

A guide to debt recovery

Introduction

Recovering arrears can be one of the most challenging things facing an Owners Corporation. They may be recent, or in some cases, long standing, but either way you need an effective process to recover the debt.

The Owners Corporation Act 2006 sets out the requirements for lot owners to pay contributions, outstanding fees, charges or other amounts owing to their Owners Corporation. The Owners Corporation has a duty to recover these amounts from the owner within fair and reasonable timeframe.

On top of this, the Owners Corporation can choose to charge interest on arrears at the rate set by the Penalty Interest Rates Act 1983. However, it must not charge more than the maximum prescribed amount under this Act.

In certain and unique circumstances, the Act permits waiving of interest by resolution of a Committee. Further, the Act also mandates that an Owners Corporation must report on any interest waived during a financial year, so it is inherent upon the Owners Corporation to ensure it meets these obligations whenever dealing with fees and arrears.

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

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Debt recovery process

The debt recovery process implemented by Horizon Strata has been developed around the responsibilities and obligations that are imposed by the Owners Corporation Act 2006. This process contains five key steps which are as follows:

Issue the fee notice

1

Issue the Fee Notice

The Owners Corporation issues a fee notice to the registered proprietor of the lot in the prescribed form.

Issue a reminder notice

2

Issue a Reminder Notice

If the debt remains unpaid, Horizon issues a reminder notice 10 days after the due date of the levy.

Issue a final fee notice

3

Issue a Final Fee Notice

If the debt remains unpaid after 28 days from the due date, Horizon issues a Final Fee Notice.

Issue notice of legal action

4

Issue Notice of Intent to Commence Legal Action

If the owner does not comply with the Final Fee Notice, Horizon will issue a Notice of intent to commence legal action 28 days after the Final Fee Notice.

Commence legal proceedings

5

Commence Legal Proceedings

If the debt remains unpaid after steps 1-4, Horizon will prepare documents and handover the matter to a legal team with instructions to commence legal proceedings.

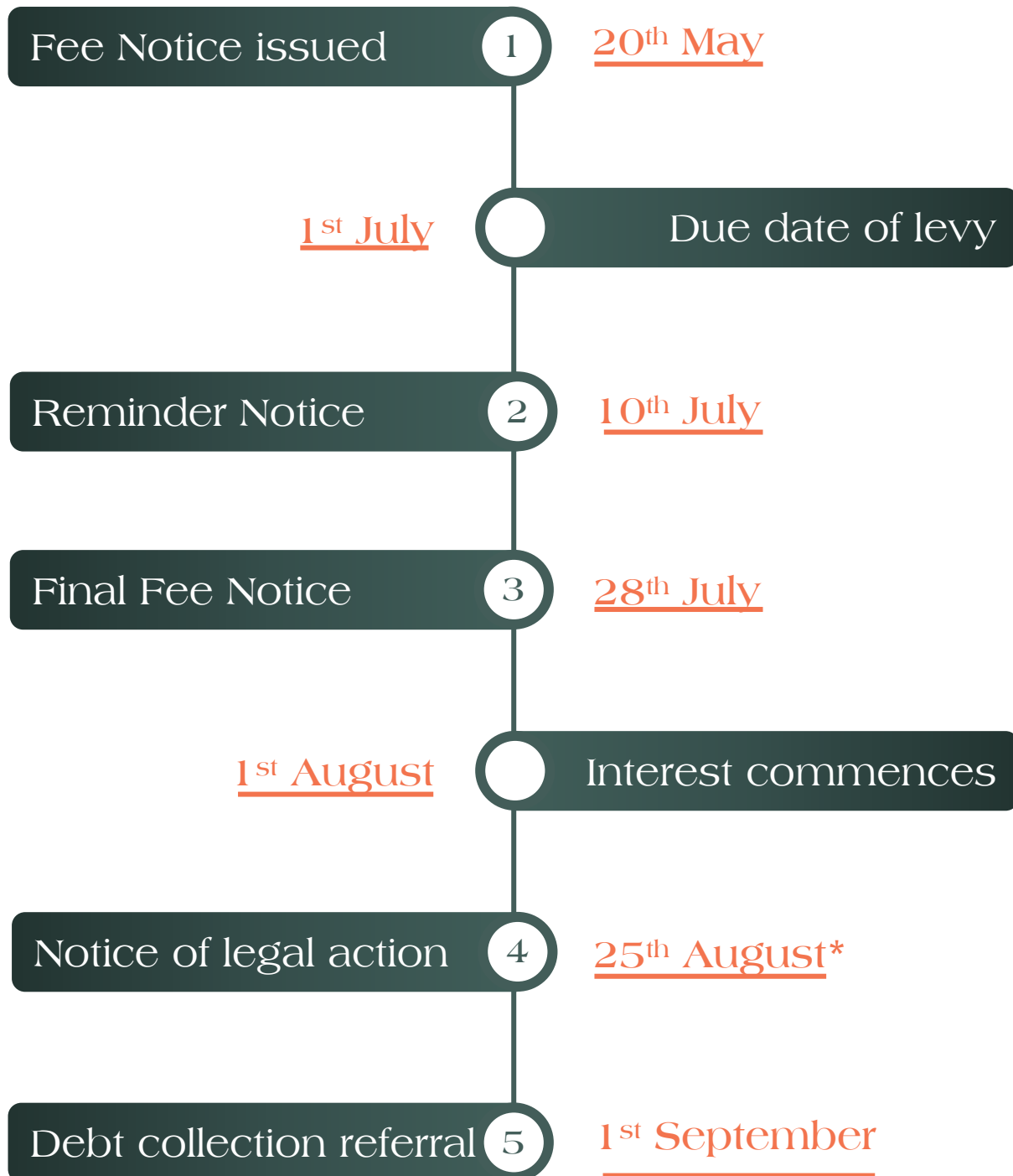
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Timeline of process

At Horizon we have a structured process right from the initial fee notice, through to commencement of legal proceedings. An example is set out below;



* The date for step 4 may vary based on the days of each month

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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.

