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# LEVY RECOVERY PRACTICES TO CHANGE DUE TO CORONAVIRUS

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## LEVY RECOVERY PRACTICES TO CHANGE DUE TO CORONAVIRUS

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On 22 March 2020, the Australian Government announced a further economic response to the Coronavirus. That response includes changes to personal and corporate insolvency laws which will have a dramatic impact on the way overdue strata levies are recovered.

### **A snapshot of the changes**

The key changes to insolvency laws will apply for 6 months. Those key changes are as follows:

1. The minimum amount of a debt required for an owners corporation to initiate bankruptcy proceedings against a lot owner in levy arrears will temporarily increase from its current level of \$5,000.00 to \$20,000.00.
2. The time a lot owner will have to respond to a bankruptcy notice will be temporarily increased from 21 days to 6 months.
3. The minimum amount of a debt required for an owners corporation to issue a creditor's statutory demand against a corporate lot owner will increase from \$2,000.00 to \$20,000.00.
4. The time for a corporate lot owner to respond to a creditor's statutory demand will be extended from 21 days to 6 months.

### **Understanding the changes**

Previously, an owners corporation could issue a bankruptcy notice or creditor's statutory demand against a lot owner in levy arrears in an amount greater than \$5,000 (bankruptcy) or \$2,000 (winding up), wait 21 days, and if the lot owner did not comply with the notice or demand start bankruptcy or winding up proceedings against the owner in court. That will no longer be the case. This will make it much more difficult for an owners corporation to recover overdue levies from a lot owner through the bankruptcy notice and creditor's statutory demand procedure. The changes to insolvency laws are intended to give lot owners who are in levy arrears more time to consider repayment arrangements before they can be forced into bankruptcy or liquidation.

### **Ramifications of the changes**

Any owners corporation that wants to recover levy arrears from an owner will now need to reconsider the most effective way to do so. The standard approach of issuing a bankruptcy notice or creditor's statutory demand against a lot owner in substantial arrears, or a lot owner with a history of failing to pay his or her levies on time, will need to be reconsidered. Now, an owners corporation that wants to



collect levy arrears from an owner will need to consider using other means such as issuing a garnishee order against the owner's bank or rental agent or a writ for the levy of property to have the Sheriff seize and sell goods that belong to the owner. There will also be a greater need for owners corporations to make use of the examination procedure under which owners in levy arrears who are sued can be required to provide details of their financial circumstances and attend court for that purpose.

### **What about payment plans?**

The economic impact of the Coronavirus will undoubtedly result in some lot owners being unable to pay their levies on time. In those circumstances, owners corporations will need to consider making greater use of payment plans. The strata legislation sets out rules concerning payment plans. Those rules do not provide the flexibility that is required in these times largely because they require payment plans to be approved at a general meeting. Those rules require payments plans to:

- be in writing;
- be approved by a resolution passed at a general meeting;
- be limited to a period of 12 months;
- contain the owner's name, lot title details and address for service of notices;
- identify the amount of overdue levies, interest accrued on those levies and the way in which interest has been calculated;
- contain a schedule of payments for the amounts owing, the period for which the plan applies and the manner in which payments are to be made by the owner;
- contact details for a strata committee member or a strata manager who will be responsible for any matters arising in relation to the payment plan;
- contain statements that a further payment plan may be agreed to by the owners corporation by resolution but that the existence of the payment plan does not prevent the owners corporation taking legal action to recover the overdue levies.

### **Template payment plan documents**

We have developed template documents concerning payment plans that are compliant with the strata legislation. These include template motions to approve payment plans and a template payment plan. We will be offering these template documents to our existing levy collection clients free of charge. If

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you are not an existing levy collection client but wish to purchase those documents from us, please get in touch. We will also be expanding our levy collection services to arrange and monitor compliance with payment plans to reduce the workload of strata managers. If you want to enquire about our payment plan services, please do not hesitate to contact us.

### **Conclusion**

The economic impact of the Coronavirus, and the recent changes to insolvency laws announced by the Australian Government, will force owners corporations to reconsider the way they collect overdue levies from lot owners. Now is the time for strata managers to get ahead of the pack and prepare for the changes that will be necessary to levy collection practice and procedure.

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### **About JS Mueller & Co Lawyers**

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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