

All strata schemes have their own set of by-laws. These by-laws comprise of rules that each resident and visitor must comply with. This article discusses some of the standard by-laws put in place by strata schemes. It also explains the consequences of breaching a by-law and how by-laws can be changed.



A. INTRODUCTION

The purpose of strata by-laws is to govern:

- The conduct (behaviour) of residents and visitors; and
- The use of the common property.

Strata schemes have their own set of by-laws which usually reflect the preferred lifestyle of the scheme. Accordingly, there may be significant differences between the by-laws of one strata scheme and another strata scheme.

The *Strata Schemes Management Regulation 2016* (NSW) sets out model by-laws for strata schemes. However, these model by-laws are not automatically applied to the strata scheme. Rather, to be effective they must be adopted (in part or in whole) by the owners corporation or lodged with the strata plan. Strata by-laws for each strata scheme are kept on the strata roll and can easily be obtained from the owners corporation and/or the Strata managing agent.

When enacting by-laws, the owners corporation needs to ensure that the by-law is not unjust – that is, it cannot be harsh, unreasonable, or oppressive.¹

B. STANDARD BY-LAWS

Some of the key model by-laws set out in schedule three of the *Strata Schemes Management Regulation 2016* (NSW) are discussed below.

B.1. KEEPING PETS

The model by-laws set out two options for keeping pets in the strata scheme. The first option provides that pets can be kept as long as written notice of the pet is given to the owners corporation within 14 days of moving in. The second option provides that pets can be kept if written approval from the owners corporation is given. Approval from the owners corporation cannot be unreasonably withheld.

Both options provide that if a pet is kept in the strata scheme, then:

- The pet needs to be kept within the lot;
- The owner needs to supervise the pet when it is on common property; and
- Any mess made by the pet on the common property needs to be cleaned.

In regard to banning pets from the strata scheme completely, the NSW Civil and Administrative Tribunal (NCAT) recently held that a by-law entailing a blanket prohibition on keeping pets was invalid because it was unjust.²

B.2. VEHICLES

The model by-laws set out that vehicles cannot be parked or stood on common property unless:

- The owners corporation has provided written approval; or
- A sign authorised by the owners corporation permits such parking or standing over on the common property.

¹ *Strata Schemes Management Act 2015* (NSW) s 139(1) ('SSMA').

² *Yardy v The Owners Corporation SP 57237* [2018] NSWCATCD 19.



STRATA BY-LAWS

PAGE 2/2

B.3. CHANGING THE COMMON PROPERTY

The model by-laws provide that a lot owner does not need consent from the owners corporation to install:

- A locking and/or safety device for the protection of the resident and lot;
- A screen (or similar device) that prevents animals and insects from entering the lot; and/or
- Any structure or device that prevents children from being harmed.

When installing any of these devices, the lot owner needs to ensure that they conform with the appearance of the rest of the buildings. The owner will also have to repair any damage to the common property that may have occurred when installing these devices.

B.4. COMMON PROPERTY AND PLANTS/ GARDENING

The model by-laws set out that an owner must not damage any lawn and/or plants that may be situated on the common property. An owner is also unable to use part of the common property for gardening purposes.

B.5. OBSTRUCTION AND NOISE

Under the model by-laws an owner/occupier must not impede upon another person's lawful use of the common property (unless it is temporary). Moreover, an owner/occupier must not create any noise (on their lot or on the common property) that affects the peaceful enjoyment of other residents.

B.6. BEHAVIOUR OF PEOPLE IN THE STRATA SCHEME

The model by-laws set out that an owner/occupier and any invitees must:

- Be adequately dressed;
- Not behave in an offensive or embarrassing manner; and
- Not behave in a manner that is likely to hinder the peaceful enjoyment of other people in the strata scheme.

C. BREACHING A BY-LAW

All owners and occupiers of a strata scheme are required to comply with by-laws (provided that they have been signed and sealed).³

If an owner/occupier breaches a by-law, the owners corporation can give a notice to the owner/occupier stating that he or she is required to comply with the by-law contravened.⁴ The owners corporation can then apply to NCAT if the owner/occupier continues to contravene the by-law.⁵ The Tribunal may order the contravening owner/occupier to pay a monetary fine if they are satisfied that the by-law continued to be breached after a notice had been given.⁶

D. CHANGING A BY-LAW

A by-law can be changed by the owners corporation through a special resolution at a general meeting.⁷ However, the new or amended by-law will not be binding until:

- The owners corporation has provided notification to the Registrar-General within six months of the by-law being passed through the resolution;⁸ and
- The Registrar-General records the notification in the folio for the common property.⁹

It should be noted that the SSMA sets out restrictions on by-laws, which prevent the owners corporation from enacting certain types of by-laws.¹⁰ For example, the owners corporation is prohibited from implementing by-laws that;

- Are unjust;¹¹
- Restrict children;¹² and
- Prevent keeping of assistance animals.¹³

E. CONCLUSION

In conclusion, strata by-laws affect all owners and occupiers of a strata scheme. It is therefore important that people owning or residing in a lot understand the by-laws for their strata scheme.

Comasters Law Firm is able to help clients with matters relating to strata law.

³ SSMA s 135.

⁴ Ibid s 146(1).

⁵ Ibid s 147(1).

⁶ Ibid.

⁷ Ibid s 141(1).

⁸ Ibid ss 141(1)(a), 141(4).

⁹ Ibid 141(1)(b).

¹⁰ Ibid s 139.

¹¹ Ibid s 139(1).

¹² Ibid s 139(4).

¹³ Ibid s 139(5).

CONTACT US