

Article Information

Service: Dispute Resolution & Litigation, Property & Development, Restructuring & Insolvency, Strata & Community Title

Recovering Unpaid Levies Part A - Tricks, Tips and Pitfalls for Bodies Corporates in relation to Unpaid Levies

he prompt recovery of levies which are in arrears is an important factor to ensure the smooth and efficient ongoing operation of a body corporate.

Levies are the lifeblood of Body Corporates. Without them being paid, the Body Corporate cannot live up to its statutory requirements. That means, if you own a lot within a community titles schedule you will be required to pay Body Corporate levies. When lot owners fail (or refuse) to pay levies, the scheme is required to put into place a debt collection process which ensures the recovery of levies in a timely manner.

In uncertain and difficult economic times, people often give precedence to pay the bills they see as most pressing and urgent. Liabilities such as levies and taxes are not readily identified as essential or are often seen as something that can be pushed back. Recently we have seen more and more lot owners refusing to pay levies, either at all, or in a timely manner which causes difficulties for the responsible Body Corporate and adds to the burden borne by the owners paying their levies.

Some of the more common mistakes made by Bodies Corporate relate to:

- Failing to raise levies properly and understanding what can be recovered.
- Commencing proceedings for recovery of unpaid levies in a timely manner.
- Understanding what it means to have a “restricted issue” in this context.
- Understanding the proper method of enforcement of a judgment for unpaid levies.

We will deal with 1, 2 and 3 in this article. 4 will be in our next instalment.

What is an Unpaid Levy and what can be recovered?

The Regulations (and equivalent provisions of the Accommodation Module) provide that a Body Corporate may recover the amount of the contribution or instalment, any applicable penalty for not paying the contribution or instalment and any costs reasonably incurred in recovering those amounts as a debt.

The risk for Bodies Corporate is that if levies aren't raised properly, there will be difficulties in recovering those levies. It is important that Bodies Corporate comply with the Standard and Commercial Modules requirements for raising levies, and maintain accurate records of all levy statements and notices issued to lot owners.

A liability to pay body corporate levies are enforceable jointly and severally against:

- A person who was the owner of the lot when the debt became payable.
- A person (including a mortgagee in possession) who becomes an owner of the lot before the debt is paid.

If regulated in the *Body Corporate and Community Management Act* (BCCMA), the Body Corporate can fix a penalty up to 2.5% for each month a contribution or instalment is in arrears.

If an owner is liable for a contribution, or a contribution instalment, and a penalty, an amount paid by the owner must be applied in the following order:

- Towards the penalty
- In reduction of the outstanding contribution or instalment

- Towards any recovery costs for the debt.

When do Recovery Proceedings need to be commenced?

A common mistake made by Bodies Corporate is the commencement of recovery proceedings for unpaid levies in a timely manner. The principle here is that recovery proceedings must be actioned promptly. The Regulations state that if recovery action has not been previously commenced, it is necessary that the proceedings be started within two (2) months of the debt being outstanding for two (2) years. In practice, that is almost too long as that would mean other owners have been funding the defaulting person for that period of time.

Where the proceedings are not commenced in a timely manner, and within the time prescribed by the Regulations, we have seen cases where Bodies Corporate risk limitation issues in recovering unpaid levies, and unnecessary costs being incurred.

In those circumstances, we have seen the Bodies Corporate being unable to recover those unnecessary costs from the relevant lot owners as those fees were not "reasonably incurred".

Conclusion

The defences to levy claims are few. We will discuss them another time. Most often, the Body Corporate is able to proceed to obtain judgment for the levies and other monies due. Now what?

Our next newsletter will discuss these methods and the mistakes we have seen happening.