

# Levies and capital works funds

## Levies

Levies are a fee or 'contribution' paid by all lot owners in a scheme to cover the projected costs and expenses of the scheme. All levies must be worked out in proportion to the unit entitlements of each lot.

### Setting levies

Levies are calculated at the annual general meeting (AGM) by the owners corporation. To set the levies, a budget must be given showing the existing financial situation and an estimate of payments to be made and received. The calculation for the capital works fund levy should reflect, or include, the amount calculated in the 10-year capital works plan.

The budget must be:

- distributed with the notice of the AGM, or
- tabled at the meeting before voting on the levy motion.

The motion to set the levies must show the amount for each fund and be approved by a majority vote.

Generally, the contribution can be paid by instalments, and the laws allow for the payment amount and due date to be varied.

### Calculating capital fund levies

To determine the capital fund levy for each lot owner, the total estimated cost of capital works is divided by the total number of unit entitlements, and then multiplied by each lot owner's unit entitlements.

As an example, if an owners corporation calculates that it needs \$200,000 over 10 years, then it would need to levy (raise) \$20,000 each year. To meet the \$20,000 per year, contributions would need to be levied according to the unit entitlement of each lot. If there were 20 lots in the scheme and each had the same unit entitlement, each owner would be required to contribute \$1,000 per year to the capital works fund (note - these calculations are of a general nature only).

## Special levies

Owners corporations can vote to introduce a 'special levy', which can sometimes be a large amount. Special levies can be sought where there are insufficient funds to cover large capital works or unforeseen works, for example, to carry out major repairs to the common property.

Special levies are calculated according to the lot entitlement of each lot owner.

### Interest and discounts on levies

An unpaid levy attracts interest at the rate of 10% simple interest a year if not paid within one month of the due date. The owners corporation cannot increase or decrease the interest, but it can make a special resolution to charge no interest. Unpaid levies, including interest, can be recovered by the owners corporation as a debt in court.

An owners corporation may make a special resolution to give a 10% discount where a levy is paid before the day it is due. Payment made on the day it is due does not attract the discount.

### Payment frequency

The *Strata Schemes Management Act 2015* (the Act) allows for the varying of payments and the amount of the levy. The owners corporation can decide the timing that levies are collected from lot owners, for example, yearly, half-yearly, quarterly or monthly. For many strata residents, paying smaller amounts on a more frequent basis may be preferred to paying larger amounts on an annual basis.

The financial implications of the different ways of raising funds should be carefully considered by each owners corporation.

### Reimbursement of levies

An owners corporation can decide, by unanimous resolution only, to distribute any money in its capital works fund to lot owners, if the owners corporation considers that the money is not required for the purposes of the fund.

Contributions made by owners to the capital works fund are not refundable when an owner later moves out of the strata scheme, even if the money has not yet been spent on the item that the levies were intended to fund.

### Payment plans for unpaid levies

The Act permits the owners corporation to require the payment of overdue levies by lot owners. It can, if it wishes, enter into payment plan with a non-paying lot owner so they can make periodic payments of their overdue levies. If amounts remain unpaid, the owners corporation can take recovery action by applying to the Local Court. The owners corporation may apply to the NSW Civil and Administrative Tribunal (the Tribunal) instead of the Local Court only if it is seeking other orders from the Tribunal as well.

### Funds

All strata schemes must establish an administrative fund and a capital works fund to administer the finances of the strata scheme. This includes managing any interest earned from investing the moneys of these two funds.

#### Administrative fund

The administrative fund is used to manage the day-to-day expenses of running the scheme, including maintaining the common property, providing for insurance, and other recurrent expenses, such as electricity, water, carpet cleaning, lawn mowing services and the like.

#### Capital works fund

The capital works fund (previously called a 'sinking fund') is to ensure there is enough money to pay for capital expenses when the job needs doing.

This can include funds to pay for the following works:

- painting or repainting the common property
- acquiring, renewing or replacing personal property for the scheme
- renewing or replacing fixtures and fittings that are part of the common property, and
- to replace or repair the common property.

The capital works fund is required by law to have a 10 year plan in place (see The 10 year capital fund plan, below).

#### Funds for specific purposes

The Act provides that an owners corporation may enter into an agreement to provide amenities or services to particular lots. These lots are responsible for payment for amenities and services so provided.

This allows for more flexibility in strata schemes, where they can create funds for specific purposes where only some of the lot owners will derive a benefit. For example, some lot owners may want Pay TV services and they can now establish a fund for this purpose. Interested lot owners would pay costs into this fund and use the service without passing costs on to other lot owners who do not wish to use the service.

A fund established for a specific purpose must be with an authorised deposit taking institution, and the owners corporation must adhere to financial reporting requirements under the Act.

#### Exemptions for two-lot schemes

Owners in two-lot strata schemes may be exempt from the requirement to have a capital works fund if the strata buildings are physically detached, no buildings are situated outside the lots within the scheme, and the owners corporation passes a unanimous vote that a capital works fund does not need to be set up.

#### Transfer of money between funds

The owners corporation can transfer money from one fund to the other, or make a payment from one fund that should have been paid from the other. But the owners corporation must make a levy to repay that fund within three months after the transfer of monies.

#### Buying into a Strata Scheme

Prospective purchasers of a strata lot should get information on the current state of both the administrative and capital works funds from the section 184 certificate and other searches done by their lawyer or conveyancer. This information gives a valuable insight into the scheme.

## The 10 year capital fund plan

The owners corporation is required to prepare a plan of expected major expenditure to be met from the capital works fund. The plan is for a 10 year period commencing on the first AGM of the owners corporation, and must be reviewed at least every 5 years. Items of major expenditure could include, for example, to replace the roof on a building.

The amount required for the 10 year plan may vary between schemes, for instance, newer schemes may require relatively less money than the plans for older schemes with more repair work due. Each capital fund 10 year plan should reflect the individual needs of its scheme.

The 10 year plan must be approved by owners at an annual general meeting (AGM).

### Developing the plan

Owners corporations can put the 10 year plan together themselves or engage independent experts to prepare the plan.