



The Law Society
of New South Wales

COPY

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Our Ref: JC:lb:1290152
Direct Line: 9926 0216

17 March 2009

Ms Lyn Baker
Commissioner for Fair Trading
Office of Fair Trading
PO BOX 972
PARRAMATTA NSW 2124

Dear Commissioner,

Certificates under section 109 Strata Schemes Management Act 1996 (NSW)

I am writing to you at the request of the Law Society's Property Law Committee (Committee).

A copy of a letter to you from my predecessor dated 1 July 2008 outlining the Committee's concerns about the form of the section 109 certificate is enclosed.

The Committee has taken the liberty of redrafting the certificate to address the matters discussed in that letter and to make the certificate more user friendly. A table commenting on the changes is also enclosed.

The redrafted certificate will, the Committee suggests, provide adequate information to enable a proper adjustment of the levies on completion of contracts so that there is no necessity for further adjustments, either between the vendor and the purchaser or by the strata managing agent.

The Committee is happy to discuss these issues further and to arrange a meeting between Committee representatives and your office if required. If you wish to discuss these issues or arrange a meeting please contact Ms Liza Booth on telephone 9926 0202 or email ljb@lawsocnsw.asn.au.

Yours sincerely

Joseph Catanzariti
President



The Law Society of
New South Wales is a
constituent body of the
Law Council
of Australia





Our Ref: HM:ljb:1280976
Direct Line: 9926 0216

1 July 2008

Ms Lyn Baker
Commissioner for Fair Trading
Office of Fair Trading
PO Box 972
PARRAMATTA NSW 2124

Dear Commissioner

Certificates under section 109 Strata Schemes Management Act 1996 (NSW)

I am writing to you at the request of the Law Society's Property Law Committee (Committee).

The Committee has become aware of a growing number of instances where practitioners are experiencing difficulties with settlement adjustments due to the form of the section 109 certificate. An example of a typical complaint from a legal practitioner is enclosed.

The Committee would like to make some suggestions on the content of section 109 certificates which the Committee thinks will assist practitioners and strata managers in the conduct of their respective businesses.

As a general comment, the Law Society points out:

1. the current section 109 certificate prescribed by Schedule 7 of the Strata Schemes Management Regulation 2005 does not comply with section 109(3)(a) of the *Strata Schemes Management Act 1996 (NSW)*;
2. the certificate in its current form is not user friendly; and
3. the information which is provided, in some instances, is inadequate to enable a proper adjustment of levies on completion of contracts, resulting in the necessity for further adjustments (either between the vendor and the purchaser or by the strata management agent).



Section 109(3)(a) of the *Strata Schemes Management Act 1996* (NSW) states that in respect of the relevant lot, the certificate must specify "the amount of any regular periodic contributions determined by the owners corporation under Part 3, the periods for which those contributions are payable and any discounts applicable for early payment" (emphasis added).

As adjustments under contracts are determined by reference to the number of days in a levy period (rather than by reference to the date the relevant instalments are due or paid), difficulties arise in circumstances where the levy periods do not coincide with the payment dates.

Form 2 of the Schedule 7 of the *Strata Schemes Management Regulation 2005* sets out the prescribed form for section 109 certificates. You will note that there is no item specifying the periods for which contributions are payable as required by section 109(3)(a).

The Law Society suggests a review of Schedule 7 of the *Strata Schemes Management Regulation 2005* is carried out as soon as reasonably practicable. The object of the review is to:

- ensure that form 2, being the prescribed form of certificate, complies with section 109; and
- ensure that Form 2 contains the following information in connection with contributions to the administrative fund and the sinking fund (under section 76(1)) and special contributions to the administrative fund (under section 76(4)):
 - the annual amount of the contribution;
 - the periods for which the contributions are payable;
 - any discounts applicable for early payment;
 - amount (if any) outstanding;
 - particulars of any amount outstanding;
 - amount (if any) in credit; and
 - particulars of any amount in credit.

The Law Society is happy to discuss these issues further and to arrange a meeting between Committee representatives and your office if required. If you wish to discuss these issues or to arrange a meeting with Committee representatives, please contact Ms Liza Booth on telephone 9926 0202 or email lib@lawsocnsw.asn.au.

