

# “Going, going, gone?” Levies, Charges and Bankruptcy

An owners corporation needs money to run its affairs. It raises this money by levies imposed on lot owners in accordance with their respective lots' unit entitlements. Common misconceptions are that a levy forms a charge on the lot and it gives the owners corporation priority over other creditors in the bankruptcy of a lot owner. Where a lot owner fails to pay levies, the owners corporation may be tempted to pursue the lot owner to bankruptcy based on these misconceptions.

While it's true that if a lot is sold and there are levies outstanding at the date of sale, both the vendor and purchaser are liable jointly and severally to pay the levies, this is because of statutory provisions in the Strata Schemes Management Act 2015 rather than the lot being charged with the amount of an outstanding levy. The sale contract usually allows the purchaser to discharge its liabilities for unpaid levies by deducting them from the purchase price and sending them to the strata manager. An important thing to note here is that if the owners corporation has incurred legal and other levy recovery fees (known as section 80 expenses) then the purchaser is not liable to pay them.

In law, a charge is a secured interest in property. The most common type of charge is a mortgage to a bank. The person in whose favour a charge is given usually acquires the right to sell the property at some point in time if there is a default in payment. An owners corporation however never acquires the right to sell a lot for an unpaid levy and therefore does not have a charge over the lot as a security for payment of the levy.

In the bankruptcy of a lot owner, a bank with a mortgage over a lot ranks as a secured creditor of the lot owner whereas the owners corporation is an unsecured creditor, ranking behind secured creditors such as the bank and any other creditor entitled to a priority payment.

This means if the trustee in bankruptcy sells the lot, then the proceeds of sale are paid out in the following order, first to the bank to pay off the mortgage, then to pay the costs of the bankruptcy (that is the trustee in bankruptcy's fees and the costs of the petition of the creditor that made the lot owner bankrupt), then any other payments given priority under section 109 of the Bankruptcy Act 1996 (that is priority payments) and finally to pay unsecured creditors such as an owners corporation.

Even if the owners corporation has successfully sued the lot owner for the unpaid levies, the owners corporation (as a judgment creditor) continues to rank as an unsecured creditor only.

Therefore, bankruptcy is only a worthwhile means to recover unpaid levies if a lot owner has substantial equity in the lot (or other assets) which will cover secured creditors, priority payments and other unsecured creditors.

While bankruptcy is a very technical area of the law and may not always be the best way for an owners corporation to pursue unpaid levies, in many cases a lot owner facing the prospect of going bankrupt usually ends up paying the unpaid levies to avoid the significant impact that bankruptcy has on the lot owner's assets and financial affairs.

Finally, an owners corporation (as a judgment creditor) may be able to have the sheriff sell the lot at auction pursuant to a writ of levy of property without the need of bankrupting the lot owner. However this process is also complicated because it can only be undertaken if the judgment for unpaid levies (including interest and costs) exceeds \$10,000 and if the lot owner has no goods to seize to satisfy the judgment. The writ of levy of property does not make the owners corporation a secured creditor and if there is a mortgage and the sheriff sells the lot, then the sheriff must pay out the mortgage and the sale costs first before applying the net proceeds to the judgment debt in favour of the owners corporation.

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