

# Short-term letting: an update on changes relating to strata schemes



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In September 2017 we published an article about the uncertainty that had arisen by amendments to the Strata Living Handbook published by NSW Fair Trading dealing with an owners corporation's power to make a by-law to prohibit or restrict short-term letting. Thereafter, there was one case by the NSW Civil and Administrative Tribunal that held such a by-law to be invalid, although that decision did not canvas all the relevant issues and there was still much uncertainty. On 10 April 2020 new laws came into effect that now clarify the position.

## Introduction

1. The *Fair Trading Amendment (Short-Term Rental Accommodation) Act 2018*, which forms part of the STRA regulatory framework, was passed well over a year ago and came into force and had effect from 10 April 2020.
2. The long-awaited Code of Conduct regime for short-term letting participants was at the last minute repealed and has therefore not yet come into force or effect. However, other parts of the STRA regulatory framework, including insertion of section 137A into the *Strata Schemes Management Act 2015* (NSW) did come into force and have effect from 10 April 2020.
3. Those amendments are relevant to any owners corporation that has a registered by-law prohibiting or restricting short-term letting, or intends to make such a by-law.

## How do the changes apply to strata schemes?

4. There were two views under the law that existed prior to 10 April 2020. In simple terms, the first was that owners corporations were entitled to use their by-law making power to regulate the use of lots including by prohibiting or restricting short-term rental accommodation arrangements, whether or not the lot was the principal place of residence of the person granting the right to occupy the lot. The second was that such a by-law was beyond power and invalid. No matter which view was correct, the changes outlined below are significant.
5. Section 137A provides as follows:

### **137A Short-term rental accommodation**

- (1) A by-law made by a special resolution of an owners corporation may prohibit 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.
- (2) A by-law has no force or effect to the extent to which it purports to prevent 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.

- (3) In this section, short-term rental accommodation arrangement has the same meaning as in section 54A of the *Fair Trading Act 1987*.
6. A short-term rental accommodation arrangement is defined in s.54A of the *Fair Trading Act 1987* (NSW), and means a commercial arrangement that grants a person the right to occupy a residential premises for a period of less than three months.
7. Section 137A(1) of the *Strata Schemes Management Act 2015* (NSW) expressly allows an owners corporation to make a by-law to prohibit a lot being used for short-term rental accommodation if the lot is not the principal place of residence of the person granting the right to occupy their lot.
8. However, it also provides that such a by-law has no force or effect to the extent that it purports to prevent a lot being used for short-term rental accommodation if the lot is the principal place of residence of the person given another the right to occupy the lot.
9. Therefore, a by-law can prohibit owners and occupiers of lots from renting out their apartment on booking platforms like Airbnb and Stayz, but only if the apartment is not the primary residence of the owner or occupier. For example, an owner or occupier of a lot can now short-term let their spare room while they continue to reside in the apartment, or short-term let the entire apartment while they travel for a month or two.

#### **What steps should owners corporations take?**

10. If an owners corporation has an existing by-law restricting or prohibiting short-term rental accommodation arrangements, such by-law should be reviewed and amended so that it does not apply to an occupier's principal place of residence being used for short-term rental accommodation arrangements, otherwise the by-law at least to that extent is invalid and unenforceable.
11. If an owners corporation has not introduced a short-term letting by-law, and has otherwise been waiting for these changes to take effect, an owners corporation should now consider introducing such by-law given the clarity now afforded by the new changes.

#### **We are here to assist**

12. If you have an existing short-term letting by-law that you would like reviewed, or you would like to introduce a new short-term letting by-law, we can assist. Our short-term letting by-law is future-proof in the sense that it makes reference to the Code of Conduct which, although not yet introduced and remains in draft form, when it is introduced the by-law incorporates the requirement to comply with the Code of Conduct. Therefore, it will not be necessary to again review and change the by-law on the introduction of the Code of Conduct.
13. If you have an existing by-law, the most appropriate way to proceed would likely be to repeal that by-law and make a new by-law that specifically deals with the new provisions. We are offering to prepare the relevant motions and draft by-law at a discounted cost of \$440 including GST as a fixed fee for all new instructions that we receive between now and 30 June 2020. For assistance please contact David Edwards.

**David Edwards**

Accredited Specialist Commercial Litigation | Partner | FACCAL

Email | LinkedIn

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**About DEA Lawyers**

DEA Lawyers is a specialist firm of experienced strata lawyers with comprehensive knowledge of all matters relating to strata and community title law.

general@dealawyers.com.au www.dealawyers.com.au

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**DEA Lawyers**

(02) 9223 6344 | general@dealawyers.com.au | www.dealawyers.com.au