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LAWYERS



THE TOP 5 BY-LAWS FOR 2021!

Adrian Mueller

Partner | Senior Lawyer

B.Com LLB FACCAL

[Email](#) | [LinkedIn](#)

THE TOP 5 BY-LAWS FOR 2021

Introduction

There were a number of changes to strata laws during 2021 that resulted in the need for many strata buildings to change their by-laws. In this article, we take a look at the top 5 by-laws for 2021.

Pets

There were substantial changes to the laws relating to the rules regarding the keeping of pets in strata buildings over the last 12 months. In October 2020, the NSW Court of Appeal ruled that “no pets” by-laws are not valid. This was followed in late August 2021 with changes to the *Strata Schemes Management Act 2015* that it created a default position allowing pets in strata buildings and reinforcing the Court’s decision that “no pets” by-laws are not enforceable. These changes resulted in thousands of strata buildings changing their pets by-laws by revoking “no pets” by-laws and by introducing new pets by-laws. These new pets by-laws typically require pet owners to obtain owners corporation approval to keep pets with them in strata buildings, require detailed information to be given by pet owners to their owners corporations when applying for permission to keep their pets and set out stringent rules regulating the keeping of pets. Many of these by-laws are pushing the boundaries of what can and can’t be done by requiring pet owners to pay pet bonds and application fees and prohibiting pets in certain areas of common property. In a recent ruling involving the Horizon building, NCAT confirmed that those stringent rules could be included in a pets by-law. STAY TUNED. There are likely to be further developments and more litigation in this area.

Cost Recoveries

There is an ever increasing trend among owners corporations to introduce cost recovery type by-laws. These by-laws typically allow an owners corporation to recover from owners and occupiers the costs it incurs as a result of breaches of the by-laws committed by those owners and occupiers. The scope of costs that are covered by so called cost recovery by-laws is ever increasing and include the old chestnuts such as cleaning, costs, rubbish removal expenses and common property repair costs, false fire alarm call out fees and extra call out charges imposed by fire safety contractors who are denied access to lots. But there is an ever increasing demand for cost recovery type by-laws to cover a greater range of costs including insurance premium increases, insurance excesses resulting from insurance claims relating to lot property, repairs to lot property, and even by-law drafting costs and the costs of litigation between owners corporations and owners and occupiers. The jury is still out as to whether these cost recovery type by-laws are enforceable in all respects but some recent decisions handed down by NCAT indicate that they are.

Short Term Rental Accommodation

There have been a number of changes to the laws regulating short term rental accommodation arrangements in strata buildings over the last 12 months. On 10 April 2020 the *Strata Schemes Management Act 2015* was amended to explicitly give an owners corporation power to make a by-law banning short term rental accommodation arrangements in its building. However that new power came with a restriction that meant a by-law could not prohibit a person using their lot for the purpose of short term rental accommodation arrangement if the lot is their principal place of residence. This meant that many existing by-laws dealing with short term rental accommodation arrangements were no longer enforceable and needed to be tweaked. This meant that many thousands of strata buildings changed existing or introduced new by-laws to regulate short term rental accommodation arrangements. Indeed, in the last 12 months the trend has been for these by-laws to regulate rather than prohibit short term rental accommodation arrangements as there has been a greater recognition among the strata community that the sharing economy has substantially increased the number of short term rental accommodation arrangements across New South Wales.

Renovations

The trend for strata buildings to introduce master renovations by-laws has continued during 2021. These by-laws typically delegate to the strata committee power to approve minor renovations, set out rules regulating minor and major renovations and expand the statutory list of minor and major renovations. These by-laws frequently include short form, template by-laws which are able to be used by owners who wish to obtain owners corporation approval for major renovations to save time and money.

Noise and Parking

The old bug bears of noise and parking continue to require the adoption of by-laws to deal with them. In the last 12 months there has been an emerging trend for these by-laws to be more prescriptive. For example, it has become more common for by-laws dealing with floor coverings to introduce specific acoustic ratings for new floor coverings to avoid excessive noise transmission and for the standard noise by-law to be tweaked to prohibit certain types of noise after hours or noise that exceeds certain decibel levels. These tweaks are aimed at making these by-laws more specific and easier to enforce. There also continues to be a trend for bespoke parking by-laws to be introduced in many strata buildings that permit owners corporations to move or remove illegally parked vehicles, to issue parking infringement notices and to recover the costs of issuing those notices from the offenders.



Conclusion

These by-law trends are likely to continue well into 2022. Further, with the recent introduction of the *Community Land Management Act 2021* and changes to the rules regarding by-laws in community management statements, there is likely to be a need for most community schemes to review their management statements and make any necessary changes to their by-laws to ensure they align with the rules contained in the new legislation.

Adrian Mueller

Partner | B.Com LLB FACCAL
adrianmueller@muellers.com.au

About JS Mueller & Co Lawyers

JS Mueller & Co Lawyers has been servicing the strata industry across metropolitan and regional NSW for over 40 years. We are a specialist firm of strata lawyers with in depth and unmatched experience in, and comprehensive knowledge of all strata law inclusive of by-laws, building defects and levy collections.

02 9562 1266
enquiries@muellers.com.au
www.muellers.com.au



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