

By-Laws and what it means



What are the by-laws?

By-laws in a strata scheme are rules that govern how owners and occupants of individual lots within a strata-titled building must behave and use common property areas.

These rules are designed to ensure that all residents within the strata scheme can live together harmoniously, respect each other's rights and enjoy their property without causing undue interference to others.

By-laws may cover a wide range of issues, including:

Behaviour and conduct of residents and guests within the strata scheme
Use of common property areas, such as gardens, parking areas, and laundry facilities
Maintenance and repairs of common property areas
Noise levels and the playing of musical instruments
Keeping of pets
Alterations or renovations to individual lots
Storage of items in common areas
Parking and access to car parks.

By-laws are legally binding, and owners and occupants must comply with them. Breaching a by-law can result in a fine or other enforcement action, such as legal action. Any proposed changes to the by-laws must be agreed upon by the owners in a general meeting, and the changes must be registered with the relevant government authority.

The owners corporation has a choice of using 'model' by-laws, creating their own by-laws, or using a mix of both.

What are the model by-laws?

Model by-laws are standard or 'template' rules created by the NSW Government. They are an easy and cheap way for the owners corporation to ensure their by-laws are reliable and meet the minimum legal requirements.

The model by-laws include rules for: permitting pets, dealing with nuisance or hazardous smoking, acceptable resident noise levels, short-term rental accommodation, and measures to prevent overcrowding.

Owners corporations often adopt these model by-laws, and also make changes or additions specific to their scheme.

How to get a copy of the by-laws?

Most people will receive a copy of the by-laws when they move into the scheme. If you do not have a copy, current owners and residents can ask the strata committee secretary or strata manager for a copy of the by-laws.

If you are a tenant, your landlord must give you a copy of the by-laws within seven days of signing the rental contract. They must also provide a new copy whenever the by-laws change.

Potential owners

Potential owners will usually get a copy of the by-laws when they get a strata report or if they ask the seller's real estate agent for a copy. Getting a strata report will come with a fee. The by-laws must also be included in the contract for the sale of land.

By-laws must be registered with NSW Land Registry Services (NSW LRS). Anyone can access a copy of the by-laws from LRS for a fee.

By-Laws also have restrictions on by-laws and they cannot conflict with the following:

conflict with existing laws
be 'harsh, unconscionable or oppressive'
stop someone from selling or leasing their lot (except in some cases of short-term rental accommodation)
ban children stop someone having an assistance animal

When by-laws can be changed?

An owners corporation can add, remove or change current by-laws with a vote at a general meeting.

Approval of a by-law change will depend on the proportion of votes cast. If the votes against are 25% or less, the change will pass.

How to request a new by-law or a by-law change?

Before asking to add or change a by-law, it's a good idea to first discuss your idea with other owners. To make the change, you will need to submit a motion, which is a proposal for discussion that gets added to the agenda of a general meeting. To submit a motion, contact the secretary on the strata committee or the strata manager in writing. Give them your name, the by-law changes you want, and the reasons for the change in 300 words or less.

Can you request exclusive use of common property?

Common property is owned and used by all residents in a strata scheme. However, an owner might want personal use of a certain area of common property.

This could mean being given exclusive use or special privileges. For example, the right to use a garden bed, or make renovations to common property to put in an attic. To request personal use of common property, you must ask the owners corporation to create a new by-law, using the above process.

This type of by-law is called a 'common property rights' by-law. In addition to voting, you can only make this by-law if you have written agreement to it from any owners to whom it gives special use of common property. If they do not agree, the by-law cannot be passed.

This type of by-law must say who will be responsible for maintenance of the affected area – either the owner or the owners corporation.

Breaches of by-laws

If you breach (break) a by-law, the owners corporation can follow these steps to ensure to deal with it.

Warning

The owners corporation or strata committee may first choose to talk to you about the by-law and ask you to stop.

How is the notice issued?

The owners corporation can hold a general meeting and vote to issue you notice of breaking a by-law.

Through a majority vote, you can be given a notice to comply, which asks you to stop breaking the rules or risk being fined through the NSW Civil and Administrative Tribunal (the Tribunal).

The notice can be sent via post or email and needs to include the details of the by-law that was broken.

The owners corporation may allow the strata committee or strata manager to give notices for them. If this is the case, a notice to comply can be given without holding a general meeting.

Mediation

If you continue to break the rules, the owners corporation can contact NSW Fair Trading for mediation. Mediation is a free service that helps residents, owners and owners corporations solve issues.

The Tribunal

If the issue can't be resolved by mediation, the owners corporation can ask the NSW Civil and Administrative Tribunal to decide whether a by-law has been broken. The Tribunal can issue fines of up to \$1,100.

What If the breach continues?

If you continue to break the rule, the owners corporation can apply to the Tribunal again. The Tribunal can issue another fine, this time up to \$2,200. The owners corporation does not have to give you another notice before contacting the Tribunal again. If you do not follow an order that the Tribunal has given you, you can also be fined up to \$5,500.

CONTACT US

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