A fee notice must also be issued no later than 28 days before the due date. Most Owners Corporations in Victoria levy fees quarterly in advance, which fall due on the 1st of each designated month.

Fee notices are issued to the registered proprietor of the lot. They are the party liable for fees and charges owing to the Owners Corporation, whether those are current or outstanding. Any debt that is associated with a lot remains with that lot, including when the registered proprietor sells the lot and a new registered proprietor takes possession. All debts and liabilities associated with that lot are now the responsibility of the new proprietor to meet. However in most cases, debt is cleared upon the transfer of a lot at the time of settlement.

The Act also requires that the fee notice be sent to the Australian residential address of the registered proprietor of the lot. If one has not been provided, or an agent nominated to receive the notices, we are required to send the notice to the last known Australian address (often provided and nominated at settlement).

The Act also permits notices to be given electronically, in accordance with the Electronic Transactions (Victoria) Act 2000. However, the lot owner must indicate their preference to the Manager for this method of delivery to be implemented.

2 | Issue reminder

If the levy remains unpaid at the due date, Horizon will issue the lot owner with a reminder notice. This is issued 10 days after the due date of the levy. No interest or additional charges are incurred by the lot owner at this point.

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3 | Final fee notice

If the fees and charges remain unpaid within 28 days after the due date of the fee notice, the Owners Corporation can issue a final notice to the lot owner. At Horizon, we issue this notice 28 days after the due date of the levy. Interest has not been incurred at this point; however, Horizon charge a fee of \$16.50 to raise and distribute the Final Fee Notice which is incurred by the lot owner

This notice advises the lot owner that they have an obligation to pay the overdue fees and charges and notifies them that interest may be incurred should the outstanding fees not be paid by the 1st of the following month.

Penalty Interest

At Horizon we insist that all Owner Corporations resolve to charge penalty interest at the maximum rate payable under the Penalty Interest Rate Act 1983. This is a resolution passed at the Annual General Meeting. The interest is calculated daily, and charged monthly until the debt has been paid in full.

An Owners Corporation may also elect to waive interest for particular circumstances, however in doing so, must report to the Annual General Meeting advising the details and reason.

Interest is not charged to the lot owner if the levy is paid within one month after the due date. However, interest is backdated to the due date if the levy remains unpaid.

4 | Notice of legal action

If the levy still remains unpaid, and the lot owner fails to comply with the terms of the final fee notice within 28 days, a notice of intent to commence legal action will be issued to the lot owner.

This letter affords the lot owner with a several days to make payment before legal action commences. Penalty interest has been charged and is accruing since the due date at this point.

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5 | Legal proceedings

If the payment has still not been paid, the debt will be referred to a debt collection agency on the 1st of the following month. At this stage, a debt collection referral fee of \$62.50 from Horizon will be charged to the Owners Corporation for preparation of documentation and referral to the agency. The Owners Corporation may then recover this charge from the lot owner.

Should the lot owner fail to comply with the debt collection agencies attempts to recover the debt, then an application to VCAT will be lodged requesting an order be handed down to recover the arrears.

It is vital that we advise that legal proceedings are not definitive and can be dependent on the outcome at each stage. It may take up to two years to resolve should the matter continue through the legal process via the Magistrates and Supreme Court of Victoria.

Any costs incurred by the Owners Corporation to recover the debt are on charged to the relevant lot. Upon recovery of the outstanding arrears, all debts, interest and charges owing should be collected.

FAQ's

Who pays the fee notice?

The person who is the registered proprietor of the lot is liable for outstanding fees and charges.

How much is the interest on arrears?

The interest payable to the Owners Corporation is resolved at the Annual General Meeting of the owners. The amount is often resolved as the "maximum rate chargeable under the Penalty Interest Rate Act 1983". Interest charged must not exceed the maximum amount under this Act.

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Can I receive my fee notice via email?

Yes, absolutely. At Horizon we encourage lot owners to receive correspondence and fee notices via email. Not only does it provide a better solution for the environment, it is direct and more efficient.

Do you offer a payment plan?

If a lot owner experiences hardship or has a genuine reason for need of a payment plan, application must be made to the Owners Corporation. Should an agreement proceed, Horizon will facilitate this for a reasonable, pre-determined fee.

I've moved address and have incurred charges on my account for non-payment?

The Owners Corporation Act 2006 points out that any lot owner who is absent from the lot for more than 3 months must advise the Owners Corporation of their new mailing address in Australia as soon as possible. If this occurs, and you have overlooked informing Horizon of the change, please contact us at your earliest convenience. The Owners Corporation may take this into consideration and waive any charges you incur, however, this is at their discretion and must be reported to the Annual General Meeting.

Can I nominate an Agent or Property Manager to receive my notices?

Yes. We are happy to send your notices directly to your agent, provided you confirm they are your designated nominee for this purpose. The request must be in writing to our email address – info@horizonstrata.com.au

DISCLAIMER: this information is intended as a guide only.

If you have further queries, please contact Horizon Strata on 03 9687 7788.

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