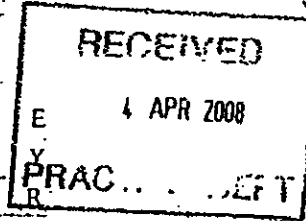
Yours sincerely



Hugh Macken
President

M I L N E
B E R R Y
B E R G E R
F R E E D M A N
S O L I C I T O R S
M E D I A T O R S

ABN 34 050 875 014

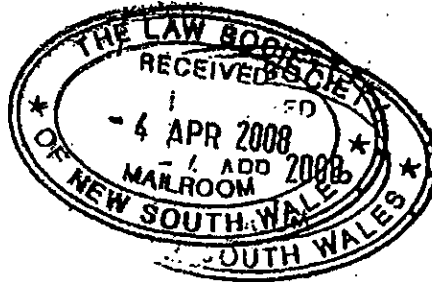


ACCIDENT CLAIMS
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INDUSTRIAL LAW
INSOLVENCY
INTELLECTUAL LAW
JOINT VENTURES
MORTGAGES
PARTNERSHIP AGREEMENTS
PROBATE
PRODUCT LIABILITY
PROPERTY TRANSACTIONS
RETIREMENT HOUSING
RETIREMENT PLANNING
WILLS & BEQUESTS

OUR REF: VICTOR BERGER:Leisa Furlong

3 April 2008

The Law Society of NSW
Conveyancing Committee
170 Phillip Street
SYDNEY NSW 2000



Dear Sir/Madam,

RE: FORM OF SECTION 109 CERTIFICATES

I wish to draw to your attention the form of Section 109 certificate which appears to be in general use at this time. In my view the form is misleading in respect of adequately highlighting arrears. We enclose a copy of what we understand is such a form.

In our view in the form under paragraph 1 and 2 entering below where the 4 current quarters appear a sum in answer to "Amount owing" at least at first glance would not necessarily alert the recipient of the form that the sum inserted if it is more than what may be the addition of the instalments for the current period commencing from the first quarter of the current calendar year (for example if one is expecting to complete during the first quarter and the amount owing is said to be more than that amount) is other than the total of the 4 quarters unless it is obvious that the amount owing is more than a little greater than the 4 quarters. In our view we believe that there ought to be a separate section which clearly:

- uses the expression "Arrears" and
- indicates how the arrears have been determined.

We trust that we have adequately described the issue/concern. If you require any clarification please do not hesitate in contacting me.

PARTNERS: Victor Berger LL.B. (Accredited Business Law Specialists) (Mediator - ACDC Certified)

Harry Norman Freedman B.A., LL.B. (Accredited Family Law Specialists)

Mittu M.Gopalan B.A., LL.B. INHOUSE ADVOCATE: Stephen J. McGlynn

ALL CORRESPONDENCE TO: 154 Elizabeth Street, Sydney NSW 2000 Telephone 9264 3877

Rear 223 Victoria Road Gladesville NSW 2111 Telephone 9817 4698 DX 11606 SYDNEY DOWNTOWN Fax (02) 9267 8639 Int. (61 2) 9267 8639

Email mbbf@legalmbbf.com.au

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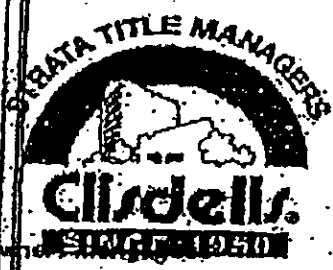
We look forward to your comments.

Yours faithfully,
MILNE BERRY BERGER & FREEDMAN
Victor Berger

Per: *Milne Berry Berger Freedman*

Encl.
SAVBBERGER\Law Society of NSW008. Letter to Law Society 03.04.08.doc

CERTIFICATE UNDER SECTION 109 OF THE STRATA SCHEMES MANAGEMENT ACT 1996



Date of Certificate: 5 February 2008
 Lot in respect of which certificate issued: Lot 700 in Strata Plan No. 53194
 Person requesting certificate: Mr & Ms Terry & Sayde Sarkis & Mokdassif
 if an authorised person, authorised by Terry Joseph Sarkis and Sayde Mokdassif (owners of the lot, subject to the covenant charges of lot).

