

# Legal Review

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## Recoveries & Insolvent Deceased Estates



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There have been recent developments as regards the recovery of monies owed by deceased estates to various parties, including particularly, owners corporations for unpaid strata levies, interest and recovery expenses. One of the main concerns is where an apartment is left as the sole asset of a deceased estate to a sole beneficiary who lacks capacity or is in dire financial distress and then falls behind in payment of levies.

A recent matter has seen the executive committee and strata manager seek to have the deceased estate administered pursuant to Part XI of the Bankruptcy Act<sup>i</sup> (the Act). This strata plan comprises a 3-lot plan where the registered proprietor (and lot owner as recorded on the strata roll) died in 2011.

From as early as 2012, the daughter of and sole beneficiary under the will of the deceased, while having been granted probate of the estate in early 2012 did nothing in order to administer the estate. Levies continued to accrue and went unpaid for some 3 years prior to recovery attempts being initiated thus leaving the remaining 2 lot owners to foot the bill for the ongoing operation of the strata plan.

The starting point for any application pursuant to Part XI of the Act is the Official Receiver's Practice Statement 5, which outlines the expected procedure and supporting documentation required. One key advantage to this type of application, as compared to the normal bankruptcy process is that no act of bankruptcy is required prior to commencing proceedings.

Upon filing and service of your creditor's petition, at the return date you will require the usual affidavits in support of your application (affidavit of debt, affidavit of search), and if the matter is unopposed, in the normal course, an 'administrator' (similar to a trustee in bankruptcy) should be appointed over the estate. It then falls to the administrator to administer the deceased estate, similar to a bankrupt estate.

One final hurdle is the issue of costs. Where the application is undefended, even if a strata applicant, the usual fixed costs order should cover most of a client's costs and therefore no further levies need to be issued to remaining lot owners.

It is where the matter becomes defended that things can become frustrating for lot owners, particularly in relation to smaller strata plans where the remaining lot owners are funding the legal fees. These same lot owners have had to fund the ongoing management expenses of the common property and the strata plan and are now having to fund the litigation also.

The issue of section 80 costs<sup>ii</sup> is also reluctantly dealt with by the Federal Circuit Court Judges, but the applicable rule is that the costs and disbursements incurred were reasonable in the circumstances and should theoretically be refunded mostly in full, although this is not always the case.

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<sup>i</sup> 1966 (Cth)

<sup>ii</sup> Pursuant to section 80 of the Strata Schemes Management Act 1996 (NSW)