

A Guide to Debt Recovery



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TURNBULL COOK

The information contained within this document has been developed to provide owners with information about the current debt recovery process at Turnbull Cook.

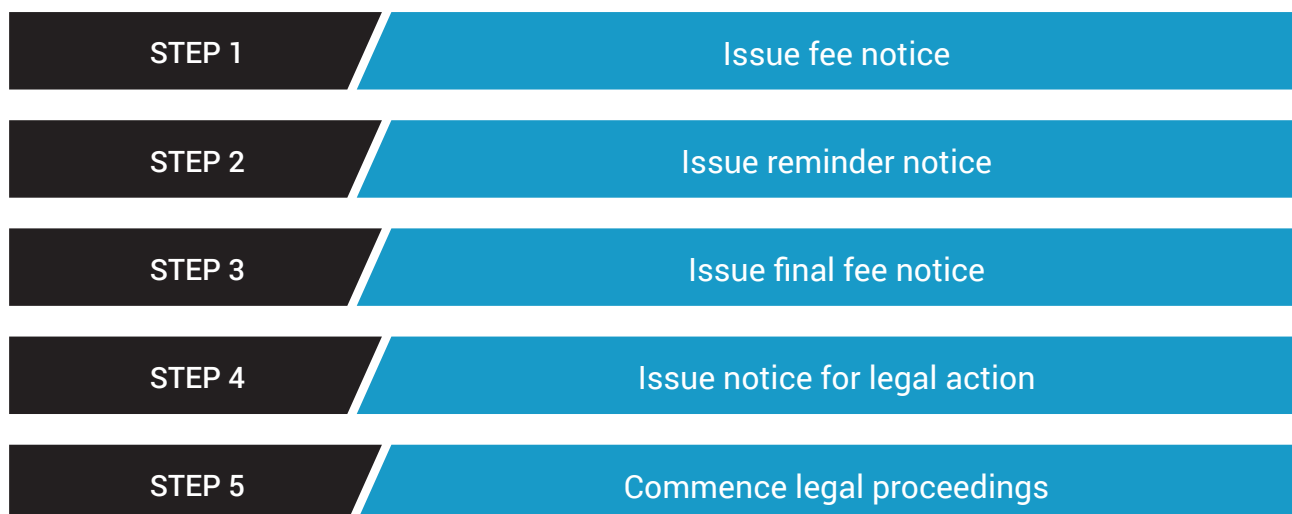
No-one likes owing or being owed a debt.

Under the strict requirements of the Owners Corporations Act 2006, lot owners must pay any outstanding fees, charges, contributions or amounts owing to their Owners Corporation, which has a lawful duty to recover them without waiver or discount.

That's why it's vital that the Owners Corporation understands its powers and functions to ensure effective debt management.

The Debt Recovery Process

The debt recovery process at Turnbull Cook has been developed around the responsibilities of the owners corporation that are imposed by the Owners Corporations Act 2006 ("the Act"). The debt recovery process used at Turnbull Cook has contains five steps:



Step 1

Issue Fee Notice

Owners Corporations rely on levying fees in order to fulfill their maintenance and administrative responsibilities. Under section 31 of the Act, the Owners Corporation must issue a fee notice to the lot owner to recover fees and charges.

Fee notices are issued 28 days before the due date.

The fee notice due dates fall due at the start of the quarter: January 1, April 1, July 1 and October 1. The frequency and timing depend on the resolutions made by your committee.

Who is liable for fees?


The person who is the registered proprietor of the lot is liable for outstanding fees and charges. So is any person entitled to receive the rents and profits from that lot, such as a bank or other mortgagee that has taken possession.

This means that a lot's debt from outstanding fees, charges, contributions, or other amounts owing to the Owners Corporation stays with the lot and does not follow the debtor. So a new registered proprietor who has bought the lot from the debtor would now have to pay the outstanding amount to the Owners Corporation.

On transfer of lot ownership, we remove all debt recovery history and the debt becomes a new liability.

Address requirements

The Act requires that the fee notice is sent to the Australian residential address of the registered proprietor of the lot. If we don't have an Australian residential address for the owner and an agent hasn't been nominated, we are required to continue sending it to the last known Australian address



Step 2

Fee Reminder Notice

If a levy remains unpaid at the due date, we issue the lot owner with a reminder notice. No interest or charges are incurred to the lot owner at this point.

