

Difficulties Paying Strata Levies?

How to Change the Amount or when it needs to be Paid

Strata Levies are part and parcel of ownership of lots within a strata scheme. The owners corporation is entitled to make decisions about the striking of levies to meet its present and future expenses, and lot owners are required to make levy payments to continue to remain financial and capable to contributing to the decision-making within a scheme.

How can levies be struck?

Under sections 81 and 83 of the Strata Schemes Management Act 2015 (NSW):

81 Owners corporation to set contributions to administrative and capital works funds

- (1) The owners corporation must determine the amounts to be levied as a contribution to the administrative fund and the capital works fund to raise the amounts estimated as needing to be credited to those funds.
- (2) That determination must be made at the same meeting at which those estimated amounts are determined.
- (3) The owners corporation must levy on each person liable for it such a contribution.
- (4) If the owners corporation is subsequently faced with other expenses it cannot at once meet from either fund, it must levy on each owner of a lot in the strata scheme a contribution to the administrative fund or capital works fund, determined at a general meeting of the owners corporation, in order to meet the expenses.
- (5) A contribution is, if an owners corporation so determines, payable by the regular periodic instalments specified in the determination setting the amount of the contribution.

83 Levying of contributions

- (1) An owners corporation levies a contribution required to be paid to the administrative fund or capital works fund by an owner of a lot by giving the owner written notice of the contribution payable.
- (2) Contributions levied by an owners corporation must be levied in respect of each lot and are payable (subject to this section and section 82) by the owners in shares proportional to the unit entitlements of their respective lots.
- (3) Any contribution levied by an owners corporation becomes due and payable to the owners corporation on the date set out in the notice of the contribution. The date must be at least 30 days after the notice is given.
- (4) Regular periodic contributions to the administrative fund and capital works fund of an owners corporation are taken to have been duly levied on an owner of a lot even though notice levying the contributions was not given to the owner.

A decision to strike a levy must be made by resolution at a general meeting of the owners corporation. A strata committee or managing agent exercising delegated powers does not have the authority to strike special levies.

However, unexpected levies can often be a source of dispute within strata schemes, especially if the levies involve large sums and/or require payment within an unreasonable period of time.

How do I challenge a levy?

Levies need to be made in accordance with the requirements of Division 2 of the Strata Schemes Management Act 2015. If levies are not made in accordance with the Act, or if the resolutions at the general meeting to strike the levies are invalidly made, they can be challenged in the Tribunal.

The Tribunal also has the power to vary levies under section 87 of the Strata Schemes Management Act 2015:

87 Orders varying contributions or payment methods

- (1) The Tribunal may, on application, make either or both of the following orders if the Tribunal considers that any amount levied or proposed to be levied by way of contributions is inadequate or excessive or that the manner of payment of contributions is unreasonable:
 - (a) an order for payment of contributions of a different amount,
 - (b) an order for payment of contributions in a different manner.
- (2) An application for an order may be made by the lessor of a leasehold strata scheme, an owners corporation, an owner or a mortgagee in possession.

The test for the exercise of power under section 87 is an objective test of whether or not the levies struck are “inadequate or excessive” or if the manner for payment is “unreasonable”. The powers under section 87 relates to the totality of the amount levied, and not whether the levy imposed on the owner of one lot is inadequate or excessive.

The Tribunal can give regards to a range of factors including (but not limited to):

- The purpose of the levy;
- Whether or not the owners corporation has an interest in the matter requiring the levy;
- Whether the decision to strike the levy is reasonable;
- Whether the levy raised is proportional to the proposed expenditure; and
- Whether the method of payment is reasonable.

It is up to the applicant in the proceedings to establish the unreasonableness of the levy proposed.

The commencement of proceedings in the Tribunal can be a lengthy process and owners seeking to challenge levies need to be aware of the inherent risks of litigation, including adverse cost orders if they are unsuccessful.

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