



# Strata Insight

by **Stansure** Strata

## Smoking in Strata

The recent changes to body corporate legislation include the protection of residents from second hand smoke. When addressing smoking-related issues with a body corporate, two things should be considered:

### 1. Existing smoking by-law

Do the by-laws for the scheme have a by-law which regulates smoking activities within the scheme? A smoking by-law can include defining designated smoking areas or restrictions on smoking in certain areas. If your by-laws do not include a smoking by-law it may be time for the body corporate to consider updating the by-laws. Please contact our office to find out how we can assist with this.

If the by-laws for your scheme include a smoking by-law, the body corporate, through its committee can resolve to commence the by-law enforcement process.

### 2. Nuisance or hazard – As provided under Section 167 of the Body Corporate and Community Management Act.

Section 167 provides that an occupier of a lot must not cause a nuisance, or interfere unreasonably with the use and enjoyment of the property by others. It further provides that the occupier should not allow their invitees to either. If an occupier or their invitee regularly exposes other owners, occupiers or their invitees to smoke in another lot or on the common property, they are in breach of Section 167 of the BCCM Act.

If a resident believes another resident is breaching Section 167 we recommend that the committee consider writing to the resident in question bringing the requirements of Section 167 to their attention and requesting that they take appropriate measures to prevent further smoking nuisance to other residents in the complex.

If this attempt at self-resolution is unsuccessful, the committee can consider further actions as prescribed under the legislation and through the Office of the Commissioner for Body Corporate and Community Management.

Please contact our office for further information on these processes.

## Alternative Insurance

Prior to the release of the amendments to the Body Corporate and Community Management Act, bodies corporate that were unable to obtain Insurance coverage that is not complaint with the requirements set out in the legislation i.e. full replacement value, and were required to make application to the Commissioner for Body Corporate and Community Management for approval before taking out alternative insurance.

The new amendments provide that an adjudicator can now approve an application for alternative insurance coverage, in place of the commissioner, and now extends this provision to schemes established under a standard format plan (previously group title plan). Prior to the amendments, only schemes established by a building format plan (previously building unit plan) could make an application to the Commissioner for alternative insurance arrangements.

## Owner's Motions



Drafting motions for the committee and the body corporate can be daunting for many owners. The legislation provides that an owner's motion must not be altered unless approved by the submitter.

It is important to note that the legislation sets out that a motion must:

- be in writing;
- include any necessary quotes and other documents;
- be clear; and
- be enforceable (and actionable).

A valid motion should set out what the body corporate is agreeing to, how this is to be achieved, by whom and if applicable, what the cost is and how it will be paid and/or funded. Any quotes, fee proposals, illustrations and other supporting documents must accompany the submitted motion and be annexed to the agenda of the appropriate meeting to ensure the validity of the motion being considered.

Motions that do not meet the requirements set out in the legislation can and should be ruled out of order by the Chairperson, as they are invalid motions.

### **Should the committee review their by-laws**

What are by-laws? By-laws are a set of rules that a body corporate makes to control and manage common property and regulate various matters such as keeping animals, noise, parking on common property, improvements to lots and/or common property and exclusive use allocations.

It is the responsibility of the committee of the body corporate to enforce the body corporate by-laws, in the interests of all residents and the body corporate in general.

By-laws are generally created at the inception of the scheme. Over time the needs and issues faced by a body corporate can change. The recent legislative changes have introduced new by-laws such as smoking by-laws and towing by-laws.

Other legislative changes mean that some older by-laws are now invalid and unenforceable as they are no longer consistent with the Act and Regulations. This can include some pet by-laws, by-laws that impose a monetary liability and by-laws that discriminate between different types of occupiers.

Should a body corporate or its committee wish to consider reviewing the body corporate by-laws we recommend that the committee look to engage a Strata Solicitor to review the existing by-laws and prepare new by-laws that meet the body corporate's and committee's requirements.

Please contact our office to discuss how we can assist with reviewing your by-laws.

### **Next Edition**

In our next edition we will be covering the following topics:

- By-law enforcement
- Company Nominee Forms. Why are they important?
- What are the requirements for a valid Committee?

**Do you have a topic of interest you would like Stansure Strata to address?  
Please send your submissions to [theteam@stansurestrata.com.au](mailto:theteam@stansurestrata.com.au)**