

# COMMON PROPERTY

Newsletter for professionals in the facilities  
management sector.



## *Appointment of Legal Practitioner!*



Edition: 28<sup>th</sup> July 2011

In a recent Common Property, we spoke about the need for seeking approval pursuant to section 80D of the Strata Schemes Management Act 1996 (SSMA).

One of the major concerns with section 80D is whether an Owners Corporation needs to pass a resolution granting approval for the running of a case.

Section 80D of the SSMA requires that the Owners Corporation must pass a resolution at a general meeting for any action that exceeds the prescribed amount. That being, \$12,500 or \$750 per unit whichever is the lesser. What therefore happens when a resolution is passed and the case or cases require different action?

This matter was considered in *Catzel v Owners Strata Plan 468 (2011) NSWSC 370*. In this case, the Owners Corporation had passed a generic resolution regarding the pursuit of levies. The resolution among other things stated that the Owners Corporation will take legal action to chase levy arrears. The motion did not identify who the action would be taken against.

The Supreme Court stated that section 80D of the SSMA is open to an Owners Corporation passing a resolution authorising the initiation of legal actions where the subject matter relates to a 'particular or discrete matter' the case goes on to say that no Owners Corporation is required in such circumstances to seek a further resolution of a full meeting of the Owners Corporation.

*Catzel* primarily gives precedent allowing Owners Corporations to pass a resolution giving authority to take a form of action without specifically setting out the target or the type of procedures taken.

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It is important that, before initiating action, you should seek the advice of the Owners Corporation legal representative to ensure this motion is correct. In the case of Owners Strata Plan 46528 V Hall (2009) NSWSC 278 the Supreme Court struck out an action of an Owners Corporation because no general meeting was held at all. To ensure a Hall situation does not occur in any of your strata schemes get the advice before it occurs.

Cheers,  
**Bailey Compton and the team at ACP/Leverage**

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