



STONEGATE  
LEGAL

# BODY CORPORATE DEBT RECOVERY IN QUEENSLAND

Body Corporate Levy Recovery

Body Corporate Debt Recovery

Outstanding Body Corporate Levies



# Table of CONTENTS

Recovering Outstanding Body Corporate Levies.....	3
Types of Body Corporate Levies.....	3
Outstanding Body Corporate Levies Recovery .....	4
The Amount of the Contribution or Instalment.....	5
Any Penalty for not Paying the Contribution or Instalment.....	5
Any Recovery Costs Reasonably Incurred by the Body Corporate.....	6
The Body Corporate Debt Collection Process.....	7
Body Corporate Levy Recovery Lawyer.....	7
Issuing the Lot Owner Debtor with a Letter of Demand.....	8
Commencing Legal Action in the Court with Jurisdiction.....	9
Service of a Notice or Process.....	10
Negotiating a Settlement or Compromise.....	10
Obtaining a Judgment or Enforceable Money Order.....	11
Default Judgment or Summary Judgment.....	11
Enforcement of the Judgment.....	12
Enforcement Warrant.....	12
Bankruptcy / Insolvency.....	13
Our Legal Fees.....	13
Fixed Fees.....	14
Deferred Fees.....	14



# Recovering Outstanding Body Corporate Levies

Are you a body corporate with outstanding body corporate levies from a lot owner?

A lot owner in a body corporate scheme is required to pay an agreed amount annually in owners' contributions and levies.

If lot owners do not pay these contributions and levies, then this could impose a financial burden on the body corporate and/or the other lot owners, forcing the body corporate to commence the strata debt recovery process.

Non-payment of body corporate levies may mean that the body corporate is actually in breach of their obligations under the relevant Act because they do not have the funds to complete the works.

This article will explain the body corporate debt collection process and a body corporates' rights and entitlements when trying to recover outstanding body corporate levies and owner contributions.



## Types of Body Corporate Levies

There are a number of different levies that need to be paid by lot owners.

The most common are the administrative fund levies and the sinking fund levies. These levies are to pay for the day-to-day running of the body corporate and the more long-term maintenance works.

These levies include costs for manager fees, cleaning costs of common property, electricity on common property, exterior & interior painting, gardening and landscaping costs, insurance, gate and/or lift and/or intercom maintenance, onsite manager fees, costs of operating the pool, road maintenance & refurbishment.

Sometimes there may be some extra insurance levies, special levies, and exclusive use levies. These levies are lot-specific levies and/or levies to deal with unexpected or unforeseen works that need to be completed – a tree on common property falls in a storm, for example.

If a lot owner does not pay these levies, then the body corporate may not have the funds to complete the works that need to be completed.

This affects the body corporate, the other lot owners, and residents.



## Outstanding Body Corporate Levies Recovery

Because of the effect that non-payment of outstanding body corporate levies can have on the body corporate, other lot owners, and residents, there are provisions in the *Body Corporate and Community Management Act 1997 (QLD)* and the module regulations.

**These instruments allow a body corporate to recover:**

1. The amount of the contribution or instalment;
2. Any penalty for not paying the contribution or instalment;
3. Any costs (recovery costs) reasonably incurred by the body corporate in recovering the amount.

**The Office of the Commissioner for Body Corporate and Community Management Practice Direction 24 also allows for a body corporate to be able to recover the following:**

1. Amounts incurred by a body corporate in repairing damage caused by an owner or in carrying out work which was the obligation of the owner;
2. Agreed charges for the supply of services by the body corporate; or
3. Amounts an owner is required to pay under an exclusive use by-law.

This eBook will explain these in more detail below.



## The Amount of the Contribution or Instalment

If a lot owner owes contributions to the administrative fund levy, sinking fund levy, insurance levy, special levy, and/or exclusive use levy, then the body corporate can seek to recover these outstanding body corporate levies.

On-top of the amount of the levy contribution owed by the debtor lot owner, a body corporate is able to add a penalty for non-payment.

