed by a person authorised by the body corporate in that behalf.
- (3) The instrument appointing a proxy shall be lodged with the secretary of the management committee at least 48 hours before the time for the holding of the meeting.
- (4) The instrument appointing a proxy is valid only if it is made and lodged in accordance with subparagraphs (2) and (3).
- (5) Where an instrument appointing a proxy is lodged with the secretary of the management committee –
 - (a) the secretary shall –
 - (i) acknowledge receipt of the instrument by leaving a receipt at the flat of the owner who made the instrument, or depositing the receipt in the letter box for that flat, before the time for the holding of the meeting; and
 - (ii) display information of the owner's flat in a prominent place in the place of the meeting before the time for the holding of the meeting, and cause the information to remain so displayed until the conclusion of the meeting; and
 - (b) the chairman of the management committee or, if he is absent, the person who presides at the meeting, shall determine the validity of the instrument in accordance with subparagraph (4).
- (6) The management committee shall keep all the instruments for the appointment of proxies that have been lodged with the secretary of the management committee for a period of at least 12 months after the conclusion of the meeting.

Disclaimer

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