The owners corporation of Strata Plan No. 53194 certifies the following:

1. Administrative fund - contributions payable by regular periodic instalments or lump sum (section 76(1) of the Act)

Total amount last determined with respect to the lot		\$2008.20	
Number of instalments payable (if contributions payable by instalments)		4	
Amount and due date of each instalment	01 Jan 2008	\$502.05	
	01 Apr 2008	\$502.05	
	01 Jul 2008	\$502.05	
	01 Oct 2008	\$502.05	
Amount owing		\$2008.20	1,004.05
Interest owing		\$22.28	22.28
Total amount owing		\$2030.48	1,026.33
Discount applicable for early payment		0.00%	

2. Sinking fund - contributions payable by regular periodic instalments or lump sum (section 76(1) of the Act)

Total amount last determined with respect to the lot		\$205.20	
Date on which determination was made		21 Nov 2007	
Number of instalments payable (if contributions payable by instalments)		4	
Amount and due date of each instalment	01 Jan 2008	\$51.30	
	01 Apr 2008	\$51.30	
	01 Jul 2008	\$51.30	
	01 Oct 2008	\$51.30	
Amount owing		\$205.20	102.60
Interest owing		\$22.27	2.27
Total amount owing		\$227.47	104.87
Discount applicable for early payment		0.00%	

3. Special contributions to the administrative fund (section 76(4) of the Act)

None

4. Money unpaid under by-law conferring a right or privilege (section 53 of the Act)

Amount payable under a by-law referred to in section 53 of the Act:

Date when amount due:

5. Contributions towards costs of proceedings (section 229 of the Act)

Amount of any levy payable under section 229 of the Act with respect to the lot:

Date on which determination made:

Number of instalments payable (if contributions payable by instalments):

Amount of each instalment:

Dates on which each instalment is due:

Amount (if any) outstanding:

Brief statement as to the purpose for which the contribution was levied:

6. Amounts recoverable in relation to work carried out by owners corporation

Amount (if any) recoverable under section 53 of the Act:

PETER CLIDELLS PTY LTD ABN 19 000 133 899 623 PRINCESS HIGHWAY, ROCKDALE NSW 2216 LOCKED BAG No. 30, ROCKDALE DC NSW 2216	TELEPHONE: (02) 8558 5222 FACSIMILE: (02) 8558 5223 DK 25304 ROCKDALE clidells@clidells.com.au	Strata Management Specialists Property Valuation Specialists Member of Real Estate Institute of NSW	Member of Institute of Strata Title Management Member of National Community Titles Institute Member of the Australian Property Institute Member of the Institute of Consulting Valuers
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7. Rate of interest payable on contributions
Rate of interest payable under section 79 of the Act on contributions
Amount of interest payable in relation to outstanding contributions

10%
\$24.65

8. Amount of unpaid pecuniary penalties
Amount of any unpaid pecuniary penalty that is a charge on the lot
by reason of section 206 of the Act

9. Particulars on strata roll for lot to which certificate relates
Name of owner Terry Joseph Sarkis and Sayde Mokdajai
Address for service of notices on owner 'Kimberley Estate'
700/83-83 Dalmeny Avenue
ROSEBERY NSW 2018

Name and address for service of notices of each mortgagee, covenant charges or other person who has
given notice to owners corporation under section 118 of the Act
None

10. Managing agent and caretaker
Name and address of managing agent appointed under section 26 of the Act
Peter Clifford Pty Ltd
629 Princes Highway
Rockdale NSW-2216

Name and address of caretaker (if any) appointed under section 40B of the Act
Southern Cross Enterprises Pty Ltd
Caretaker: Charles Boustani
C/-85 York Street Sydney NSW 2032
Office: 9299 3068 Mobile: 0414 607 84

11. Members of executive committee

Chairman Joe Tourney
'Kimberley Estate', 484/ 83-83 Dalmeny Avenue, ROSEBERY NSW 2018

Treasurer Marel Palagocara
'Kimberley Estate', 502/ 83-83 Dalmeny Avenue, ROSEBERY NSW 2018

Member Natalia Muckor
'Kimberley Estate', 123/ 83-83 Dalmeny Avenue, ROSEBERY NSW 2018

Member David Liu
21 Ingram Street, KENSINGTON NSW 2033

Member Susan Sun
'Kimberley Estate', 664/ 83-83 Dalmeny Avenue, ROSEBERY NSW 2018

Member Ron De Zhang & Yue Rong Chen
'Kimberley Estate', 163/ 83-83 Dalmeny Avenue, ROSEBERY NSW 2018

Member Frank Hooker
'Kimberley Estate', 437/ 83-83 Dalmeny Avenue, ROSEBERY NSW 2018

Member Hanbing Xu
'Kimberley Estate', 222/83-83 Dalmeny Avenue, ROSEBERY NSW 2018