## Any Penalty for not Paying the Contribution or Instalment

The Module Schedules allow for penalty interest to be added to the debt amount. The Modules Schedules say:

*The body corporate may, by ordinary resolution, fix a penalty to be paid by owners of lots if a contribution, or instalment of contribution, is not received by the body corporate by the date for payment fixed in notices of contribution given to the owners.*

*The penalty must consist of simple interest at a stated rate (of not more than 2.5%) for each month the contribution or instalment is in arrears.*

Therefore, to be able to recover penalty interest, the body corporate must fix the penalty interest rate by ordinary resolution.

This ordinary resolution can be made at the same time as a resolution to engage a body corporate levy recovery lawyer.



# Any Recovery Costs Reasonably Incurred by the Body Corporate

The reasonable costs of engaging body corporate levy recovery lawyers and the reasonable outgoings associated with the recovery of the non-payment of body corporate levies can also be claimed.

In *Body Corporate for Sunseeker Apartments CTS 618 v. Jasen* [2009] QDC 162 Newton DCJ said:

Having regard to the conduct of this litigation by Ms Jasen and the evidence of Mr George I am satisfied that the plaintiff is entitled to recover the sum claimed by way of recovery fees

In this matter Newton DCJ awarded the entire legal costs of the Body Corporate in the amount of \$41,445.91. In legal-speak, this is called indemnity costs – if fact the recovery of “*reasonably incurred costs*” under your particular module schedule may be better than the award of indemnity costs and may include more than just legal costs.

As to the reasonableness of the costs incurred, Michael Howe, Adjudicator said in *Body Corporate for SL8 v Falzon and Anor* [2012] QCAT 556:

*Whether a cost is reasonably incurred will depend on what was done, whether it was appropriate to incur the cost, when it was done, and the amount of the cost involved.*

In an appeal from the Magistrates Court to the District Court on the Magistrate’s Order that:

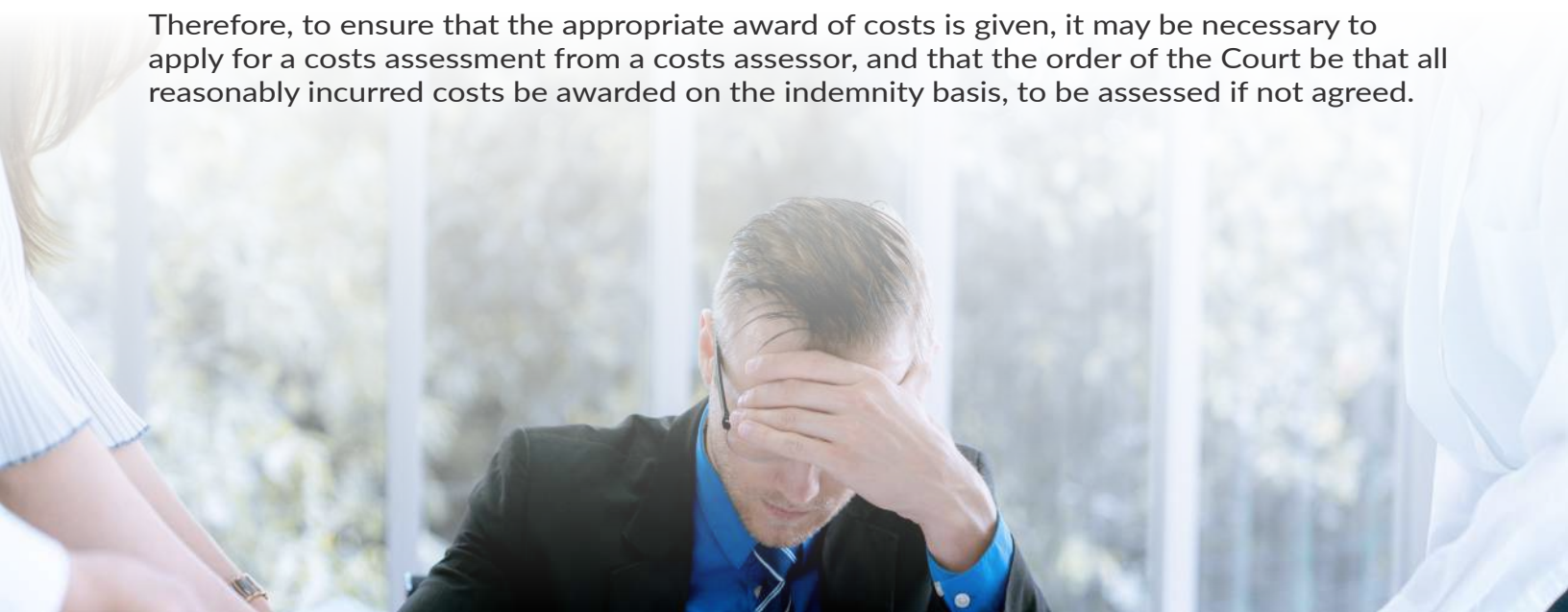
*The defendant pay to the plaintiff the whole of the recovery costs incurred by the plaintiff from and including the date of filing of Southport claim 52186/10, that is 7 December 2010.*

