

Recovery of Outstanding Contributions – Recovery Costs

Recovery costs can and will be recovered from a lot owner when they are “reasonably incurred”.

The considerations to be applied to the “reasonably incurred” costs are (a) that the actual amount of the costs incurred are reasonable (i.e. not excessive) and (b) were incurred in a reasonable manner by the Body Corporate.

How do you ensure that “recovery costs” are reasonable? The Body Corporate takes the following steps:

1. Evidence is provided to the Court that the actual costs incurred were reasonable and were accordance with the costs provided to the client.
2. That the decision to institute legal proceedings and take steps in the recovery process were reasonable decisions made by the Body Corporate. In other words this means that a reasonable period of time is given to the lot owner for the payment of the contribution due to the implementation of the SSKB debt recovery process and that a letter of demand is sent prior to the institution of legal proceedings.
3. The recovery costs is liquidated because it is itemised and it is an amount which has already been **paid** by the Body Corporate before it is included upon the ledger statement of a lot owner.
4. The words “ledger statement” do not appear within the legislation. It must be remembered the **only** legal obligation placed upon the Body Corporate regarding the collection of outstanding contributions is to take the following steps:
 - a. Hold the Annual General Meeting which confirms the budgets and the contributions.
 - b. Send out the “contribution notice” at least 30 days prior to the contribution being due and payable by the lot owner.
 - c. Ensure the contribution notice is sent to the address on the strata roll or as directed by the lot owner.
5. Section 92(2) of the Accommodation Module and Section 102(2) of the Standard Module states that a lot owner does not have the right to exercise a vote on a motion or choose a member of the Committee, if the owner of the lot owes a debt in relation to the lot at the time of the meeting.
6. A Body Corporate debt includes contribution instalments, penalty interest and recovery costs incurred in recovering a debt: *Body Corporate for the Wave CTS 36237 v Prins (Decision of Magistrate Duroux)* and section 143 of the Accommodation Module which states that if a contribution is not paid by the date for payment, the Body Corporate may recover each of the following amounts as a “debt”:
 - I. The amount of the contribution.
 - II. The penalty for not paying the contribution.
 - III. Any costs (recovery costs) reasonably incurred by the Body Corporate in recovering the amount.
7. This interpretation is consistent with section 157 (6) of the Accommodation Module because if the Body Corporate is **satisfied** there are **special reasons** for allowing a discount of the contribution or waiving a penalty or liability for recovery costs, the Body Corporate **may allow** the waiving of the penalty interest or the recovery costs on whole or in part.

8. A liability to pay a body corporate debt in relation to a lot is enforceable jointly and severally against each of the following persons— (a) a person who was the owner of the lot when the debt became payable; (b) a person, including a mortgagee in possession, who becomes an owner of the lot before the debt is paid. (4) If there are 2 or more co-owners of a lot, the co-owners are jointly and severally liable to pay a body corporate debt in relation to the lot. (5) If an owner is liable for a contribution or instalment of a contribution, and a penalty, an amount paid by the owner must be paid— (a) first, towards the penalty; and (b) second, in reduction of the outstanding contribution or instalment; and (c) third, towards any recovery costs for the debt.

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