Member Mariela Mitovic
PO Box 87, ROSEBERY NSW 2018

12. By-laws

Particulars of any by-laws made by the owners corporation within the 2-year period before the date of this certificate that have not been lodged at the office of the Registrar-General as at that date:

13. Insurance policies

Particulars of all insurance policies held by owners corporation:

Policy No. 06S 4478057	Strata Unit Underwriting Agency Pty Ltd	Broker: Strata Unit Underwriters	Insured due 31/12/2008
Type: Strata	Premium: \$165,838.84	Paid on: 12/11/2007	
Cover		Sum Insured	Excess
Building		\$226,141,850.00	\$1,500.00
Loss Of Rent		\$33,821,248.00	\$0.00
Common Contents		Included	\$0.00
Legal Liability		\$20,000,000.00	\$0.00
Office Contents Liability		\$5,000,000.00	\$0.00
Building Catastrophe		\$33,821,248.00	\$0.00
Fidelity Guarantee		\$50,000.00	\$0.00
Voluntary Workers Personal Accident		1000/100,000	\$0.00
Workers Compensation		As Per Act	\$0.00

THE COMMON SEAL OF THE OWNERS - STRATA PLAN NO. 50194

was hereunto affixed on 5 February 2008 in the presence of D A Armstrong being the person(s) authorised by section 233 of the Strata Schemes Management Act 1995 to attest the fixing of the seal.



Note: Section 109(8) of the Act provides that a certificate given under this section is conclusive evidence, as at the date of the certificate, of the matters stated in it in favour of a person (whether or not the applicant for the certificate) taking for valuable consideration.

MARY

18/02/2008 21:17 FAX 87884353

2. Sinking fund – contributions payable by regular periodic instalments or lump sum (section 76(1) of the Act)

Total amount last determined	Amount	Period	
	.....	..... to	
Number of instalments payable (if contribution payable by instalments)			
Amount of each instalment, period to which instalment relates and date due	Amount	Period	Date Due
	.....	..... to .....	.....
	.....	..... to .....	.....
	.....	..... to .....	.....
	.....	..... to .....	.....

Amount (if any) outstanding
 Particulars of any amount outstanding
 Amount (if any) in credit
 Particulars of any amount in credit
 Discount (if any) applicable for early payment

3. Special contributions to the administrative fund (section 76(4) of the Act)

Amount of any levy payable under section 76 (4) of the Act

Date on which determination made

Number of instalments payable (if contribution payable by instalments)

Amount of each instalment, period to which instalment relates and date due

Amount	Period	Date Due
.....	..... to .....	.....
.....	..... to .....	.....
.....	..... to .....	.....
.....	..... to .....	.....

Amount (if any) outstanding

Particulars of any amount outstanding

Amount (if any) in credit

Particulars of any amount in credit

Brief statement as to the purpose for which the contribution was required

4. Money unpaid under by-law conferring a right or privilege (section 53 of the Act)

Amount payable under a by-law referred to in section 53 of the Act

Date when amount due

5. Contributions towards costs of proceedings (section 229 of the Act)

Amount of any levy payable under section 229 of the Act

Date on which determination made

Number of instalments payable (if contribution payable by instalments)

Amount of each instalment, period to which instalment relates and date due

Amount	Period	Date Due
.....	..... to .....	.....
.....	..... to .....	.....
.....	..... to .....	.....
.....	..... to .....	.....

Amount (if any) outstanding

Particulars of any amount outstanding

Amount (if any) in credit

Particulars of any amount in credit

Brief statement as to the purpose for which the contribution was required

6. Amounts recoverable in relation to work carried out by owners corporation

Amount (if any) recoverable under section 63 of the Act

7. Rate of interest payable on contributions

Rate of interest payable under section 79 of the Act on contributions

Amount of interest payable in relation to outstanding contributions

8. Amount of unpaid pecuniary penalties

Amount of any unpaid pecuniary penalty that is a charge on the lot by reason of section 206 of the Act

9. Particulars on strata roll for lot to which certificate relates

Name of owner Name
Address for service of notices on owner Address

Name and address for service of notices on Name
each mortgagee, covenant chargee or other Address
person who has given notice to the owners Capacity
corporation under section 118 of the Act

10. Managing agent and caretaker

Name of managing agent (if any) appointed Name
under section 26 of the Act Address

Name of caretaker within the meaning of Name
section 40A of the Act Address

10. Members of executive committee

	Name	Address
Chairman
Treasurer
Member 1
Member 2
Member 3
Member 4
Member 5
Member 6
Member 7

11. By-laws

Particulars of any by-laws made by the owners corporation within the 2 year period before the date of this certificate that have not been lodged at the office of the Registrar-General as at that date

.....
.....

