

# NSW Strata By-laws – What Investment Property

The new strata laws will make a number of significant changes to the making and enforcement of by-laws. The commencement date is 30 November 2016 and investment property owners need to be getting ready for the changes.

An owner of an investment property, which is a strata unit, has an interest in ensuring that the building has appropriate by-laws and that they are properly enforced. Key issues for investment property owners:

- Deficient by-laws or enforcement of them can undermine the amenity of the building and negatively impact on rental returns.
- Failure to make or enforce by-laws can expose investment property owners to compensation claims from tenants. For example, there was a case last year where an investment property owner was the subject of a substantial compensation order, arising from failure by the owners corporation to contain cigarette smoke emanating from a nearby apartment. This undermined habitability of the owner's unit and resulted in a claim by the owner's tenant, against the owner, based on the owner's tenancy law obligation to provide habitable premises.
- Conversely, some by-laws can positively impact on rental returns, e.g. those reflecting pet friendly and disability friendly buildings. Units in such buildings tend to have higher sale prices and rental returns, due to limited supply, relative to demand.

The changes to the types of by-law which can be made are not earth shattering. There have been changes to the default model by-laws, but these need not be adopted and can be changed. There have been some additions to the range of permitted by-laws, e.g. a by-law limiting occupant numbers is permissible.

The changes to the enforcement mechanisms are far more important. These will be streamlined and penalties will be significantly increased, making it much more practical to enforce compliance with by-laws.

Owners need to take a proactive approach to this issue. They should review the by-laws for their building and if they are deficient or not being adequately enforced, they should consider consulting with other owners, with a view to convening a general meeting to make changes.

## Key takeaways

- Investment property owners must ensure by-laws are appropriate and enforced to maintain rental returns.
- Deficient by-laws can lead to compensation claims from tenants.
- Positive by-laws can enhance property value and rental returns.
- The new enforcement mechanisms for by-laws will be more streamlined and effective.
- Owners should proactively review and amend by-laws to protect their interests.

Bannermans Lawyers is a NSW strata law firm advising owners corporations, strata managers and lot owners.

*\*\*\*The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

**Prepared by David Bannerman and Mark Pollinger**  
**February 10 2016**