

## Article Information

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## Body Corporate Levies: What are they and what happens if you don't pay?

**Most people know that if they own a lot within a community titles schemes they are required to pay Body Corporate levies. For many, however, what Body Corporate levies are, what they are used for and what happens if you do not pay them is confusing, if not an outright mystery.**

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### A is for "Annual General Meeting"

Body Corporate levies are typically fixed every financial year at the Annual General Meeting for the Body Corporate by way of ordinary resolution. The Annual General Meeting will also determine:

- the levies to be paid by each lot owner or per lot entitlement
- the number of instalments by which to pay the levies
- the due date for paying each instalment.

### B is for "Budgets"

The levies payable by each lot owner is typically determined by two budgets that must be adopted by a Body Corporate in every financial year - these being the Administrative Fund Budget and the Sinking Fund Budget.

The Administrative Fund Budget must contain estimates of necessary and reasonable expenditure to cover:

- the cost of maintaining common property and Body Corporate assets
- the cost of insurance
- other expenditure of a recurrent nature (e.g. electricity, pest control, bank fees etc.).

The Sinking Fund Budget has two objectives:

- it must raise a reasonable amount to cover necessary and reasonable capital expenditure for that year
- it must reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years - often referred to as the "Sinking Fund Forecast". Anticipated major expenditure includes such things as repainting the exterior of buildings or replacing the Scheme's air-conditioning system.

### C is for "Contributions"

To meet the expected costs outlined in the Administrative Fund Budget and the Sinking Fund Budget, a Body Corporate requires contributions from lot owners. Contributions are recovered by way of levies payable to the Body Corporate in accordance with the contribution schedule lot entitlement for each lot within the Scheme. In other words, bigger lots usually pay greater levies than smaller lots.

Unfortunately, the Administrative Fund Budget and the Sinking Fund Budget cannot always anticipate all of the expenses incurred by a Body Corporate in a financial year. Where unexpected expenses arise, the Body Corporate must, by ordinary resolution, fix a special contribution to be levied on lot owners - often referred to as a "Special Levy".

When a Special Levy is necessary, the Body Corporate must determine by ordinary resolution:

- whether the Special Levy should be paid in a single amount or by instalments
- the date(s) by which the Special Levy is due to be paid.

Depending on the nature of the unexpected expense, Special Levies can be particularly onerous on lot owners which, in turn, may increase the likelihood of non-payment. For example, it would not be uncommon for a Body Corporate to seek a one-off Special Levy of (say) \$20,000 from a lot owner to cover the cost of urgent or emergency expenditure.

### **D is for “Debt”**

If a lot owner fails to pay levies properly raised in accordance with the Body Corporate and Community Management Act 1997 and the relevant regulation module, they may be recovered as debt. In addition to recovering the unpaid levies, a Body Corporate may also seek to recover:

- any penalty for late payment, including interest of not more than 2.5% per month
- any costs reasonably incurred by the Body Corporate in recovering the amount outstanding, such as legal costs.

Unpaid levies can grow into a large debt quickly due to late payment penalties. Therefore, it is important for lot owners and Bodies Corporate alike to ensure that levies are paid on time.

### **E is for “Enforcement”**

A Body Corporate must administer the common property and Body Corporate assets for the benefit of all lot owners included in the Scheme. When levies are not paid, this becomes increasingly difficult as well as unfair on those lot owners who are paying their levies when they fall due. Therefore, Bodies Corporate must ensure that levies are paid on time and, when they are not, that steps are taken to enforce payment without delay.

If levies are not paid within 2 years of their due date, the Body Corporate must commence proceedings to recover payment within 2 months from the end of that 2 year period. Recovery proceedings may be approved by the Committee of a Body Corporate without the need for a general meeting.

When a Body Corporate fails to commence recovery proceedings to enforce payment of unpaid levies, they run a variety of risks, including complaints to the Office of the Commissioner for Body Corporate and Community Management or simply running out of the funds necessary to run and administer the common property and Body Corporate assets.

### **Comments**

The recovery of levies can be a slow and difficult process for Bodies Corporate, but it need not be. Typically, smaller debts are easier to manage and recover. In our experience, larger debts, apart from causing cash flow issues for Bodies Corporate, are often more difficult to recover and take longer. The key for Bodies Corporate is acting quickly before the debt grows and taking steps to recover unpaid levies in a timely fashion. Doing so will result in substantial savings all-round for the Body Corporate.

*Piper Alderman can assist with the recovery of levies, from the smallest to the largest, including commencing and conducting recovery proceedings from start to finish. Piper Alderman offers this assistance on a fixed fee basis which provides Bodies Corporate with peace of mind and transparency about their up-front costs which, as mentioned, may be recovered as part of the recovery proceedings in any event.*

*If your Body Corporate requires assistance in relation to the recovery of levies or you simply have some questions arising out of this article, please contact [Mario Esera](#) or [Warren Jiear](#).*