

*A free newsletter to the sectional title community by  
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## MUST SHALL GO?

*Interpretation problems arising from the text of our new legislation*

*In this last edition of 2018 I shall ~~must~~ intend to focus mainly upon difficulties arising from the text used, mostly, in the rules. The most obvious change in the use of words is the replacement of the word 'shall' with 'must.'*

I must agree that the legal tradition of using the word 'shall' in statutory texts, rules, and constitutions is not really user-friendly and perhaps out of date. Let me say that the word 'shall' has been and is being used in legislation in a manner which is not always accurately indicative of the true meaning of many statutory provisions. In many instances 'must' is a better word to express the correct meaning.

But the way 'shall' has been replaced with 'must' in the Management Act and prescribed rules almost suggests that the 'find and replace' feature of word-processing software had been used, doing replacements in a willy-nilly fashion. A general replacement such as in the Act and in both sets of rules is not warranted in several instances.

In many cases where 'shall not' has been replaced with 'must not', the expression 'may not' would have been more suitable.

In a previous edition I have pointed out that the founding provision for the role of the rules is S 10(1) of the Sectional Title Schemes Management Act:-

*A scheme must as from the date of establishment of the body corporate be controlled and managed, subject to the provisions of this Act, by means of rules.*

Compare this to the wording in S 35(1) of the 1986 Act:-

*A scheme shall as from the date of establishment of the body corporate be controlled and managed, subject to the provisions of this Act, by means of rules.*

Whereas the word 'shall' clearly means that the rules do in fact govern sectional title bodies corporate, irrespective of what may be decided by members or trustees, the word 'must' has a somewhat weaker meaning, almost equivalent to 'should be' controlled.

In one instance in the Management Act, namely section 5(h), the use of the word '*must*' is seriously misleading where it suggests that the body corporate is compelled, upon application by an owner, to approve the extension of the boundaries or floor area of his or her section. Compare this provision with other provisions in section 5 where the word '*may*' is used.

There are other instances where '*must*' is not appropriate, but I must, or should (or shall) now attend to other more important matters.

*Season's Greetings!*

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