

Lot Owners, Tenants and Shared Facilities in Strata

A lot owner has an apartment in a strata scheme with shared facilities with a pool, sauna and gym however the owner does not live in that strata scheme because they have rented their apartment out – can they still use the pool, sauna and gym, deemed as shared facilities?

The answer may not be that straight forward and raises many questions:

- They have rented out their apartment, but the lot owner still pays the levies so wouldn't they be entitled to use the shared facilities?
- Even though the lot owner still pays the levies have they signed their rights over to the tenants for use of the shared facilities once they lease the property?
- Can the lot owner prohibit their tenants from using the apartment facilities thereby by doing so, the owner can have complete access to the facilities as after all they pay the levies?
- Perhaps the lot owner can still use the facilities, unless there is a specific by-law which prohibits them from using the shared facilities?

The answer is typically this:

- When an owner leases their lot, they also lease their interests in the common property to their tenant.
- This means the owner forfeits his or her right to use the common property facilities such as the pool, sauna and gym.
- In some cases a shrewd owner might change the lease to reserve to the owner the right to continue to use the common property facilities.
- It is unlikely this would be legally effective because

an owner's interest in the common property cannot be dealt with separately from, or severed from, his or her interest in their lot.

- However, an astute owner could decide not to lease out part of the lot such as storage room or one of two car spaces. In doing so, the owner could retain his or her interest in the common property and the right to use the common property facilities.

Do you need to review your by-laws?

In some cases it can be very useful to put in place a by-law that makes these rules clear to ensure that common property facilities are not overused.

[NEED TO UPDATE YOUR COMMON PROPERTY FACILITIES BY-LAW?](#)



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Since 2002 Adrian has specialised almost exclusively in the area of strata law. His knowledge of, and experience in strata law is second to none. He is the youngest person to have been admitted as a Fellow of the ACSL, the peak body for strata

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