

What are my Options for Outstanding Levies?

Recovering outstanding levies from difficult lot owners in the most cost and time effective matter is a constant battle for owners corporations.

The most cost effective means to recover funds is to garnish their known bank accounts, or other income streams (such as rental income) where known.

Unfortunately, the courts are reluctant to permit a notice of motion to garnish a bank unless positive evidence can be adduced to show that there is a link between the lot owner and that bank (such as a mortgage with the bank is registered on title in their name).

Also, an owner often does not have sufficient funds in their accounts with the bank to wholly satisfy the debt.

Where an owners corporation does not have details of the bank that the lot owner uses in order to form the basis of a garnishee order, or the garnishee order does not recover enough funds, a common next step following the receipt of a judgment is to:

1. File a notice of motion for a writ for levy of property,
2. Register a writ for levy of property; and
3. Have the Sheriff attend the property and levy any goods.

Quite often this is enough to prompt a lot owner to start paying the debt.

Where the Sheriff is unable to seize and sell sufficient property to satisfy the debt, there are two main options left to an owners corporation:

1. Proceed to bankruptcy proceedings (so long as the debt is over \$10,000); or
2. Seize and sell the property (so long as the debt is over \$20,000).

Following the initial step steps detailed above of filing for a writ for levy of property, the steps involved in proceeding to levy property (land) are:

1. Have the Sheriff issue a confirmation that they cannot satisfy the writ by proceeding further against the goods;
2. If the debt remaining still exceeds \$20,000 then:

- a. File a judgment creditor's notice, including an affidavit verifying the advice from the Sheriff and annexing it to the affidavit;
 - b. Serve this on the debtor
3. File:
 - a. affidavit of service of the creditor's notice;
 - b. notice of sale,
and give to Sheriff to fix date for sale no earlier than 4 weeks from the date of service of the creditor's notice.
4. Serve filed notice of sale with sale date on debtor.
5. Provide affidavit of service of the notice of sale to the Sheriff.
6. Publicly advertise the sale at least one week before the fixed sale.

If no application to pay by instalments is made in the interim

7. Have 4 weeks lapse without payment (or an application to pay by instalments)
8. Proceed with auction
9. Once sale has occurred, the legal costs of undertaking the above need to be either agreed with the debtor or an application for assessment of the costs of execution made within 2 months;
10. Following 2 months the judgment creditor is paid the sum referred to in the writ for levy, and the balance is paid to the debtor (excluding any known costs (beside legal fees the subject of an application for assessment))

The steps involved in proceeding to seize and sell land are quite complex, and at any time in the process the debtor can apply to make payment of the debt by instalment order, which stays the enforcement of the writ.

As a result of the above, it will often be the case that it is more streamlined to proceed to bankrupt a lot owner than to take all the necessary steps to effect the sale of the property.

Prepared by Bannermans Lawyers
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T: (02) 9929 0226 M: 0403 738 996 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA