

Transferring Money Between Funds

Questions regarding what the body corporate can do when there is not enough money allocated in a certain fund, in particular the transferring of money between the administrative fund and the sinking fund are common in our Office.

In this article we will briefly touch on what are funds, how funds are raised and whether money can be transferred between funds.

What are funds?

All bodies corporate have expenses. The legislation requires bodies corporate to plan for these expenses. The money that owners contribute to the body corporate, or that the body corporate receives from other sources, is paid into what are called funds.

There are usually two funds: administrative fund and sinking fund. The administrative fund is used to pay for maintaining common property and assets, insurance, postage, service contractors such as the body corporate managers or caretakers, and other recurrent spending. The sinking fund is for major expenditure of a capital or non-recurrent nature. Examples of capital expenditure include repainting the common property or replacing a roof or lift.

The Commercial Module also includes an option for a third fund, being a promotional fund.

Schemes registered under the 2-Lot Module still have body corporate expenses. However, the owners are not required to put money aside in the two funds. When a body corporate expense arises the two owners decide by making and recording an owners' agreement.

Raising funds

Before each Annual General Meeting (AGM) the committee prepares a budget for each fund. The budget sets out how much is needed during the year for the daily administration of the scheme and estimates what may be required for major works in coming years. The committee may refer to a sinking fund forecast to help determine how much is needed and when. It is not compulsory for the body corporate to do a sinking fund forecast, however it may be difficult to anticipate the expenditure over nine years without one. The body corporate may engage a professional to complete one or complete one themselves. There is no duty on the body corporate to adhere to a sinking fund forecast.

At each AGM owners vote to approve the budgets and also agree how much to pay throughout the year to raise enough money to meet the budget. These are called levies. The body corporate may choose the frequency of the levy payments throughout the year. For example a body corporate may decide on one annual levy or split the levies into quarterly payments.

Although there are two funds, the body corporate may decide to open only one bank account. The account is held in the name of the body corporate, for example, "Body corporate for Country Manor community titles scheme 1234". Monies for each fund are deposited into the account.

The body corporate may also invest funds. At the end of the term the principal sum is either reinvested or returned to the original fund, to be used for its intended purpose. The interest earned from each fund can be paid back into the same fund.

There is not enough money in the fund

Bodies corporate cannot simply transfer money between the administrative fund, the sinking fund or the promotional fund if there is not enough money in one fund.

Committee spending is limited and money must be available in the budget before the committee can spend it. If there is no provision, or insufficient provision, in the budget for the particular expenditure, the committee must call a general meeting to approve a special levy to pay for the expenditure.

In some situations bodies corporate may be in a position to amend the budgets voted on at the annual general meeting by holding an extraordinary general meeting (EGM) to vote to approve new budgets and levies to accommodate any unplanned expenses.

Amending the budget at an EGM is a different process from adjusting the budget at the AGM. At the AGM, the body corporate can only adjust the proposed budget up or down 10 per cent. This could be done if there is a motion that passes or does not pass that has not been factored into the proposed budget. If the budget needs adjusting, those present at the meeting can be asked to vote on a procedural motion.

Too much money in a fund

It doesn't happen often but sometimes the body corporate may end up with too much money in one of its funds and be tempted to transfer it to the other fund.

This may happen because a special levy was raised and not spent for the purpose it was raised, or the body corporate raised money it was not entitled to raise (such as for painting the buildings in a standard format plan of subdivision).

The legislation does not provide for what to do when this happens, other than to state that monies cannot be transferred between funds. There are very limited circumstances where a body corporate can refund monies paid into the sinking fund. There have been a number of adjudicators' orders which have dealt with the issue where monies have been collected in contravention of the legislation. One example is where a body corporate has collected levies for the payment of painting the buildings in a community titles scheme registered under a standard format plan of subdivision. In this type of scheme the painting is the owners' responsibility not the body corporates.

This article was contributed by Chris Irons, Commissioner for Body Corporate and Community Management