

Topic 5 - Contributions levied on owners

The annual contributions payable by lot owners are decided at each annual general meeting (SM s141). The body corporate must, by ordinary resolution:

- fix, on the basis of its budgets, the contributions to be levied on the owner of each lot;
- decide the number of contribution instalments to be paid; and
- set the date on or before which the payment of each instalment is required.

Basis for determining contributions

Unless the Act or the regulation modules states otherwise, the contributions levied on the owner of each lot must be proportionate to the contribution schedule lot entitlement of the lot (SM s141). Building insurance is one such exception, which is usually calculated on the basis of the interest schedule lot entitlement of the lot.

Information about the lot entitlements is detailed in the community management statement for the community titles scheme, a copy of which can be obtained from the Land Titles Registry of the Department of Natural Resources and Water.

Unexpected expenses (SM s141)

If an unforeseen liability arises which has not been included in the budget, the body corporate must, at a general meeting and by ordinary resolution, fix a special contribution to be levied on each lot owner to meet the additional cost. The body corporate may choose to require the special contribution as a single amount or as a number of instalments over a period of time.

Interim contributions (SM s141)

The committee may set an interim contribution payable by lot owners before annual levies are fixed. Interim contributions are usually set to cover any shortfall in the budget between the end of the body corporate's financial year and the time of the annual general meeting. In these cases, the amount of contribution:

- must be subsequently offset against the annual contributions payable by lot owners;
- must be calculated on the basis of the level of contributions that applied for the previous financial year; and
- must relate as closely as practicable to the period from the end of the previous financial year to 2 months after the proposed date of the annual general meeting.

Contribution notice (SM s142)

The body corporate must give at least 30 days written notice of a contribution or instalment to lot owners. The notice must include:

- the total amount of the contribution levied on the owner;
- the amount of the contribution or instalment which is currently required;
- the date on or before which the contribution or instalment must be paid ("date for payment");
- any discount the owner is entitled to for payment by the due date;
- any penalty the owner is liable, for each month the payment is late; and

- any amount which is overdue, where applicable.

The contribution notice may also include notice about an amount payable by the lot owner to the body corporate for:

- a contracted service enjoyed by the owner (for example, cable TV); or
- an exclusive use or special right over common property enjoyed by the owner.

Note: Section 169 of the Standard Module provides that a body corporate may provide services for the benefit of lot owners and occupiers *by agreement* with the person for whom the services are supplied.

For example, a body corporate arranges for pest control of the common property and asks lot owners if they want to have their lots treated at the same time. The body corporate can only provide the service to lot owners who agree to have pest control treatment. While treatment of the common property would be paid for from body corporate levies, lot owners who agreed for their lots to be treated would be separately charged for this service.

Where should contribution notices be sent? (SM s142)

Contribution notices may be sent to a lot owner at their address for service provided to the body corporate or in another way that a lot owner has directed.

Discounts and penalties

The body corporate may choose to use discounts and penalties to encourage owners to pay contributions and instalments by the required date for payment.

If the body corporate is satisfied there are special reasons for allowing a discount, or waiving a penalty, the body corporate may allow the discount, or waive the penalty in whole or part (SM s145).

Discounts (SM s143)

The body corporate may, by ordinary resolution, fix a discount to be given to lot owners if a contribution or instalment is received by the date for payment specified in the contribution notice. The discount cannot be more than 20% of the amount payable.

Example: a body corporate has set a contribution of \$500, payable in 4 instalments of \$125. It has also fixed a discount of 10% for instalments received by the date for payment in the notice of contribution sent to owners. A lot owner receives a notice requiring payment of an instalment of \$125 by 30 June and pays the amount on 28 June. The owner is therefore entitled to a discount of \$12.50 on the instalment.

Penalties (SM s144)

The body corporate may, by ordinary resolution, impose a penalty to be paid by lot owners if a contribution or instalment is not received by the date for payment specified in the contribution notice. The penalty must consist of simple interest at a stated rate of not more than 2.5% for each month the contribution is in arrears.

Example: A body corporate has set a contribution of \$1000, payable in 4 instalments of \$250. It has also set a penalty of 2% per month. A lot owner receives a notice requiring payment of an instalment of \$250 by 30 June. The instalment is not paid

until 25 September. The owner is therefore in arrears for 2 months and liable to pay a penalty of \$10.

Outstanding contributions (SM s145)

If a contribution or instalment is not paid by the date for payment, the body corporate may recover the amount of the contribution or instalment, any applicable penalty and any costs *reasonably* incurred in recovering these amounts as a debt.

If a debt has been outstanding for 2 years, the body corporate must start proceedings to recover the amount within 2 months from the end of the 2 year period. However, this does not mean that the body corporate must wait 2 years before starting action to recover a debt.

The legislation does not provide specific direction on how a body corporate should recover debts. The Office of the Commissioner for Body Corporate and Community Management has no jurisdiction over debt recovery matters. The body corporate may therefore consider recovering outstanding amounts, through their local Magistrates Court as a minor debts claim.

If an owner, who owes a body corporate debt which includes a penalty, provides a payment towards the debt, the amount must be paid:

- first, towards the penalty;
- second, to reduce the outstanding contribution or instalment; and
- finally, towards any recovery costs for the debt.

A by-law that purports to impose a monetary liability may be invalid.

By-laws that purport to impose a monetary liability have been the subject of several adjudicators' orders. It has been held by adjudicators that a by-law which allows the body corporate to recoup legal costs or costs of debt collection from a lot owner who has contributions outstanding is unlawful. The body corporate is limited to recovering only those costs ordered by a Court. (Order 0219-2006 "Sailfish Point")

Liability to Pay a Body Corporate Debt (SM s145)

The liability to pay a body corporate debt for a lot may be passed on from the owner of a lot when the debt became payable to a person who becomes an owner of the lot before the debt is paid.

If there are 2 or more co-owners of a lot, the co-owners are liable to pay a body corporate debt in relation to the lot.

In situations where there is a transfer of ownership of a lot, a prospective purchaser should be supplied with a "**disclosure statement**" completed by the current owner. The disclosure statement should indicate, among other things, what the current body corporate contributions are for that financial year.

As part of the usual conveyancing searches, a prospective purchaser should obtain a body corporate "**information certificate**" (BCCM Form 13) from the secretary or body corporate manager, to confirm the information given by the previous owner in the **disclosure statement**. Any outstanding levies against the lot should be indicated on the **information certificate**. Usually, any outstanding levies are settled between

the seller and the purchaser at settlement. The new owner becomes responsible for any debt following settlement.

Note: If the owner of a lot owes a body corporate debt at the time of a general meeting, a person does not have the right to exercise a vote for their lot or for choosing a member of the committee, unless it is a motion that requires a resolution without dissent, (SM s84).