

## What if there is a default?

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This is obviously a critical question and a topic about which we think our clients should be very informed.

First, we have to be precise about who it is that is defaulting. Is it the corporation that is behind in its loan repayments to Lannock or is it an owner who is behind in their levy payments to the corporation?

Many corporations have some arrears in levy payments throughout the course of a year. It's a practical fact that not everyone organises themselves to make every payment on time. In these cases, it's business as usual. The corporation usually has enough funds to enable creditors (including loan repayments) to be paid.

However, there are several points to note if the corporation is in default in its obligations to Lannock.

If the strata corporation is "primarily residential" then Lannock must abide by the terms of the Consumer Credit Code. This includes such things as giving 28 days written notice of demand. However, you can expect that we will contact you before making this demand so that we can understand what's gone wrong and help out if we can.

Note that the law applies to all defaults in exactly the same way – there is no difference if a corporation that is in default in loan repayments than if the corporation is in default with any other kind of payment.

When considering default scenarios, it's important to first consider how the corporation could be in default in the first place. There are only two reasons: Either the corporation has failed to raise the levies that it should have raised. Or, the corporation has not pursued a member who has not paid their levies on time.

Note that both of these activities are within the power of the corporation to prevent. The corporation has all the powers it needs (in fact, it has the obligation to exercise these powers) to raise a levy. Also, the corporation has very powerful authority to pursue unpaid levies.

Put very plainly, a corporation which properly exercises its powers (obligation) to raise levies and its powers to follow-through on unpaid levies can never be in default. The corporation has total control over its destiny.

However, if a corporation failed to do this, and assuming the relationship with Lannock had broken down, we as a creditor would exercise the same rights that all creditors of strata corporations have. We would go to the appropriate court to seek a judgment. With that judgment, we would make an application to the Consumer, Tenancy and Traders Tribunal seeking the appointment of a compulsory manager. A compulsory manager has all the powers of a general meeting and, presumably, would set about raising or collecting levies (the very actions that the corporation has the power to do and should have done) in order to address the situation.

Please contact Lannock if you would like more information or if you have any questions.