

# Can you Bankrupt an Owner who Doesn't Pay Levies?

During times when owners suffer financial difficulty, owners corporation can often find themselves out of pocket with overdue and [unpaid strata levies](#). This can be a huge concern to strata communities, especially if an owner declares bankruptcy and they face the possibility of missing out on payment of any overdue strata levies or recovery costs.

So when can an owner who does not pay strata levies on time be made bankrupt? And what happens once an owner is bankrupted?

Bankruptcy is a legal process that can occur when an individual cannot pay their debts as and when they fall due.

In Australia bankruptcy is governed by the *Bankruptcy Act 1966* (Cth) and is regulated by the Australian Financial Security Authority (AFSA).

Once a person becomes bankrupt, control is given up of their finances and assets to a Trustee in exchange for protection from legal action being taken against the person by an entity to which they owe money.

So, what happens when a lot owner is [unable to pay](#) their strata levies? Can they be bankrupted?

## Bankrupting an Owner

- A bankruptcy notice can be issued in the event that an owner owes strata levies, is sued by the owners corporation, and judgment is entered against the owner for more than \$5,000.
- Usually, we will exhaust all avenues for recovery of outstanding strata levies before seeking the strata manager/owners corporation's instructions to bankrupt the owner.

- However, if the judgment debt is significantly higher than \$5,000, the strata manager/owners corporation would normally provide an instruction for us to move to bankrupt the owner immediately after entry of judgment against them.
- Upon receipt of instructions, we perform a bankruptcy search to ensure the owner has not already been declared a bankrupt.
- If the owner is not already bankrupt, we draft and file a bankruptcy notice with the [Australian Financial Security Authority](#) – the current filing fee is \$470.
- Once filed, we then serve the bankruptcy notice on the owner.
- Then, the owner has 21 days to make payment of the amount claimed in the bankruptcy notice.
- If the amount claimed remains unpaid after 21 days, we seek the strata manager/owners corporation's instructions to issue a creditor's petition to commence court proceedings to make the owner bankrupt.
- If the strata manager/owners corporation instructs us to proceed, we commence bankruptcy proceedings in the Federal Circuit Court against the owner.
- If the Court makes an order for the owner to be declared a bankrupt, a Trustee is appointed to the owner's estate.

### **What happens once an owner is bankrupted?**

- The Trustee obtains information about the owner's financial circumstances including any assets owned by the owner and any liabilities of the owner.
- After completing his or her investigations, the Trustee will normally move to sell the owner's assets to pay the liabilities owed by the owner.
- This often involves the Trustee obtaining possession of the owner's strata lot and selling the lot.
- Once the lot is sold, the owners corporation is normally

paid the [overdue levies](#), interest and recovery costs.

For NSW levy collection or strata legal advice contact us [here](#) or call 02 9562 1266, we're happy to assist.