

BY-LAW REVIEWS - HOW TO AVOID THE PITFALLS AND CORRECT THE MISTAKES

JS Mueller & Co Forum | 31 July 2018



Daniela Terruso | Lawyer | BA LLB

Strata By-law Reviews

- What mistakes have been made during the by-law review process by some owners corporations?
- What other matters should an owners corporation consider when making by-laws into the future?

What are Strata By-laws?

Strata By-Laws essentially serve three functions:

- Regulate occupation, use and enjoyment of lots and common property;
- Confer special rights or privileges on lot owners to the exclusion of other lot owners (Common Property Rights By-Laws)
- Extend powers of an owners corporation (Empowering By-Laws)

What a Typical Strata Scheme Looks Like in Terms of its By-laws

- Pre 1996 schemes – typically use the model by-laws (such as those found in Schedule 2 to the Regulation) together with additional by-laws granting common property rights and with the occasional empowering by-law;
- Post 1996 schemes – More of a mixed bag. Still many use model by-laws but you see a rise in site specific developer drafted by-laws. You also see a rise in more complex developments facilitated by the part building strata legislation and the community schemes legislation.

Common Mistakes in Undertaking Strata Reviews

- **Mistake 1** – Out with the old and in with the new blanket adoption of new Model By-Laws.
 - The new Schedule 3 Model By-Laws have some glaring omissions. These are:
 - By-Law 13: Moving In and Out
 - By-Law 14: Floor Coverings
 - By-Law 18: Notice Board

- **Mistake 2** – Do Nothing (if it ain't broke don't fix it).
 - The new Schedule 3 Model By-Laws contain many useful by-laws.
 - By-Laws 9 & 10: Smoke Penetration and Safety
 - By-Laws 17 & 18: Change in Use or Occupation to be notified and Compliance with Planning and Other Requirements
 - By-Law 5: Keeping of Animals (Assistance animals under Section 9 of the Disability Discrimination Act)

Common Mistakes in Undertaking Strata Reviews

- **Mistake 3 – Renovations By-Laws**
 - Keep in or take out pre-existing Renovations By-Laws?
 - New Renovations By-Laws? Required as a result of the new legislation eg. What constitutes cosmetic works, minor renovations, major renovations
 - Need to retain ongoing obligations.
 - Need for clarity and consistency.
 - If under an exclusive use by-law need for consent of the owner of the lot affected to effect any changes.

Difficulties Encountered in Affecting Changes to By-laws Following Review

Consent of the owner of the lot affected by a Common Property Rights By-Law before passing Special Resolutions to effect any changes can be difficult to achieve in practice.

Harsh Unconscionable or Oppressive By-laws – More to do on No Pets By-laws

Section 139(1) of the *Strata Schemes Management Act 2015* requires that a by-law passed as and from 30 November 2016 must not be harsh, unconscionable or oppressive. This is a new provision not previously found in prior NSW strata legislation.

Similar provision in Queensland strata legislation: section 180(7) of the *Body Corporate and Community Management Act 1997* in place since 2008.

- Isle of Palms Resort decision and other decisions on by-laws restricting pets. No pets by-laws have been successfully challenged on this ground.

Thank You

Daniela Terruso | BA LLB
danielaterruso@muellers.com.au
02 9562 1266

The information contained in this paper is provided for your personal information only. It is not meant to be legal or professional advice nor should it be used as a substitute for such advice. You should seek legal advice for your specific circumstances before relying on any information herein. Contact [JS Mueller & Co](#) for any required legal assistance.