12. Insurance policies

Particulars of all insurance policies held down by owners corporation

Type of policy	Name of insurer	Policy number	Sum insured	Date due	Date when last premium paid	Amount of last premium

Name of each insurance broker for each policy (if relevant): Name

Address

Items 14 to 17 must be completed if the strata scheme is also part of a community scheme

Name of community association:

Address for service of notices:

.....

Name of precinct association (if any):

Address for service of notices:

.....

13. Contributions payable to administrative fund of community association

Total amount last determined	Amount	Period
	.....	..... to

Number of instalments payable
(if contribution payable by instalments)

Amount of each instalment, period to which instalment relates and date due	Amount	Period	Date Due
 to .....	.....
 to .....	.....
 to .....	.....
 to .....	.....

Amount (if any) outstanding

Particulars of any amount outstanding

Amount (if any) in credit

Particulars of any amount in credit

Discount (if any) applicable for early payment

14. Contributions payable to sinking fund of community association

Total amount last determined	Amount	Period
	.....	..... to

Number of instalments payable
(if contribution payable by instalments)

Amount of each instalment,	Amount	Period	Date Due
 to .....	.....
 to .....	.....
 to .....	.....
 to .....	.....

period to which instalment
relates and date due

Amount (if any) outstanding

Particulars of any amount outstanding

Amount (if any) in credit

Particulars of any amount in credit

Discount (if any) applicable for early payment

15. Contributions payable to administrative fund of precinct association

Total amount last determined Amount Period
..... to

Number of instalments payable
(if contribution payable by instalments)

Amount of each instalment,	Amount	Period	Date Due
 to .....	.....
 to .....	.....
 to .....	.....
 to .....	.....

period to which instalment
relates and date due

Amount (if any) outstanding

Particulars of any amount outstanding

Amount (if any) in credit

Particulars of any amount in credit

Discount (if any) applicable for early payment

16. Contributions payable to sinking fund of precinct association

Total amount last determined	Amount	Period
	.....	..... to

Number of instalments payable
(if contribution payable by instalments)

Amount of each instalment,	Amount	Period	Date Due
 to .....	.....
 to .....	.....
 to .....	.....
 to .....	.....

period to which instalment
relates and date due

Amount (if any) outstanding	.....
Particulars of any amount outstanding	.....
Amount (if any) in credit	.....
Particulars of any amount in credit	.....
Discount (if any) applicable for early payment	.....

Law Society's comments on the redrafted s109 certificate suggested by the Law Society

Number	Change	Comments/explanation
1.	General	<p>1. Formatting has been slightly changed to ensure all relevant information is contained in more definite columns on the right hand side of the certificate.</p> <p>2. Where particulars of a party is required, provision has been made for the insertion of their name and address (for example, see clauses 9, 10 and 11 of the certificate).</p>
2.	Insertion of new item "Strata Scheme in respect of which certificate is issued".	This amendment, coupled with the amendment to the certification by the owners corporation, means the strata managing agent only needs to insert the strata plan number once rather than twice.
3.	<p>Annual amounts of contribution, information on contributions to the administrative fund and sinking fund (both for the relevant strata scheme and any relevant community, precinct or neighbourhood scheme) has been slightly changed to reflect the following information:</p> <p>(a) the amount of the last determination;</p> <p>(b) the period to which the determination related; and</p> <p>(c) the amount of each instalment, the period to which the instalment related and the due date for the instalment.</p>	<p>The current form prescribed by the regulations requires information on:</p> <p>(a) the amount of the last determination;</p> <p>(b) the amount of each instalment; and</p> <p>(c) the date on which each instalment is due.</p> <p>What is more relevant to purchasers (and practitioners) is the amounts of each determination (both annual and periodic) and the periods to which those determinations relate (rather than the dates on which they are due) (although the latter is also useful and has been included in the certificate).</p> <p>Clauses 1, 2, 3 and 5 have been amended to incorporate this information into one paragraph.</p>
4.	Addition of information containing particulars of any amount which is outstanding and any amount in credit.	Clauses 1, 2, 3 and 5 have been amended to include this information.
5.	Addition of information regarding name and address for services of community association and precinct association.	