It was submitted that there was no evidence as to what recovery costs had been incurred, and so it was not open to the Magistrate to order that all of the costs in fact incurred were both reasonably incurred and reasonable in amount. McGill SC, DCJ went on to say in *Ramzy v Body Corporate for GC3 CTS38396 & Anor* [2012] QDC 397:

*In relation to the costs of the proceeding in Southport, it was I consider open to the Magistrate to order that those costs be assessed, but this should have followed a conclusion that the conduct of that proceeding had been reasonable, and to have been ordered to be in accordance with the test appropriate to the Regulation, namely such costs as were reasonably incurred and reasonable in amount.*

Both of the cases above were cited as good law by Judge Robin QC in *Prins v The Body Corporate for the Wave* [2013] QDC 66.

Therefore, to ensure that the appropriate award of costs is given, it may be necessary to apply for a costs assessment from a costs assessor, and that the order of the Court be that all reasonably incurred costs be awarded on the indemnity basis, to be assessed if not agreed.



# The Body Corporate Debt Collection Process

It is reasonable for the body corporate to have taken the following steps:

1. Set the contributions to be levied on owners;
2. Given the correct notice of contribution payable;
3. Set any discounts for timely payment (if at all);
4. Set any penalty interest on outstanding levies (if at all); and
5. If a lot owner is in arrears, serve an arrears notice.

If these steps have been done (if required) then you will have to commence with the body corporate debt recovery process and engage a body corporate levy recovery lawyer.



## Body Corporate Levy Recovery Lawyer

Once engaged, a body corporate levy recovery lawyer will commence the legal process of recovering outstanding body corporate levies. This is done in the following way:

1. Issuing the lot owner debtor with a letter of demand;
2. Commencing legal action in the Court with jurisdiction;
3. Negotiating a settlement or compromise;
4. Obtaining a judgment or enforceable money order;
5. Enforce that judgment or Court order.

We will now go into more detail below.





## Issuing the Lot Owner Debtor with a Letter of Demand

The first step is to issue a lawyer's letter of demand.

The letter of demand outlines the particulars of the debtor's breach, gives then lot owner debtor an outline of the steps taken by the body corporate above.

The letter of demand also foreshadows pending legal action and puts the lot owner debtor on notice that if the body corporate is forced to commence legal action that the lot owner debtor will have to pay all recovery costs reasonably incurred, plus penalty interest (if applicable).

The letter of demand does two things – it encourages the debtor to pay without resorting to costly litigation; and/or if they continue to do nothing, it puts them on notice of an award of costs, which can be used in the cost recovery process.

If the lot owner debtor continues to ignore all reasonable attempts to resolve the matter without litigation, the body corporate may have to instruct the body corporate levy recovery lawyer to commence legal action.



