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NEW STRATA LAWS CONCERNING SHORT TERM ACCOMMODATION - DID WE CREATE OR FIX A PROBLEM?

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NEW STRATA LAWS CONCERNING SHORT TERM ACCOMMODATION - DID WE CREATE OR FIX A PROBLEM?

On 10 April 2020, new strata laws concerning short term rental accommodation arrangements commenced. These laws give an owners corporation power to make a by-law prohibiting short term accommodation in certain circumstances. But there are two major problems with the new laws that limit their effectiveness. In this article we take a look at those problems.

New Strata Laws Concerning Short Term Rental Accommodation

Section 137A of the *Strata Schemes Management Act 2015* commenced on 10 April 2020. The section gives an owners corporation power to make a by-law to prohibit a lot being used for the purposes of a short-term rental accommodation arrangement in certain circumstances. A short-term rental accommodation arrangement is a commercial arrangement for giving a person the right to occupy residential premises for a period of up to three months at any one time.

However, section 137A does not allow a by-law to prohibit a lot being used for the purposes of a short term rental accommodation arrangement if the lot is the principal place of residence of the person who, pursuant to the arrangement, is giving another person the right to occupy the lot. This means that to the extent any by-law purports to prevent a lot being used for the purposes of a short term rental accommodation arrangement where the lot is the principal place of residence of the person who, pursuant to the arrangement, is giving another person the right to occupy the lot, the by-law has no force or effect.

Background to New Strata Laws Concerning Short Term Rental Accommodation

Section 137A is intended to overcome doubts that had previously been expressed by NCAT about the power of an owners corporation to make a by-law prohibiting short term accommodation. Section 137A was also intended to form part of a suite of new laws that would regulate the short-term rental accommodation industry. Those new laws were meant to give greater scope for short term rental accommodation arrangements to occur where the host is present in the lot. Most of the other laws that were intended to be introduced to regulate the short-term rental accommodation industry have not commenced and indeed have been shelved during the Covid-19 pandemic. However, there are two loopholes associated with section 137A which have created new problems.



Problem One – Principal Place of Residence Exemption

Section 137A differs from some of the other laws that were intended to regulate the short-term rental accommodation industry. This is because section 137A provides that a by-law can not prevent a lot being used for the purpose of a short term rental accommodation arrangement *if the lot is the principal place of residence* of the person who, pursuant to the arrangement, is giving another person the right to occupy the lot. The exemption in section 137A does not require the host *to be present* in the lot whilst the short-term rental accommodation arrangement takes place. The section just requires the lot to be that person's principal place of residence. This creates a loophole. It means that if a lot is a person's principal place of residence, that person can vacate the lot (e.g. go away on a summer holiday), still make the lot available for short term accommodation and there is nothing the owners corporation can do about that practice. This loophole is likely to have unintended consequences and prevent owners corporations taking action against people who make their lots available for short term accommodation whilst they move out of the lot or are away on extended holidays.

Problem Two – Unlawful Short-Term Rental Accommodation Arrangement Exemption

There was previously no doubt that an owners corporation could make a by-law that required owners and occupiers of lots to comply with the law and prohibited lots being used for any illegal purpose such as unlawful short-term accommodation. Now, section 137A prevents by-laws prohibiting unlawful short-term accommodation in lots that are the principal place of residence of the people who, pursuant to those arrangements, give other people the right to occupy their lots. Currently, in most local government areas across New South Wales, short term accommodation is either prohibited or requires local council approval under planning legislation. But an owners corporation is no longer able to make a by-law prohibiting unlawful short-term accommodation arrangements in lots that are the principal place of residence of their owners or occupiers. That creates another undesirable loophole in the new laws.

This means that if an owners corporation wants to stop unlawful short term accommodation occurring in a lot that is the principal place of residence of the person who is organising that short term accommodation it must press the local council to issue an order against the person or take legal action in the Land & Environment Court to obtain an injunction. Most owners corporations will not take legal action in the Land & Environment Court due to the time, cost and trouble of doing so and many local councils do not have the resources to issue orders to shut down unlawful short term accommodation arrangements.



Conclusion

The strata laws concerning short term rental accommodation arrangements make clear that an owners corporation can make a by-law prohibiting a lot being used for the purposes of a short term rental accommodation arrangement if the lot is not the principal place of residence of the person who, pursuant to the arrangement, is giving another person the right to occupy the lot. But the loopholes in those new laws expose their weaknesses and are regrettable. It remains to be seen if the NSW Parliament takes steps to close those loopholes.

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