

Recovery of levies in strata schemes - changing of the landscape due to COVID-19



The economic impact of COVID-19, and the changes to bankruptcy and insolvency laws made by the Australian Federal Government, will require owners corporations to reconsider the way they collect overdue levies from lot owners. This article explores some of the recently introduced measures and consequences.

Changes to insolvency laws

1. The Australian Federal Government has now passed temporary amendments to insolvency and corporations laws in light of the challenges COVID-19 poses to many otherwise profitable and viable businesses and persons.
2. The changes made, contained in Schedule 12 to the *Coronavirus Economic Response Package Omnibus Act 2020* (Cth), are intended to avoid unnecessary insolvencies and bankruptcies by providing a safety net for:
 - (a) directors and businesses to help them operate during a temporary period of illiquidity rather than enter voluntary administration or liquidation; and
 - (b) individuals to assist them with managing debt and avoiding bankruptcy.
3. The legislation will operate for a six month period starting on 25 March 2020 [unless extended]. The two main changes from a debt recovery point of view are as follows:
 - (a) the minimum threshold for which creditors can issue a statutory demand to a company has increased from \$2,000 to \$20,000 for a period of six months, and companies will have 6 months to respond to a statutory demand rather than the usual 21 days;
 - (b) the minimum threshold for a creditor to initiate bankruptcy proceedings against an individual has increased from \$5,000 to \$20,000 and debtors will have 6 months to respond to a bankruptcy notice rather than the usual 21 days.
4. Therefore, in circumstances where a statutory demand or bankruptcy notice may have usually been issued, an owners corporation would now either be prevented from doing so (because of the increase to the thresholds) or be less likely to do so (because of the extended time frames) and will likely explore alternative measures.

Alternative debt collection measures

5. There are no changes to the right to commence proceedings in Courts seeking judgment for unpaid levies. There are a range of other debt collection measures that have not changed and are still available including:
 - (a) garnishee orders in respect of wages/salaries, funds in bank accounts and/or rental payments;

- (b) writ for levy of property;
 - (c) writ for levy of land;
 - (d) examination notices and orders;
 - (e) payment by instalments;
 - (f) demands on mortgagees.
6. Those measures should still be used by owners corporations where necessary and appropriate.

Payment plans and waiver of interest

7. The economic impact of COVID-19 will undoubtedly result in some lot owners being unable to pay their levies on time. In those circumstances, owners corporations will need to consider making greater use of payment plans. However, the legislation can be inflexible because it requires such payment plans to be approved by a resolution at a general meeting and there are other requirements including:
- (a) the payment plan must be in writing;
 - (b) must be approved by a resolution at a general meeting;
 - (c) be limited to a period of 12 months;
 - (d) contain the owner's name, lot details and address for service of notices;
 - (e) identify the amount of overdue levies, interest accrued on those levies and the way in which interest has been calculated;
 - (f) contain a schedule of payments for the amount owing, the period for which the plan applies and the manner in which payments are to be made by the owner;
 - (g) contact details for a strata committee member or strata manager who will be responsible for any matters arising in relation to the payment plan;
 - (h) contain statements that a further payment plan may be agreed to by the owners corporation by resolution but the existence of the payment plan does not prevent the owners corporation taking legal action to recover the overdue levies.
8. The legislation provides that payment plans may be agreed either generally or in particular cases and therefore regard must be had to the resolution passed by the owners corporation at the last annual general meeting in order to determine whether a further resolution approving a plan, or plans generally, needs to be passed.
9. If an owner requests a payment plan because they have lost their job, or their income has been significantly impacted, as a result of COVID-19, an owners corporation should consider requiring the following:
- (a) the lot owner to put the application in writing including written reasons detailing the circumstances in which they are unable to pay the levies when they fall due and payable;
 - (b) evidence of loss of main source or sources of income;

- (c) evidence of qualification for Federal Government assistance in response to COVID-19.
- 10. If a lot owner can demonstrate that they are unable to pay levies when due and payable for reasons beyond their control due to COVID-19 and payment when due would cause the person genuine financial hardship, then the owners corporation should consider putting any recovery action on hold and agreeing to a payment plan.
- 11. The strata committee may also determine by resolution (either generally or in a particular case) that a contribution is to bear no interest. In appropriate cases, this may well provide owners with comfort that in their time of hardship, that the debt will not continue to incur interest for a determined period of time.

Should owners corporation's continue or commence action for recovery of levies?

- 12. This is a question that has been raised with us a lot over the last few weeks. The answer to it depends on a number of circumstances including the owners corporation's financial position, the relevant lot owner's history of failure to pay and whether the lot owner can demonstrate that they have lost their job, or their income has been significantly impacted, as a result of COVID-19.
- 13. We expect that in most cases, existing debt recovery actions, where owners were already in arrears prior to the lockdowns in March 2020, would be continued unless there are extenuating circumstances.
- 14. In relation to debts that were existing but had not yet reached instructions for lawyers, those should be assessed on a case-by-case basis.
- 15. All new debts that are less than 60 days in arrears will also need to be considered on a case-by-case basis.
- 16. Owners corporations still have obligations to make payments for expenses like insurance, electricity, water, strata management, building management, maintenance and repair etc and therefore those liabilities need to be balanced with some owners being unable to pay due to the impact of COVID-19.
- 17. We provide a full suite of levy recovery and debt recovery services and if you require any advice or assistance in relation to these matters please do not hesitate to get in contact.

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15 April 2020

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DEA Lawyers is a specialist firm of experienced strata lawyers with comprehensive knowledge of all matters relating to strata and community title law.

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