Readers may not know that, I am just a humble conveyancer at heart. I run a small but humble conveyancing practice in the back blocks of Castle Hill. We suffer the pangs of banks, we obtain our business from the scrapings of real estate tables and we are abused and we are looked down upon by Strata Managers as the inferior. Well, that is the way it appears to us!

One of the items that continuously raises its head in training is the issuing of section 109 Certificates to solicitors. Section 109 of the Strata Schemes Management Act 1996 (SSMA) allows any lot owner to seek a certificate from the Owners Corporation which provides a range of information, that includes amongst other things, unpaid levies.

It is worth noting that, Lot owners are the only ones allowed to request a 109 Certificate. This means that, in a real estate transaction, the only person permitted to obtain such a certificate is the vendor not the purchaser. Unfortunately, the person who benefits from the 109 Certificate is the purchaser. It is absolutely required by a purchaser to adjust levies at settlement. Most importantly, conveyancers use this as a means of paying out all levies before settlement.

Vendors obtain a section 109 Certificate and their solicitor provides it to the purchaser’s solicitor early in the process. Usually about 3 weeks before settlement. A lot can happen in that 3 weeks, for example, a special levy could be raised or levies could be paid.
One of the complaints by Strata Managers is that you are required to give oral updates on the 109 Certificate a couple of days before settlement. Conveyancers need to do this because otherwise, they will not be able to properly pay all levies at settlement. Conveyancers seek the same information at local councils and the water authorities.

Let’s look at the positive for a strata manager. If you have a lot owner who has not paid their levies, the worst result of giving an oral update is that you ensure that all levies for that lot are paid up to date at settlement. A desired result for the Owners Corporation and the strata manager giving the service.

What happens if you do not provide the information and new levies have been struck between the date of the 109 Certificate and the settlement? Settlement will occur with unpaid levies. These levies will be raised against the new lot owner who was completely innocent of those levies and who has no action against anyone. That new lot owner will be left with levies that he or she is not responsible for, which will culminate in anxiety towards the strata manager.

What verbal updates do is to ensure that the new lot owner comes in with no bills owing. It is a fresh start and something which they deserve. A mere failure to give a verbal update may provide every party with anxiety that will result in some owners believing they should make the strata managers life even more painful for them then it currently is.

As a conveyancer, we absolutely need the verbal updates. We know it is painful; however it is vital to protect our clients. Please, when you have a verbal update enquiry by a conveyancer, be sympathetic, because it is absolutely vital to the protection of our mutual clients.

Cheers,
Bailey Compton
and the team at ACP/Leverage

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