

Don't Believe the Hype: From 10 April 2020, New Section 137A to Enable Owners Corporations to make By-Laws to Prohibit Short-Term Letting Commences

Strata schemes that are looking to reduce or better manage short term lettings within their buildings will welcome a legislative reform package relating to short term lettings, which is due to commence on 10 April 2020. However, key parts of the reform package have been put on hold, needing a rethink in light of the Covid-19 crisis.

The reform package comprises:

- Amendments to the Fair Trading Act 1987 (“FTA”), providing for making by regulation a mandatory code of conduct (“Code”) in relation to short term rental accommodation arrangements, being defined as “a commercial arrangement for giving a person the right to occupy residential premises for a period of not more than 3 months at any one time”. These commence on 10 April 2020, but do not have immediate impact, given that the regulation and Code are on hold.
- A new regulation under the FTA, implementing the Code. These were expected to commence on 10 April 2020, but have been put on hold.
- An amendment to the Strata Schemes Management Act 2015 (“SSMA”), including a new Section 137A, giving an owners corporation (“OC”) limited power to make a by-law restricting short term rental accommodation arrangements, as defined in the FTA. This commences on 10 April 2020.
- An amendment to the Residential Tenancies Act 2010, excluding short term rental accommodation arrangements (as defined in the amended FTA) from its operation. This commences on 10 April 2020.
- A new state environmental planning policy, specifying circumstances in which short term rental accommodation arrangements will constitute exempt development. This has also been put on hold.
- A new fire safety standard for short term lettings. This has also been put on hold.

Accordingly, as from 10 April 2020, schemes will be able to make by-laws in relation to short term rental accommodation arrangements. However, for the time being, these will need to be made:

- Consistent with the requirements of Section 137A and in particular:
 - The by-law must be made by special resolution.
 - The by-law is limited to prohibiting a lot owner from using a lot for the purposes of a short-term rental accommodation arrangement, as defined in the FTA, if the lot is not the lot owner’s principal place of residence.
- Consistent with Covid-19 lockdown laws (“Lockdown Laws”), bearing in mind that these are temporary, but over the duration of the crisis are likely to be extended. Considerations:
 - A debate has arisen as to the impact of the Lockdown Laws on short term lettings. Initial Government advice was that short term lettings were illegal under the Lockdown Laws. However that is not what the Lockdown Laws say and the Government has since backpedalled.
 - The key restriction under the Lockdown Laws is that a person must not, without reasonable excuse, leave the person’s place of residence, defined as the premises where a person lives. The Lockdown Laws give some examples of reasonable excuses, but these are examples only and not exhaustive. They suggest that there will be scenarios in which short term lettings will be permitted, perhaps as required for health care workers, persons providing care to vulnerable persons (probably extending to arrangements to be near that person), persons needing to self-isolate and persons who would otherwise not have accommodation.
- Without the benefit of the Code, which is problematic, as the Code would have included provisions assisting OCs to manage the risk, e.g. disclosure and insurance obligations on lot owners involved in short term letting activities.
- Without the benefit of the state environmental planning policy and fire safety standard.

Frequently asked questions:

What is a short-term rental accommodation arrangement?

A “short term rental accommodation arrangement” is any commercial arrangement allowing a person other than the owner of a lot to occupy all or part of residential premises, for a period of three months or less.

Can an owners corporation make a by-law to ban short-term rental accommodation arrangements?

Yes, to the extent that it prohibits lot owners from entering into short term rental accommodation arrangements in relation to lots which are not their principal place of residence, i.e. where they are not just sharing or temporarily absent.

Can an owner-occupier of a strata lot still use on-line short term letting services?

Yes, to the extent not prohibited by social isolation laws and planning laws. You may need to check your local council’s rules, especially while the state environmental planning policy is on hold.

My lot is an investment property. Can I still rent out my lot through on-line short term letting services?

Yes, to the extent not prohibited by by-laws or planning laws. You may need to check your schemes by-laws. You may need to check your local council's rules, especially while the state environmental planning policy is on hold.

We are not happy with hosting short term letting guests in our scheme. What can we do?

Schemes experiencing tensions due to the actions of short term letting guests, e.g. , disturbance caused by overcrowding or rowdy behaviour or damage to common property facilities and services, may wish to explore making new by-laws addressing these concerns.

We are here to support you through these changes. We have considerable experience with these issues and can assist you if you have any questions about these issues within your strata scheme.

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