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## Recovering sectional title levy arrears – Courtesy Property 24

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Trustees of bodies corporate sometimes fail to appreciate how disastrous it can be to allow some members to fall behind on their levy payments.



Bodies corporate should make it clear that any levy not paid within seven days of the date due will be followed up immediately and that any legal costs incurred to recover the outstanding amounts due are by law for the defaulter's account, says Cockcroft.

This is according to Catherine Cockcroft, sales manager of levy funding and collection company Propell, who adds that often one comes across the belief that the legal processes are effective and that there is, therefore, no need for concern because when attorneys "get onto" the defaulting member, they will sort things out.

However, she says what this mindset fails to acknowledge is that, in some instances, it can take a very long time to achieve satisfaction. Also, that this is an expensive process which has to be funded by the body corporate, and that the debt will probably mount exponentially until the legal process has run its course.

Cockcroft says Propell often encounter a serious lack of knowledge in trustees about the steps and time frames involved in the recovery process.

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First legal action will take the form of a letter of demand allowing the debtor seven days to pay. Such letters are usually sent by registered and by ordinary post. If payment of the amount due is not received from the debtor within the seven days (allowing perhaps two or three extra days for slow postage), the legal process is initiated with a summons to appear in court.

The Sheriff of the Court has to serve the Summons on the debtor and provide the attorney with a return of service setting out the date and manner of service on the debtor. Should the debtor fail to enter an appearance to defend within ten working days, the attorney will apply for Default Judgement and a Warrant of Execution over the movable property of the debtor at court. Due to the backlogs in the courts the response to this can take anything from a further one to eight weeks.

Cockcroft says this judgement is a powerful weapon in the body corporate's armoury because it can only be rescinded on full payment of the entire amount owing or an agreed sum or upon formal application to court setting out the defence.

Once a Default Judgment is granted the defaulting owner will be blacklisted by the credit bureau.

Should the defendant still be unable or unwilling to pay up, the attorney will proceed to instruct the Sheriff of the Court to execute the warrant on the defendant's movable property.

Courts are more reluctant to issue a warrant over the immoveable property of the debtor if the member is living in the unit and has no obvious alternative accommodation. A formal application has to be made to the court showing that all other remedies have been exhausted.

If the worst case scenario is played out, and the sheriff is authorised to auction the unit, the bank holding the bond has the power to veto the auction on the grounds that the amount owed to it (the bank) is greater than the value of the property.

If the sale does not take place, the attorney can also apply to the court for sequestration or liquidation of the member or any commercial business with which he/she is associated. This can result in a private auction and the affected parties getting together to make a deal.

If the defendant does appear in court in response to the summons, the magistrate is likely to recommend that a deal be worked out between him and the body corporate. This would be similar to the deal that he probably could have arranged had he responded to the letters of

demand – but if he has no resources with which to strike such a deal, the execution against his moveable goods and ultimately on his unit will go ahead.

So what lesson should trustees be learning from this?

Cockcroft says there are two key lessons. Firstly, she says bodies corporate and/or their managing agents should communicate timeously with the defaulting member to try to come to an arrangement which will prevent the matter being handed over to an attorney for collection.

“Secondly, once a matter is handed over for collection, although the arrear levies will almost certainly be recovered eventually, trustees need to be aware that there are various obstacles which may be encountered along the way which could result in matters taking much longer to resolve than they might expect.”

In cases where a body corporate has a high percentage of legal matters running concurrently, the costs of carrying the legal fees for the duration of the sometimes drawn out process, combined with mounting arrear levies, can very often be crippling and have catastrophic effects on the scheme. In extreme cases action may well have to be discontinued due to lack of funds for the payment of legal fees.

Cockcroft says Propell along with their levy guarantee product, are able to advance a portion of the arrear balance to a body corporate at the outset and can also fund any legal fees until such time as these are recovered back from the defaulting owner.

This means that the body corporate is relieved of the financial burden associated with instituting legal action against levy defaulters and can continue to meet its monthly obligations, she says.