

The curse of the disappearing owner

Why lot owners can be elusive

You would be forgiven for thinking that, given that the liability to pay outstanding body corporate levies will pass to a purchaser of any strata-titled property, bodies corporate have a secured interest in the property to assist the recovery of their outstanding body corporate levies.

This is, unfortunately, not the case.

For that reason, it is important that bodies corporate do as much as possible to protect themselves against arrears of levies. One of the fundamental things that bodies corporate and their managers can do is ensure that each and every lot owner is able to be contacted at any given time.

When a property is purchased, the purchaser gives details for the body corporate register. Sometimes, these details are comprehensive; sometimes, they are not. The contact details should always be comprehensive, particularly where the lot owner will not be residing in the property.

The details should include all of the following:

1. residential address in Australia for all lot owners;
2. postal address in Australia for all lot owners;
3. mobile phone number for all lot owners;
4. landline (daily and after-hours) phone numbers for all lot owners;
5. email address for all lot owners;
6. facsimile number, if applicable; and
7. if a foreign investor, overseas residential and postal addresses and landline phone number, in addition to numbers 1 to 6.

Lot owners are expected to notify the body corporate when they change any of their details, but most of them will profess ignorance when (if) you finally track them down. That's why it is imperative that the lot owner's details include all of the details above. A lot owner might change their residential address, but probably wouldn't also change their mobile phone number and email address. A lot owner might change physical address, but still have the same daytime phone number as their employer has not changed.

Why is it important to know how to contact each lot owner?

1. Each lot owner is obligated to pay levies. If you cannot find the lot owner, you cannot enforce payment.
2. Each lot owner is liable for the acts of their tenants. If you cannot find the lot owner, your ability to deal with problem tenants may be impeded.

3. If you don't know where the lot owner is, then the lot owner is not receiving notice of meetings and other communications. Their absence may skew a vote one way or the other.
4. A court will not order substituted service of court claims against a foreign national unless you can show that communications will come to their attention. If you cannot serve them, you cannot get judgment against them.

For foreign investors, the body corporate should strongly consider whether further details or agreements ought to be sought to protect the body corporate from the situation where the lot owner disappears overseas, stops paying levies and doesn't return to the country to be served with legal documents.



Rob Grealy LL.B
Special Counsel
Commercial Dispute Resolution
Anderssen Lawyers

Phone: 07 3234 3130
Email: rob@anderssens.com.au

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