# Commencing Legal Action in the Court with Jurisdiction

The various module regulations prescribe that both the Queensland Civil and Administrative Tribunal (“**QCAT**”) and a Queensland court of competent jurisdiction.

An adjudicator does not have jurisdiction in a debt dispute.

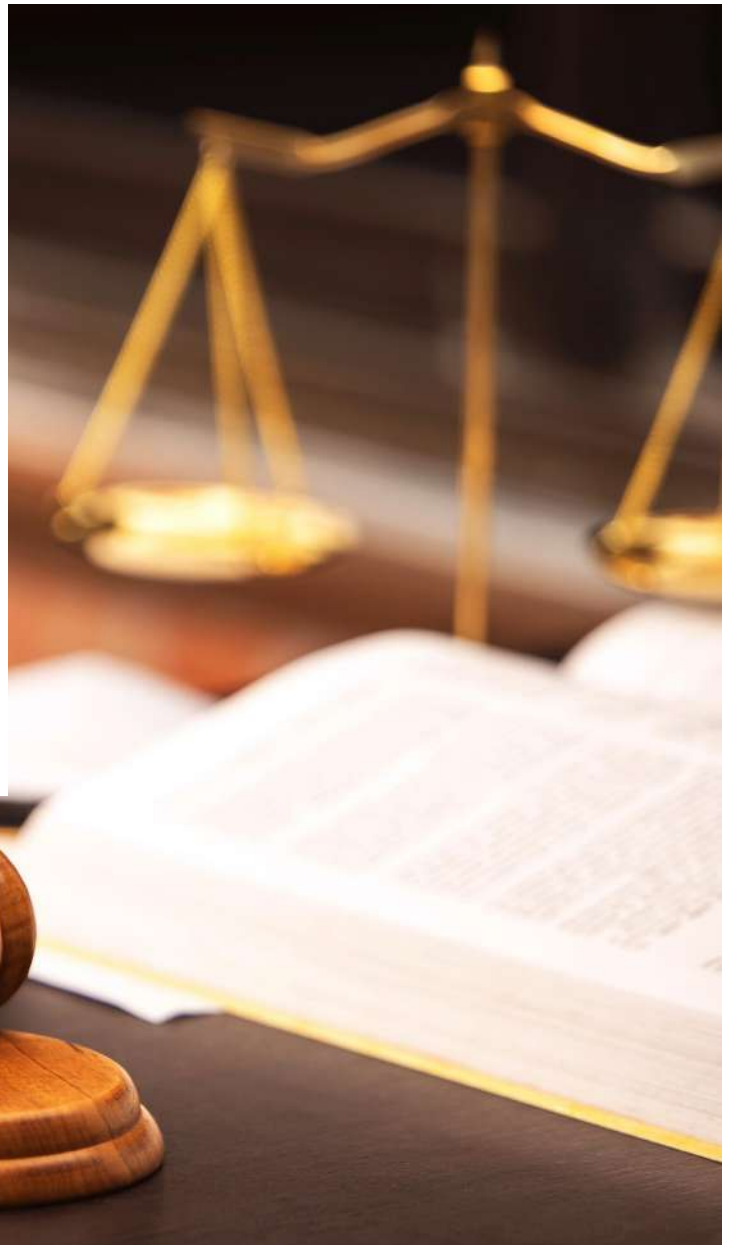
The jurisdictions of the Tribunal and the Courts in relation to civil debt claims is determined by the amount of the debt.

1. QCAT - If the debt is under \$25,000.00;
2. Magistrates Court – If the debt is under \$150,000.00
3. District Court – If the debt is between \$150,000.01 and \$750,000.00; and
4. Supreme Court – if the debt is \$750,000.01 or over.

The body corporate would have likely taken a serious wrong turn in a lot owners’ debt is more than \$150,000.00 so most legal action would be commenced in QCAT or the Magistrates Court.

