

Issue 13 (commencement minus 8 weeks)

Survive the transition to the new Strata Schemes Management Act 2015 and thrive with this 20-week program of brief training notes about the new strata laws for NSW commencing 30 November 2016.

Key points this week –

- Timeframes for giving copies of by-laws and registering by-laws have been tightened
- The purpose of by-laws has been broadened
- The number of things that by-laws can be used for to regulate internal affairs has been increased
- There is an overriding requirement that by-laws must not be harsh, unconscionable or oppressive
- The model by-laws introduce some controversy and new provisions

Timeframes

A timeframe of 14 days has been introduced for giving tenants a copy of the by-laws and any strata management statement affecting the lot or common property. Similarly amended by-laws must also be provided to tenants within 14 days.

Previously there was a two-year window for lodging by-laws. That has now been shortened to six months and this will catch out owners corporations that do not move promptly to register by-laws once they have been passed.

The broad new purpose of by-laws

Previously by-laws were made for certain purposes that were listed in a non-exclusive way. Now by-laws may be made in relation to the management, administration, control, use or enjoyment of the lots or common property.

These are similar to the words used elsewhere in Australia and allow by-laws to be customised to meet the particular needs of a scheme.

Internal regulation by by-laws

One of the themes of the new act is to enable owners corporations to make more decisions about how their internal affairs are regulated. This is evident in the new

provisions for by-laws which allow owners corporations to make their own rules in relation to the following matters:

- Adopting and modifying a common property memorandum that enables responsibilities for common property to be put on owners
- By-laws enlarging the definition of cosmetic work that can be done by an owner without any approval
- By-laws that add to the list of minor improvements which require general meeting approval rather than a by-law
- By-laws to delegate approval for minor works to the strata committee rather than requiring a general meeting – this will be a new by-law that every scheme will want to adopt
- By-laws may be used to limit the occupants of bedrooms which will be useful for schemes having trouble with “party” lettings
- By-laws will be able to be passed adopting a means of serving notices on owners if there is no address recorded on the strata role

Requirement that by-laws must not be harsh, unconscionable or oppressive

A major reform that will no doubt lead to an increase in disputes is a requirement that by-laws must not be harsh, unconscionable or oppressive. Owners corporations that seek to control too much of the behaviour of their owners will be caught by this provision. Although the words are well understood in the context of other law there will be shades of grey in their application to strata living.

By-laws that seek to regulate rather than prohibit behaviour will likely survive challenges on the basis that they are harsh, unconscionable or oppressive.

Updated model by-laws introduce controversy and new provisions

The model by-laws are worthy of consideration even for schemes that already have previous versions of the model by-laws under other legislation. The new model by-laws on smoking and overcrowding will be particularly attractive for many owners corporations and there are three new provisions in the model by-laws that chip away at the rights of owners to use their apartments for short term letting.

One of these new by-laws requires that an owner give notice to the owners corporation when changing the use of the apartment from residential purposes to short term or holiday letting.

Another of them provides that a lot must not be used for any purpose prohibited by law. This will mean that owners corporations will need to make enquiries of their development approval consent conditions on issues like short term or holiday letting.

The third new by-law in this area ensures that lots are not occupied by more persons than are allowed by law.

If owners corporations want these by-laws to apply to existing schemes by November 30 2016 they will have to pass a special resolution and register the new by-laws. Many will see this as an attractive option.

Next week: Insurance

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Michael writes this series from the unique perspective of having worked both as a strata manager and a strata lawyer. He has helped large strata management companies transition to new laws in Queensland, Victoria and the ACT, where he developed particular skills in managing change. Michael is available for bespoke training and systems development. He is the author of "Growing Up: How Strata Title Bodies Might Learn to Behave", Major Street Publishing 2015.

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