Step 3

Final Fee Notice

If the fees and charges have not been paid within 28 days of the due date of the fee notice, the Owners Corporation can issue a final fee notice to the lot owner. At this point an owner will be charged a \$57.75 debt recovery charge as well as interest accrued from the levy due date.

Interest on arrears

The Owners Corporation's resolution to charge penalty interest on outstanding fees is reconfirmed at each Annual General Meeting. The rate at which to charge interest will also be resolved and minuted. For example: "It is resolved to charge penalty interest at the maximum rate of interest payable under the Penalty Interest Rates Act 1983."

Owners Corporations must not exceed the maximum rate. Interest accumulates daily until the debt is paid in full.

The Owners Corporation may waive penalty interest but must report to the Annual General Meeting on any decision to waive or not to waive the payment of penalty interest, and the reasons for that decision. The Owners Corporation should resolve in advance any circumstances that could warrant the waiver of penalty interest.

Payment plans

If you can't pay your debt by this stage, you may be able to commence a payment plan. If you would like to start a payment plan for any debt in steps 1–3 please contact your Owners Corporation manager to set this up for you.

Step 4

Notice of Legal Action

If the lot owner fails to comply with the terms of the final fee notice within 28 days, the lot owner will be issued with a letter of legal action. This letter gives the defaulting lot owner a further chance to comply with the final fee notice prior to commencement of recovery proceedings.

The lot owner will then have a further 14 days to make payment arrangements before legal action begins.

Step 5

Legal Proceedings

Stage 1 – Debt Collector

If the payment has not been paid within 14 days, the debt will be sent to a debt collector appointed by Turnbull Cook. The debt collector will commence the appropriate actions to recover the debt.

If your case is sent to the debt collector you will incur a further debt recovery charge of \$138.

Stage 2 – Application to VCAT

If the indebted lot owner fails to comply with all previous attempts for payment, the Owners Corporation will apply to VCAT for an order requiring the lot owner to pay the debt.

An Owners Corporation applying to recover debt is likely to be awarded its application fee under the new provision at s115C(1)(c) of the VCAT Amendment Act 2014. This raises a presumption as to reimbursement or payment of fees for debt recovery applications. The Owners Corporation's legal/administrative costs in such applications will be considered separately by the tribunal.

Stage 3 - VCAT Hearing

VCAT will inform the parties of the date and time of the hearing. The parties are the applicant, (the Owners Corporation), and the respondent (the indebted lot owner), against whom the application has been brought.. Both parties must attend the hearing which takes place before a Member or Senior Member of VCAT.

All documentation should be prepared in triplicate; one copy for the applicant Owners Corporation, one copy for the respondent (lot owner), and one copy for VCAT. These documents should be brought to the hearing.

VCAT hearings are more informal than most court proceedings but it is important to remember that VCAT is still part of the judicial process in Victoria and that those involved in its administration must be treated with the utmost respect. Members and Senior Members of VCAT are not addressed as Your Honour but instead are addressed as Member, Senior Member or simply Sir or Madam. A nameplate in front of the Member or Senior Member indicating his or her name and title is displayed in the chamber.

Stage 4 - Magistrates' Court order

Should a lot owner fail to comply with an order of VCAT to pay any outstanding debts, the Owners Corporation will need to apply to the Magistrates' Court for an enforcement order.

Prior to any enforcement action the Owners Corporation must first register the certified copy of VCAT's orders with the Registry of the Magistrates' Court nearest the home address of the respondent indebted lot owner. This registration enables the Owners Corporation to pursue the enforcement of the debt repayment as if the VCAT order were a judgment of the Magistrates' Court.

Stage 5 - Enforcement

Prior to proceeding to enforcement, the Owners Corporation or the indebted lot owner may seek to enter into a payment plan by which the debt is paid off. Note that the Owners Corporation is not permitted to discount any fees owing to it.

Any decision on whether to enter into a payment plan should be agreed upon and endorsed by the committee of the Owners Corporation and recorded in the committee's minutes. The costs of drawing up the payment plan should be met by the indebted lot owner and incorporated into the sums recovered under the agreement.

DISCLAIMER: This information is intended as a guide only. Information about the Act and current legislative procedures were sourced from the Debt Recovery Practice Guideline v1.4 May 2014 from Strata Community Australia VIC.

If you have further queries, please contact Turnbull Cook's Owners Corporation professionals on 03 8697 0600.

Total Care for you and your property

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