There are advantages and disadvantages with commencing legal action in either QCAT or the Magistrates Court – as a general rule-of-thumb, as solicitors we prefer to commence legal action in the Magistrates Court.

In the Court, an action for the recovery of body corporate debt is commenced by claim and statement of claim. Once the claim and statement of claim has been drafted and filed in the Court, it has to be served on the lot owner debtor.



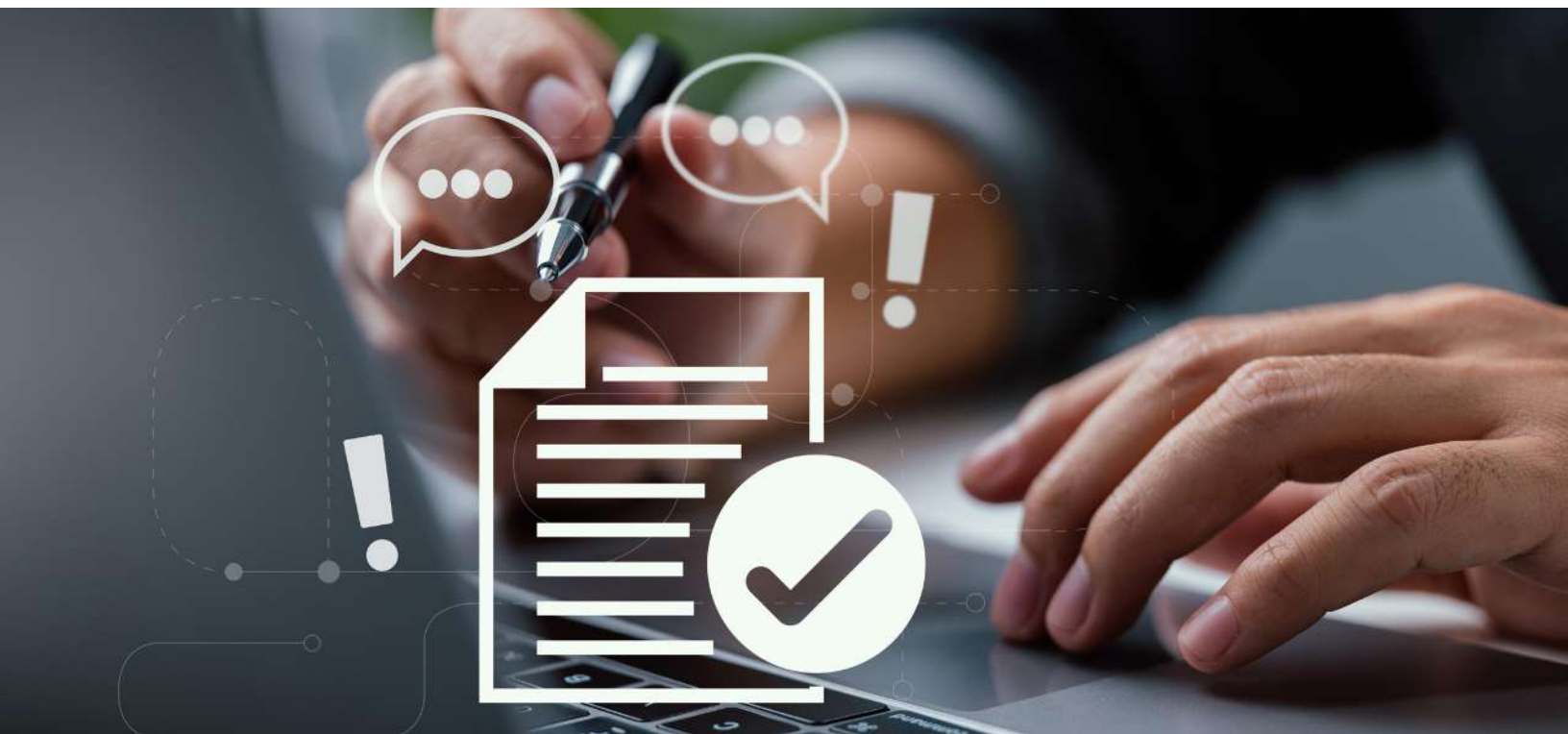
## Service of a Notice or Process

Service of an originating process on a lot owner who is a natural person must be done by giving a copy of the documents to them personally. A body corporate is required to keep an address for service of a lot owner.

