

BODY CORPORATE DEBT RECOVERY FOR OUTSTANDING CONTRIBUTIONS OWED BY OWNERS

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In the current economic climate we are finding an upward trend in the recovery of Body Corporate levies undertaken by Body Corporate Managers and Solicitors on behalf of Bodies Corporate ("Recovery Costs").

Unfortunately, Bodies Corporate are unable to claim Recovery Costs as a debt against the Lot without a determination from a court that those Recovery Costs are reasonably incurred.

A Body Corporate can only include on a Contribution Notice, the Owner's contributions, penalty interest and any amounts that an owner has agreed to pay associated with services provided to their Lot. Any additional payments, including Recovery Costs, which a Body Corporate considers an Owner is liable for, must be pursued separately. However, the non-payment of these Recovery Costs will not affect the discounts and penalties to contributions applicable to that Owner's account.

Amounts charged by a Body Corporate, such as statement fees and arrears notice fees, are not normally services that an individual Owner has agreed to pay. Although a Body Corporate Manager may be entitled to charge these amounts under the terms of their engagement, that agreement is between the Body Corporate Manager and the Body Corporate, not with the Owner.

Simply put, Recovery Costs do not become recoverable as and when they are incurred and further, a Body Corporate has no unilateral right to impose Recovery Costs on an Owner.

As such, the Recovery Costs are the responsibility of the Body Corporate to pay unless and until they are deemed to be reasonable costs, as determined by the Court, which can then be charged to the individual Owner. However, practically the issue here then for Bodies Corporate is that a Bodies Corporate may not be willing to incur Recovery Costs in the recovery of its unpaid levies.

The Body Corporate Committee should be specifically considering (and minuting), in each case, whether the costs (including those charged by the Body Corporate Manager or a Solicitor) and time taken to pursue formal action is the most effective means of recovering the debt in the circumstances.

The *Body Corporate and Community Management (Standard Module) Regulation 2008* and the equivalent provisions within the Accommodation Module ("the Modules") specifically provides for the payment and recovery of Body Corporate debts. Bodies Corporate should ensure that the system of accounting used to receipt payments made by Owners is in accordance with the legislation and the Modules.

The reason for doing so is that, in the event that a Body Corporate is required to commence action against an Owner, or simply chooses to commence action against an Owner, it will allow for a much simpler and cost effective process for the Solicitors to commence proceedings.

Be mindful that if “the amount of a contribution or contribution instalment has been outstanding for 2 years, *the body corporate must*, within 2 months from the end of the 2 year period, start proceedings to recover the amount.”

Indeed, Owners themselves should ensure that the contributions required to be paid by them do not include any Recovery Costs being claimed by the Body Corporate. If proceedings are commenced against an Owner, the Owner should also ensure that the amount claimed by the Body Corporate properly particularises the amount claimed for outstanding contribution levies, penalty interest and the amounts being claimed by the Body Corporate for Recovery Costs.

In turn, the Body Corporate should be able to properly particularise the amount owing by an Owner. The result of the Body Corporate ensuring proper accounting pursuant to the Modules means the legal costs for the recovery of the debt will be able to be kept to a minimum.

CONCLUSION

This is not to say that Bodies Corporate are not entitled to charge Recovery Costs, only that they should be mindful that such Recovery Costs cannot be charged to an Owner without a determination from a Court that those charges are reasonably incurred. That is, under any proceedings there should be a separate claim in addition to the outstanding contributions and penalty interest but not included in the Owners statement.

Short Punch & Grestorix Lawyers (“SP & G”), in consultation with Body Corporate Managers, have sought to develop a cost effective mechanism for Bodies Corporate to enable the recovery of outstanding levies from Owners. Indeed, the first issue for Bodies Corporate is to ensure that their Body Corporate Manager has correctly receipted any payments by the Owner in accordance with the applicable Module.

SP & G are then able to provide a cost effective service of issuing Court proceedings to recover outstanding levies owed by Owners and Recovery Costs incurred by the Body Corporate.

Please feel free to contact our office to assist in the recovery of outstanding levies owed to Bodies Corporate or any other Body Corporate matters.