

WHEN SHOULD A BODY CORPORATE ALLOW A DISCOUNT FOR AN OVERDUE PAYMENT?

The legislation has created a significant incentive for owners to pay their contributions by allowing a body corporate to fix a discount of up to 20% to be given to owners if a contribution is paid on time.

But ...

The issue lies in the scenario where the contribution is received by the body corporate after the due date but the owner still wants the benefit of the discount.

The blunt response is that the owner is not entitled to the discount. But, in certain circumstances, that seems overly harsh.

That is why the legislation also gives a body corporate the power to allow part or all of a discount even if the amount was not received by the due date, if the body corporate is satisfied there are 'special reasons'.

Special reasons

What constitutes 'special reasons', is not defined.

It depends on the circumstances of the situation and a body corporate should consider the merits of the particular case before making its decision.

Take the following scenarios:

1. an owner paid the contribution on the due date but it was received by the body corporate the next day, the owner had no history of late payments, the owner did not know the payment would be received the next day;
2. an owner paid the contribution 12 days late because the owner unexpectedly went to hospital for emergency surgery just before the due date for the contribution and made payment the day after returning from the hospital;
3. an owner had a direct debit set up with Stratapay (a recognised payment platform) to pay contributions, however a computer error resulted in Stratapay not paying the contribution amount to the body corporate by the due date;
4. an owner did not receive the notice of contribution before the due date for payment.

In each of these scenarios, an adjudicator has found that the body corporate acted unreasonably in deciding to not allow a discount.

Consequences

If a body corporate refuses to allow a discount, it can have the following consequences:

1. the owner may not be entitled to vote at a general meeting because they owe a body corporate debt;
2. the owner may accrue up to 30% interest per annum on the unpaid amount;
3. the owner may be required to pay reasonable recovery costs in recovering the unpaid amount.

That is not to say that a body corporate should always allow a discount, but rather emphasises that a body corporate must act reasonably in deciding whether to allow a discount.

What should you do?

A body corporate should treat requests by lot owners to reinstate a discount carefully.

That is because:

1. if a body corporate does not consider the specific circumstances of the request and adopts a blanket approach, an adjudicator will likely find that the body corporate acted unreasonably and order the body corporate to refund the amount of the discount;
2. if a body corporate allows a discount without there being 'special reasons', it is arguable that that the body corporate exceeded its powers and other owners may apply to the Commissioner's Office for relief.

If a body corporate is unsure of its ability to allow a discount for an overdue payment, or simply wants to try and avoid a potential dispute, legal advice should be obtained as soon as possible.

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