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PROPERTY
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EMAIL TRANSMISSION

To Mr P Zunker	Date January 7, 2009
Your Ref Cathedral Place	Our Ref JNM/BWS 11153
Email Address peter@cprent.com.au	Attachments - nil

CATHEDRAL PLACE – GENERAL MATTERS

We confirm your instructions to provide advice in relation to the following two matters:-

1. The ability of a Lot holder to nominate candidates and submit motions at a general meeting of Lot holders; and
2. The Chairman's power to rule a motion out of order or a nomination of a candidate invalid.

1. **The ability of a Lot holder to nominate candidates**

We confirm the background facts are as follows:-

- 1.1 On July 30, 2008 a Levy Notice was issued to the previous Lot holder of G29 in the amount of \$3,527.55 with a due date for payment being September 1, 2008;
- 1.2 Subsequent to the issue of the Levy Notice, the ownership of G29 changed;
- 1.3 The sum of \$2,585.53 was paid on September 1, 2008 and a further amount of \$972.45 was paid by the new lot owner on September 3, 2008 (being an overpayment of \$30.43);
- 1.4 The Body Corporate's account manager has confirmed the above payments;
- 1.5 During the period of September 1, 2008 to December 17, 2008, an amount of \$139.81 in interest was charged to the Lot holder's account;
- 1.6 No invoice or statement has been issued to the owner of G29 requesting payment of the interest;

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- 1.7 On December 17, 2008, the owner of G29 was informed by the Body Corporate Manager that the interest amount of \$139.81 less the overpayment of \$30.43 (\$109.38) was owing;
- 1.8 The amount of \$110.00 was paid by the new lot owner on December 17, 2008 prior to the commencement of the meeting;
- 1.9 The new Lot holder of G29 submitted a nomination for Chairman and Secretary on October 18, 2008 and submitted a motion on November 12, 2008; and

We confirm that in the normal courses of events, this interest amount would appear on the next Levy statement and would be due and payable together with the Levies for the next statement period;

1.10 Legislative requirements:

The ability of a Lot holder to submit a motion is governed by schedule 2 section 1 (6A) of the Building Units and Group Titles Act ("BUGTA") which states:

... " a person is not entitled to submit a motion for the inclusion in the agenda of a meeting. To move a motion at a meeting or to nominate a person for election as the chairperson, secretary or treasurer of the body corporate or a member of that committee unless the person is entitled to vote on that motion or in that election"...

A person's entitlement to vote at a General Meeting is governed by schedule 2, Part 2, section 2 of the BUGTA. Specifically in relation to the Levies, subsection (6) states:

... " notwithstanding any other provision of this Act, at a general meeting of the body corporate a person shall not be entitled to vote in respect of -

- (a) any motion other than a motion which to be effective must be passed by unanimous resolution without dissent: or*
- (b) the election as the chairperson, secretary or treasurer of the Body Corporate or a member of the committee; unless -*
- (c) all contributions levied and due and payable at least 30 days before the meeting in respect of the lot in respect of which the person is entitled to vote... have been duly paid before the commencement of the meeting...."*

As the interest had been paid prior to the meeting, we confirm no amount was due and payable by the owner of G29 and therefore the owner was entitled to vote in the motions and elections at the meeting on December 17, 2008. As in the normal course of events, the interest would be added to the next Levy Notice issued.

2. Chairman's powers to rule a Motion out of order

The ability of the Chairman to rule motions out of order is contained in schedule 2 part 2 section 4 of the BUGTA which states:-

"At a general meeting of a Body Corporate the chairman may rule that a motion submitted at the meeting is out of order if:

- (a) the chairman considers that the motion if carried would conflict with this Act or the By-laws or would otherwise be unlawful or unenforceable ..."*

In our opinion this is a discretionary clause and we have not been able to locate any case law canvassing the issue of whether a member being un-financial would fall within the scope of being "unlawful or unenforceable."

We also confirm there is nothing in the Act that we are aware of that would allow a Body Corporate chairman to rule a nomination out of order.

Please do not hesitate to contact the writer if you have any further queries.

Yours Sincerely,

Mahoney Lawyers

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