

You caused the Strata Insurance to Increase – So you should pay!

The NSW Civil and Administrative Tribunal (NCAT) (“**Tribunal**”) has the power under section 82 of the *Strata Schemes Management Act 2015* to make an order for payment of contributions levied or proposed by the owners corporation if the owner’s consent has been unreasonably refused.

“82 Individual contributions may be larger if greater insurance costs

- (1) *If the use to which a lot in a strata scheme is put causes an insurance premium for the strata scheme to be greater than it would be if it were not put to that use, so much of a contribution payable by the owner of the lot as is attributable to insurance premiums may, with the consent of the owner, be increased to reflect the extra amount of the premium.*
- (2) *The Tribunal may, on application, make an order for payment of contributions of a different amount to one or more contributions levied or proposed by an owners corporation on an owner if the Tribunal is of the opinion that the owner’s consent has been unreasonably refused under this section.*
- (3) *An application for an order under this section may be made by the lessor of a leasehold strata scheme, an owners corporation, an owner of a lot or a mortgagee in possession.”*

Section 82 operates to allow the owners corporation with consent of the owner to increase the lot owners levy if the lot owner caused the increase in insurance premium. For example, this could include (not an exhaustive list):

- Unauthorised works performed by the lot owner;
- Illegal usage of the lot;
- Change in use of the lot (e.g. change in businesses i.e. tattoo parlours, dry cleaners, storage and vacant lots); and
- Damage caused by the lot owner to common property.

Cases

Davis v Owners Corporation SP 63429 [2018] NSWCATCD 27 provided that section 82(2) allows the Tribunal to increase insurance premiums where the “use” to which a lot is put causes the insurance premium for the strata scheme to increase. As such, even if there is significant renovations and improvements made to the lot, if the use remains the same than section 82 cannot apply.

Maphaven Pty Ltd v The Owners – Strata Plan 48887 [2019] NSWCAT it was found that an owners corporation can only seek an order under section 82 if consent is refused by the lot owner. In this case, the owners corporation simply sought the amount to be paid by the lot owner without seeking their consent to increase the levies which were solely directed at the lot owner.

Keever v Sarraf Property Group Pty Ltd [2022] NSWSC 1017 outlined that section 82(1) of the *Strata Schemes Management Act 2015* provides for the owners corporations to make an application to the Tribunal for recovery of unpaid contribution interest. The owners corporation application failed in this instance.

Note: You cannot pass a by-law which contravenes this section which demands that a lot owner is to pay an increased premium where it can be demonstrated that the lot owner has not changed the use of the lot.

Conclusion

As seen in the above cases, it can be difficult for owners corporations to be successful in enforcing increased levies to individual lot owners for an increase in insurance premiums.

The commencement of proceedings in the Tribunal can be a lengthy process and owners corporation seeking that the owner's consent has been unreasonably refused need to be aware of the inherent risks of litigation, including adverse cost orders if they are unsuccessful.

There are currently multiple cases on foot regarding section 82, and once decisions have been reached by the Tribunal this article will be updated accordingly.

If you or your owners corporation are facing issues in regards to increased insurance premiums and you believe that a lot owner has caused the increase due to the use of their lot, please get in contact for some advice.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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