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LAWYERS



WHO IS PREPARING YOUR BY-LAW CONSOLIDATIONS?

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Introduction

There are many strata managers who are preparing and registering consolidated sets of by-laws for the strata schemes they manage. We have recently come across several by-law consolidations prepared by strata managers that contain critical and costly errors. The professional indemnity insurance policies held by strata managers may not cover the negligent preparation of consolidated by-laws. So ask yourself: who is preparing your consolidated by-laws and is it worth the risk to you if you make a mistake that is not covered by insurance?

Error 1 – Including Repealed Model By-Laws

We have seen many consolidated sets of by-laws in which model by-laws that were long ago repealed by owners corporations have been erroneously “reinstated” when a strata manager prepares and registers a consolidated set of by-laws. This error typically occurs because the *Strata Schemes Management Act 2015* says that the model by-laws found in the 2016 strata regulations apply to most strata schemes. But the Act also says that the model by-laws apply together with any changes that have been made to the by-laws. This means that if an owners corporation repealed a model by-law many years ago, that model by-law normally should not be included in a consolidated set of by-laws. In some cases, the model by-laws that were repealed were those found in Schedule 1 to the *Strata Titles Act 1973*. It can be difficult to work out which of the current model by-laws are the 1973 Act model by-laws that have been repealed and should not be included in the consolidated set of by-laws. This difficulty can lead to error.

Error 2 – Pets By-Law

In one case, an owners corporation changed the keeping of animals by law in the early 1990’s to prohibit the keeping of animals. However, when the strata manager recently prepared and registered the consolidated set of by-laws, the strata manager included both the by-law prohibiting the keeping of animals that was made in the 1990’s and the current model by-law which permits animals with the consent of the owners corporation. In those circumstances, it is not clear which by-law prevails and whether pets are allowed in the building. This has opened the door for owners and tenants who want to keep pets to do so much to the dismay of the strata committee.

Error 3 – Exclusive Use By-Law

In another case, a strata manager prepared a consolidated set of by-laws which included a by-law granting the exclusive use of the common property to certain owners. Unfortunately, the strata manager made an error, and the by law that was included in the consolidated set of by-laws allocated the exclusive use of that common property to the wrong owners. This left the owners who had, in fact, been granted exclusive use of common property disappointed and, indeed, all owners confused. In that scenario, there is no clear answer as to which owners can lay claim to the exclusive use rights conferred under the by law – is it the owners who the owners corporation resolved to grant those rights to or the owners who the registered by-law says have those rights?

Error 4 – Renovations By-Laws

We have also seen many other cases where consolidated sets of by-laws prepared by strata managers do not include all of the drawings, plans and specifications that are referred to in renovation by-laws. This often makes it impossible to work out precisely what renovations have been approved by those by-laws. This creates a problem when there is a dispute about the responsibility for the maintenance and repair of the renovations. It can also create a dispute about the validity of renovation by-laws.

Conclusion

Don't be caught out. Make sure that your consolidated by laws are prepared by a team of professionals who will get it right and who have insurance when things go wrong. Ask yourself this question: is it worth the risk of getting caught out and being held liable to a disappointed owner or owners corporation whose rights have been taken away as a result of an error made when preparing a consolidated set of by laws?

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JS Mueller & Co Lawyers

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JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of strata law and levy collection.

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