



Queensland
Government

Department of
Justice and Attorney-General

Your Ref:
Our Ref: 0638-2018/TR

e-m@iled

19 SEP 2018

19 September 2018

Mr Julian Flanagan
Rose Litigation Lawyers
PO Box 9078
GOLD COAST MC QLD 9726

Email julian@roselitigation.com.au

Dear Mr Flanagan

**RE: ADJUDICATION APPLICATION REF NO. 0638-2018
"OCEAN DREAM" COMMUNITY TITLES SCHEME**

Following consideration of the above matter, and without forming a view on the merits of the application, I have decided to reject it under *section 241* of the *Body Corporate and Community Management Act 1997* ("the Act"). This section relevantly provides:

241 Rejecting application

- (1) *The commissioner may reject an application if—*
- (c) *the commissioner reasonably believes the applicant has not made a reasonable attempt to resolve the dispute by—*
 - (ii) *for an adjudication application—internal dispute resolution or department conciliation*
 - (d) *the applicant fails, without reasonable excuse, to comply with a practice direction made under section 233 about internal dispute resolution*

Reasons for Decision

Since the reimbursement sought by your client from the body corporate would be above the committee's spending limit (unless varied), the body corporate could only agree to the reimbursement sought through a general meeting resolution. It would therefore be reasonable to expect your client to have proposed a motion to a general meeting in an attempt to obtain such an agreement.

Indeed, my Practice Direction 23 makes it clear that: "*if an issue requires a general meeting resolution, the applicant will normally be required to demonstrate they have submitted a motion to the body corporate for inclusion on the agenda of a general meeting specifically addressing the issue, and that the motion failed or the body corporate unreasonably failed to consider the motion*".

Since making "*reasonable attempts to resolve the dispute by internal dispute resolution*" is a prerequisite to lodging an application (s238, Act), and since I do not believe your client has done this, or provided a reasonable excuse for not doing it, I am rejecting their application, pursuant to the paragraphs of *section 241* noted above.

Next Steps

Please note that your client may apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of my decision pursuant to *sections 304* and *306* of the Act. Any application for external review must be made to QCAT within six weeks of receipt of this notice. If they wish to progress the original dispute at a later date, they will need to lodge a fresh application, accompanied by the application fee.

Your client may also apply for a stay of my decision to QCAT while it considers an application for external review. Please note a person has certain rights to the operation of a decision stayed which are set out under section 22 of the *Queensland Civil and Administrative Tribunal Act 2009*. For further information about applying for an external review or a stay of my decision, see www.qcat.qld.gov.au or telephone QCAT on 1300 753 228 between 8.30am and 5pm on weekdays (excluding Tuesday – available between 9am and 5pm).

Further Information

The Act limits the amount an adjudicator can order a body corporate to reimburse an owner for repairs carried out to property because of damage caused by the body corporate's contravention of the Act (s281, Act). The limit is \$10000.

Yours sincerely



Chris Irons
**Commissioner for Body Corporate
and Community Management**