

THE FIVE MOST USEFUL BY-LAWS - HOW TO MAKE YOU LOOK GOOD

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Adrian Mueller | Partner | Senior Lawyer | BCOM LLB FACCAL

The Five Most Useful By-Laws

- Cost Recoveries
- Parking Notice Fees
- Master Renovations
- Transferring Responsibility for Repairs
- Proxies

Cost Recoveries By-Law – Why?

- Industry wide practice – place miscellaneous charges on owners' accounts/ledgers.
- These charges include:
 - Repair costs
 - False fire alarm call out charges
 - Legal costs/debt recovery costs
- Is that legal?
 - The Owners - Strata Plan No 52098 v Khalil [2014] NSWLC 2
 - The Owners – Strata Plan 50946 v Hong [2018] NSWLC 3
- Can it become legal?

Cost Recoveries By-Law – What Does it Do?

- Permits an owners corporation to recover the costs it incurs:
 - When an owner or occupier breaches a by-law
 - Enforcing a breach of a by-law

- Requires owners and occupiers to:
 - Comply with the by-laws
 - Ensure their tenants comply with the by-laws
 - Ensure their invitees comply with the by-laws

Cost Recoveries By-Law – What it Does Not Do?

- Cannot permit an owners corporation to:
 - Impose Penalties/Fines
 - Make a profit

Cost Recoveries By-Law – What Does it Cover?

- Cleaning Costs
- Rubbish Removal Costs
- Common Property Repair Costs
- False Fire Alarm Call-Out Fees
- Fire Safety Contractors' Extra Call-Out Fees
- Insurance Premium Increases
- Insurance Excesses

Cost Recoveries By-Law – What Can it Cover?

- Removal of Abandoned Goods
- Removal of Illegally Parked Vehicles
- Repairs to Lot Property
- By-Law Drafting Costs
- Costs of Litigation

Cost Recoveries By-Law – What Can it Cover?

- Costs of any By-Law Breaches
- Costs of By-Law Enforcement
 - Letter
 - Notice to Comply
 - NCAT

Cost Recoveries By-Law – Is it Enforceable?

- Can a by-law impose monetary liabilities?
 - Italian Forum case (yes/no)
- Can a by-law contain its own enforcement regime?
 - Does the Act cover the field?
- Is the by-law inconsistent with the Act?
 - Costs to remove abandoned vehicles (cl. 34)
 - NCAT costs (s.60 NCAT Act)

Parking By-Law – Why?

- Regulation allows owners corporation to move illegally parked vehicles (cl 34)
- The Regulation is imperfect and contains limitations
- Owners corporation cannot move an unregistered vehicle onto the street
- Owners corporation must obtain NCAT order to recover costs incurred moving an illegally parked vehicle

Parking Notice By-Law – What Does it Do?

- Contains rules for parking:
 - No parking on common property
 - Owners responsible for tenants' parking
 - Invitees to only park in visitor parking (time restriction)
 - No parking in other private car spaces
 - Car register (vehicle details)

Parking Notice By-Law – What Does it Do?

- Permits an owners corporation to:
 - issue a notice to an owner or occupier in breach (the culprit)
 - place a notice on the offending vehicle
 - recover from the culprit the cost of issuing the notice
 - recover from the culprit the cost of moving the vehicle
- Results in multiple costs recorded on owner's account/ledger
- Stops the parking problem

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Parking Notice By-Law – What it Does Not Do?

- Does not permit an owners corporation to impose:
 - Penalties
 - Fines

Master Renovations By-law – Why?

- Act divides renovations into three categories (ss. 108-110):
 - Cosmetic work
 - Minor renovations
 - Major renovations
- Act contains very few rules for renovations
- There is a need to fill in the blanks in the Act and cover the field more comprehensively

Master Renovations By-law – What Does it Do?

- Covers minor and major renovations
- Sets out a procedure to follow to apply for approval to renovate
- Contains rules for renovations – before, during and after
- Delegates to strata committee power to approve minor renovations
- Includes a Short Template by-law for each specific major renovation (Annexure)

Master Renovations By-law – What Renovations Does it Cover?

