

STRATA LAWYERS DISSECT ANTI-AIRBNB LAWS



Holiday lets have a more profound effect on apartment blocks than stand-alone dwellings – SHUTTERSTOCK.

By Jimmy Thomson

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Things have gone quiet on the [Airbnb](#) front, with both NSW and Victorian policy wonks scribbling away on new legislation to deal with [online short-term letting](#).

It's widely accepted that holiday lets have a more profound effect on apartment blocks than stand-alone dwellings, for obvious reasons.

Late last year, the [Privy Council in London](#) ruled on a piece of overseas strata legislation that was basically a cut-and-paste of NSW strata law, section 139 (2), which says that by-laws can't interfere with owners letting their units.

This section, or a local equivalent, had been used in Australia to overturn by-laws banning Airbnb-style rentals of whole homes. However, the Privy Council ruled that these by-laws were valid. Also, the Appeals Court in WA – the highest court in that state – [had previously ruled](#) the same way.

But wait! NSW Fair Trading says they aren't valid and the NSW Civil Administration Tribunal (NCAT) has revoked a by-law in one case. There have also been a number of court rulings in Victoria that have overturned anti-holiday let by-laws.

Legal Eagles

So we approached five eminent strata lawyers and set them this hypothetical: if a block had residential-only zoning (defined as leases of not less than 90 days) and an anti-short-term-letting by-law was challenged, what would your advice be? Don't fight it or roll the dice and use the WA and Privy Council rulings to support your case?

Leading strata lawyer Stephen Goddard of Goddard & Co Solicitors cautions against "rolling the dice".

"It is not up to an owners corporation to gamble with the resources of the people it represents any more than it is appropriate for government to abdicate its responsibility in the development of relevant public policy in the public interest."

Amanda Farmer of Lawyers Chambers on Riley says the by-law would not fall foul of section 139 (2). "It is not the by-law restricting the lease of the lot, it is the local authority ... even if the by-law didn't exist, leases of less than 90 days would be illegal."

Cathy Sherry, associate professor of law at UNSW, says that it depends on the state legislation and local planning laws, although she points out that in the WA decision, "the judge seemed to have no problem with the idea that a privately-made by-law could override a public planning consent".

Adrian Mueller of JS Mueller & Co says that rather than a by-law restricting the number of days a property could be let, "I would advise the owners corporation to ... make a new by-law that would prohibit an owner or occupier of a lot using the lot ... for unlawful short-term accommodation".

Jessica Bates, senior associate with Sachs Gerace Broome, warns there are no guarantees in legal battles but "I prefer the argument that by-laws prohibiting short-term letting are by-laws restricting the use of a lot, rather than restricting the right of the owner to lease the lot, and are permissible and enforceable".

AFR Contributor

Jimmy Thomson edits the apartment living advice website flat-chat.com.au, where you can read the lawyers' responses in full. Different strata laws apply in different states.

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