If the body corporate does not have an address for service of an owner of a lot, then the address for service is the residential or business address, as last notified to the body corporate for the lot owner.

Service of an originating process on a lot owner who is a corporation must be done by sending it by prepaid post to the address of the registered office of the company.

Once served, they will have twenty-eight (28) days to file a notice of intention to defend and defence.



## Negotiating a Settlement or Compromise

At this stage, the lot owner debtor might attempt to negotiate a settlement or compromise of some kind. This is quite common.

The body corporate should give some consideration to the commercial benefits of settling a matter early, without resorting to protracted litigation.

However, the lot owner debtor has obviously demonstrated that they are bad-payers, and so careful consideration should be given to any repayment plans or further promises.

We can help and assist the body corporate with the advantages and disadvantages of settling the matter early and offer a body corporate legal advice on best practices and ways to secure the debt.

More likely, the lot owner will either continue to do nothing, or attempt to defend the legal action.

# Obtaining a Judgment or Enforceable Money Order

Legal action for debt recovery can be commenced in the Court or in QCAT.

As solicitors we would always recommend commencing legal action in the Magistrates Court rather than QCAT.

Body corporate debt recovery is commenced by issuing a claim and statement of claim in the Magistrates Court.

Once your debt recovery solicitor has drafted the claim and statement of claim it is then filed in the Magistrates Court and sealed with the Court's seal.

A sealed copy is then served on the debtor.



## Default Judgment or Summary Judgment

If the defendant does not file a defence within 28 days, then the body corporate can ask the Court for a judgment in default.

This will be a judgment for the full amount of the claim plus legal costs plus interest.

If the defendant tries to defend the claim, then the body corporate may be entitled to make an application for a summary judgment.

Pursuant to rule 292 of the *Uniform Civil Procedure Rules 1999* (Qld):

*If the Court is satisfied that:*

- a. *the defendant has no real prospect of successfully defending all or a part of the claim; and*
- b. *there is no need for a trial of the claim or the part of the claim.*

*Then the court may give summary judgment for the plaintiff against the defendant.*

As there are very few (if any) proper defences to a body corporate debt recovery claim, it is likely that a Court will give summary judgment upon application.

The purpose of legal proceedings is to obtain a judgment which can then be enforced.



# Enforcement of the Judgment

A judgment creditor can enforce a judgment over the property of the judgment debtor. This can be done through the Federal Courts with insolvency, or through the State courts by enforcement warrant.

## Enforcement Warrant

There are a number of different types of enforcement warrant:

1. Enforcement warrants for seizure and sale of property;
2. Enforcement warrants for redirection of debts;
3. Regular redirections from financial institutions;
4. Enforcement warrants for redirection of earnings;
5. Order for payment of order debt by instalments;
6. Enforcement warrants for charging orders; and/or
7. Enforcement warrants for appointment of a receiver.

Not all enforcement warrants apply in all circumstances.

However, the obvious choice is the enforcement warrant for seizure and sale of the debtor's real property. This will allow the enforcement officer to seize and auction the lot.

However, if an enforcement warrant is not the correct choice, then a body corporate can also consider the bankruptcy / winding up processes in the Federal Courts.





## Bankruptcy / Insolvency

There may be some instances where an enforcement warrant may not be the best choice for a body corporate to enforce a judgment debt.

This may be if there is no (or little) equity in the property, or if the property is held in a complex investment structure. If this is the case, then personal / corporate insolvency may be the best option.

If the judgment debtor is a natural person, a body corporate can issue the judgment debtor with a bankruptcy notice, and then file a creditor's petition to commence bankruptcy proceedings.