- Useful for:
 - Bathroom renovations
 - Kitchen renovations
 - Air-conditioner installations
 - Changing floor coverings
 - Other internal renovations
 - Pergolas + awnings
 - Solar panels

Master Renovations By-law – Approval Process

- Process for approval of minor + major renovations:
 - Owner's application for approval – prescribed form
 - Documents to be included in application (e.g. expert reports)
 - Owners corporation approve or reject

Master Renovations By-law – The Rules

- Rules before renovating
 - Prior notice to owners corporation
 - Council approval
 - Expert reports
 - Bond

- Rules during renovations
 - Licensed contractors
 - Proper and competent work
 - Timeframe for completion
 - Work Hours
 - Work methods
 - Noise

Master Renovations By-law – The Rules

- Rules after renovating
 - Completion notice
 - Expert reports
- Enduring obligations
 - Maintenance + repair
 - Indemnity
 - Compliance with the law

A Master Renovations By-law - Pros

- All rules for renovations in the one place
- Relieves strata committee from having to formulate rules for renovations
- Avoids separate by-laws and general meetings for minor renovations
- Provides a template by-law for owners to complete for major renovations
- Adds to the statutory list of minor renovations
- Streamlines and simplifies the renovations approval process

Transferring Responsibility for Repairs – Why?

- Owners corporation must repair all common property unless:
 - Special resolution is passed not to repair specific item of property; or
 - Common property rights by-law transfers responsibility for repair to owners
- A common property rights by-law can make owners responsible for repairing an item of common property

Transferring Responsibility for Repairs – What Does it Cover?

- Useful to make owners responsible for repairing:
 - Wet areas (e.g. bathroom waterproofing)
 - Air-conditioners
 - Balcony doors and windows
 - Hot water services
 - Unauthorised works

Transferring Responsibility for Repairs – The Pitfalls

- Every owner must provide written consent
- What happens if every owner does not consent?
- The by-law must be specific – it must identify the item of property to be repaired by owners
- A “catch all” description of “all unauthorised renovations” is insufficient

Proxies By-Law – Why is it Needed?

- Anti-proxy farming laws (cl. 26(7), Sch 1)
- The total number of proxies that may be held by a person is:
 - if the strata scheme has 20 lots or less, one
 - if the strata scheme has more than 20 lots, a number that is equal to not more than 5% of the total number of lots.

Proxies By-Law – Why is it Useful?

- What happens if a person holds too many proxies?
- Which proxies count?
- Who gets to decide?
- When is that decision made?

Proxies By-Law – What Does it Do?

- The proxy must decide which proxies will be used
- The decision must be communicated to the owners corporation before the meeting
- If the proxy does not decide, then the chairperson decides at the meeting
- Any decision must give priority to the earliest proxies (if possible)

The Top 5 By-laws That Did Not Make the List

1. Specific Renovations
2. Airbnb/Short Term Letting
3. Overcrowding
4. Window Safety Devices
5. Common Property Memorandum

The Most Useful By-Law (that Did Not Make the List)

Levy Collection

- (1) The owner of a lot who does not pay on time any levies to the administrative fund or capital works fund (*the culprit*) appoints the owners corporation as the attorney of the owner.
- (2) The owners corporation, in its capacity as the attorney of the culprit, shall have the power to sell the culprit's lot.
- (3) The owners corporation shall have the power to sign any contract for the sale of the culprit's lot.
- (4) The owners corporation shall be entitled to recover from the proceeds of sale of the culprit's lot all:
 - (a) overdue levies, interest and levy recovery expenses;
 - (b) expenses incurred in connection with the sale of the lot including estate agent's costs and legal costs.

Thank You!



Finally! We have this big sheet in place,
Now hurry and nail it in.

Thank You

Adrian Mueller | BCOM LLB FACCAL
adrianmueller@muellers.com.au
02 9562 1266

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