

# When unit owners don't pay up

In Australia, bodies corporate have a safety net of legal avenues to ensure defaulting unit owners are held to account for their debt. **Caroline Gonzalez**

**T**HE Institute of Body Corporate Managers Victoria estimates between 1 and 3 per cent of body corporate members are late in paying their contributions. Fewer than 1 per cent of cases end up in the courts.

But among the many reasons why members of a body corporate fail to pay levies is a lack of understanding of their legal obligations to the strata corporation, says Anna Edwards, president of the Community Titles Institute of South Australia.

"Refusing to pay levies for whatever reason causes cash flow problems for the community they've chosen to be a part of, hence the sometimes harsh but necessary legal recovery process initiated by corporations," Edwards says.

## Victoria

Andrew Dawson, president of the Institute of Body Corporate Managers Victoria, says bodies corporate should quickly track down outstanding fees.

"Owners in the body corporate have unlimited liability so it's in the best interests of everyone in the corporation that someone isn't allowed to go that far out (with their arrears) that it's very hard to catch up," Dawson says.

The debt recovery process is straightforward in Victoria, he says.

A body corporate can recover unpaid levies through a collection agency and it can even sue members or other people to recover debts.

Bodies corporate can also charge an allowable level of interest on money owed by members after the due date for payment.

Under new legislation to come into force on December 31, bodies corporate – to be known under the legislation as owners corporations – will be able to send a final notice to the offending unit owner if the money owing isn't paid



within 28 days after the date of the fee notice.

If this process fails, the owners corporation will be able to take the case to the Victorian Civil and Administrative Tribunal.

Owners corporations will be entitled to recover debt in any court of competent jurisdiction.

## New South Wales

Unit owners lose money and a right to vote at general meetings when levies aren't paid on time in New South Wales.

Overdue notices are generally sent to owners who may also bear the cost of preparation and postage of overdue notices.

Wally Patterson from Dynamic Property Services says when a levy is one month overdue, interest is applied at 10 per cent per annum until the payment is made.

If the payment is still not made after the first notice, a "final notice" is issued advising of legal action if the levy continues to go unpaid despite other arrangements or beyond a specified timeframe (usually seven to fourteen days), Patterson says.

"The next step generally is to hand the matter to a debt collection agency or lawyer for commencement of legal action," he says.

Court action generally starts when a solicitor issues a "statement of liquidated claim" with a court.

Unless the payment is settled or a defence argument filed in the court by the due date, the solicitor will seek a court order for the payment of the total amount including interest, legal fees and other costs, Patterson says.

If the unit owner is a company, proceedings for "wind up" under the *NSW Corporations Law* would generally follow from this point, he adds.

## South Australia

Under the state's Strata Titles and Community Titles acts, a body corporate may instigate legal action against a unit owner for full recovery of debts including legal costs.

On occasion, this leads to a forced sale of the unit, says Edwards.

"If a corporation takes this action, then this is predominantly dealt with through the Magistrates Court," she says.

Corporations can charge a fixed interest rate on outstanding amounts and recover a debt from the unit owner, whether or not the owner was the unit holder when the liability arose.

## Western Australia

Jacqueline Courtney, the president of the Strata Titles Institute of Western Australia, says if a unit owner doesn't

pay their strata levies, interest of up to 15 per cent per annum may be charged on the outstanding amount.

"The strata company can also commence legal action to recover the debt," Courtney says.

## Australian Capital Territory

Defaulting unit owners in the ACT firstly receive notice of not having paid their levies. Outstanding debts are charged 10 per cent interest.

If the account is still not paid by the time the next instalment falls due, then the body corporate would take, or at least consider taking, legal action to recover the debt through the Magistrates Court.

Warwick Fulton from Canberra Units Plan Services says the magistrate can make an order for the payment of the debt.

Owners who still refuse to pay can be faced with a visit from a bailiff who may seize belongings such as furniture and cars.

If the debt is more than \$20,000 then the magistrate can order the unit to be sold, Fulton says.

"The amount owing to the body corporate is a debt on the unit itself," he adds.

"This means that on a sale of the unit, the body corporate will be paid out first in priority even above a registered mortgagee."

## Tasmania

Legislation allows the Tasmanian Recorder of Titles to issue a unit owner with a court order to pay outstanding monies as levied by the body corporate.

Gary Peterson, senior strata adjudicator at the Office of the Recorder of Titles, says the *Strata Titles Act* allows the order to be lodged in a court to recover the debts up to the amount to be paid.

## Northern Territory

There's no legislation that deals specifically with recovering outstanding body corporate fees but debts can be recovered through proceedings in the territory's Local Court.

Lorelei Fong Lim from the Department of Justice says the *Unit Titles Act* allows

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bodies corporate to determine levies required from members and to provide owners with a notice setting out the amount and due date of payment.

"Where the ownership of a unit changes without the payment of outstanding levies raised under section 36 (of the Act), those levies are recoverable both from the owner at the time the action is commenced for their recovery as well as the owner of the unit at the time the levies were raised," Fong Lim says.

She says this information is general in nature and shouldn't be taken as legal advice.

## Queensland

Debt recovery actions for unpaid levies are generally pursued as a minor debt claim in the Magistrates Court.

David Smith, senior media advisor for the Queensland Minister for Fair Trading, says debts of \$7500 or less can be pursued as a minor debt claim, which is generally a quick, low-cost "do-it-

yourself" way to recover an outstanding amount without using lawyers.

Minor debt claim forms are available from the Magistrates Court.

"The proceeding must be started in the right district, that is, where the dispute began, where the other person lives or carries on business or where the other person agreed in writing to repay the debt," Smith says.

"If a contribution has been outstanding for two years the *Body Corporate and Community Management Act* requires that the body corporate must start a proceeding to recover the debt."

Some bodies corporate have used debt recovery agents to recover unpaid levies and added the charges for debt recovery to the balance of levies of each lot owner.

The Body Corporate and Community Management Office has received complaints from owners disputing such amounts added to their accounts, Smith says. ■

## USING DEBT COLLECTORS

Hiring a debt recovery agent is the way to go if you want to avoid thousands of dollars in legal fees when chasing up unpaid strata levies, says Phil Pennington from Maunsell Pennington Solicitors in Queensland.

In a court case that involved a defaulting unit owner, Pennington says the debt escalated to \$24,000 consisting of levies, interest and \$10,000 in legal fees.

The case in its preliminary stage involved barristers and included a three-day trial in the Magistrates Court.

Pennington is now appointed to the case that has yet to be resolved before the courts.

Further details couldn't be revealed due to the ongoing legal proceedings.

He says Queensland state legislation is strict on what a lot owner can be forced to pay as a monetary amount.

"If you don't have a court order for recovery of the costs, the by-laws won't help you," Pennington suggests.

"You can rack up significant legal fees in recovery (of the debt). It might be more suitable to source debt recovery agents who charge commission."

To ensure a good case for debt recovery, he recommends bodies corporate check that levy notices and calculations are correct.

If litigation is necessary, unit corporations should source an experienced lawyer to successfully handle the case, Pennington adds.