If the judgment debtor is a company, a body corporate can issue the judgment debtor with a statutory demand, and then file a winding up application to commence corporate insolvency proceedings.

So, this is the body corporate debt recovery process.

## Our Legal Fees

As well as our normal fee structure, we offer a couple of other fee options:

1. Fixed fees; and
2. Deferred fees.

Let us explain in more detail below.



## Fixed Fees

We offer fixed fees for all body corporate debt recovery services which means that you can be assured that the legal costs will not surpass your budget.

Our fixed fees are fixed for each particular legal service and are disclosed prior to commencement.

In some cases we also cap these fees.\* This means that we cap our legal fees at the amount that the body corporate is awarded.

This ensures that the body corporate has the least out-of-pocket expenses as possible.

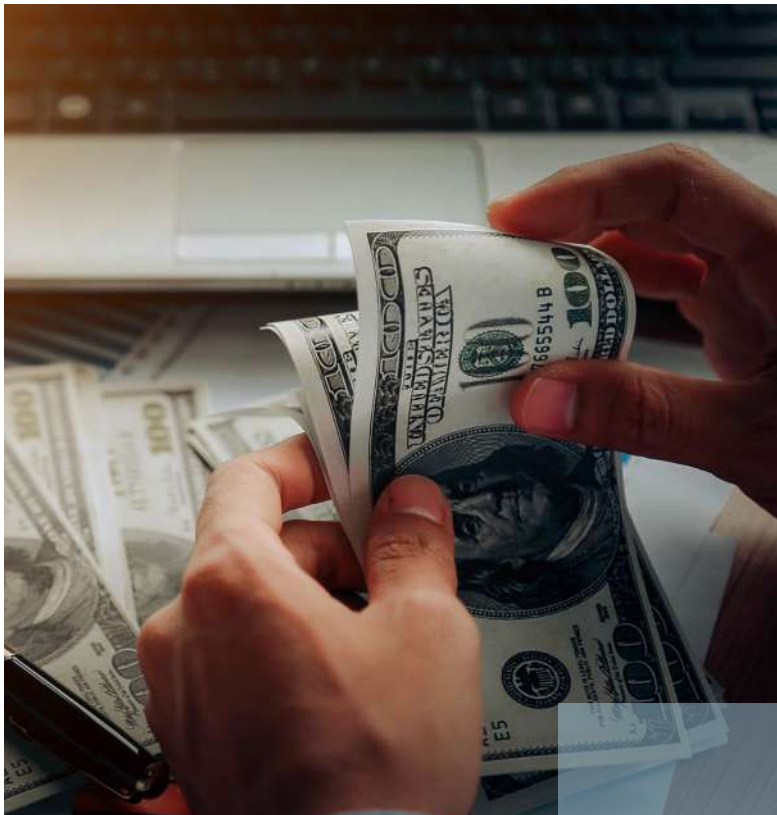


## Deferred Fees

In some circumstances we will also defer our fees. \*

This means that if we choose to run your matter in this way, we can defer our legal fees until the body corporate receives a payment.

This reduces the amount of fees paid up-front and means that even bodies corporate with minimal funds available for legal services can still have the same access to justice.





## Moving Forward

If you are on a body corporate committee, or you can make decisions on behalf of a body corporate, and you need to engage a debt recovery lawyer to recover outstanding body corporate levies, then you should give us a call.



## FREE DEBT RECOVERY EBOOK

Bodies Corporate need the lifeblood of levies to operate. If a difficult lot owner does not pay, then this will impact the entire community. This eBook explains the body corporate debt recovery process in Queensland.

By Wayne Davis – Stonegate Legal

☎ 07 5430 6640

✉ [info@stonegatelegal.com.au](mailto:info@stonegatelegal.com.au)

🌐 <https://stonegatelegal.com.au/>

[Body Corporate Debt Recovery](#)

[Outstanding Body Corporate Levies](#)