How Will the Proposed AirBnB Changes Affect Me?

The NSW Government has announced a new approach to short term lettings, including those negotiated through AirBnB and similar online services. These are to be subject to restrictions and regulation. This seems to have been driven by concerns that:

- This new but already massive industry unfairly operates without the regulation under which the traditional accommodation industry operates.
- It is adversely impacting on the traditional rental market, including availability and affordability.
- It is causing significant amenity issues, especially in residential strata schemes.

The changes are to be made by way of amendments to the Fair Trading Act 1987. A bill was passed by the Legislative Assembly and introduced to the Legislative Council on 20 June 2018. Legislative Council amendments are possible and draft regulations are not yet available, so the position may change. As presently framed, the new rules:

- Apply to "short term rental accommodation industry participants", including online booking services, agents, owners and guests.
- In relation to a "short term rental accommodation arrangement", meaning a commercial arrangement to allow a person to occupy all or part of residential premises for a period not exceeding three months.

The main provisions are:

- Strata By-laws – Strata schemes will be able to make a by-law prohibiting use of a lot for a short term rental accommodation arrangement, but there will be some restrictions:
    - A special resolution will be required, i.e. in practical terms a 75% majority.
    - This won't apply where the lot is the principal place of residence of the lot owner, i.e. renting a room in a lot which the owner continues to occupy.
- Code of Conduct – there will be a mandatory code of conduct binding on short term rental accommodation industry participants.

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- Enforcement:
    - Operators will be required to share data with NSW Fair Trading, which will have enforcement functions and powers.
    - The code of conduct will provide for an exclusion register and prohibition of participation in short term letting arrangements by persons, owners and/or guests, who have breached the code. The precise details are not yet available, but press releases suggest that this will require two or more serious breaches.
    - Breach of code of conduct provisions identified as offence provisions may be an offence. The bill specifies a maximum penalty of $110,000 for a corporation and $22,000 for an individual.
    - Breach of code of conduct provisions identified as a civil penalty provision may result in a monetary penalty. The penalty is to be specified by the regulations. There will be a two year limitation period and an incident won't be both an offence and a civil penalty matter.

- Planning Law – the new rules will prevail over inconsistent development consent conditions, but won't permit short term letting arrangements prohibited by development consent conditions.

The Government has also announced its intention to introduce new planning laws in coming months, providing for:

- A 180 day annual cap on short term lettings in Sydney when hosts are not present.
- No set cap outside Sydney, but with councils having power to set caps of not less than 180 days annually.

We have considerable experience with these issues and can assist you if you are having difficulties with the amenity of your strata scheme or the letting of your strata lot.

Key takeaways

- The NSW Government is introducing new regulations for short-term lettings, including AirBnB.
- Strata schemes can prohibit short-term rentals through a special resolution.
- A mandatory code of conduct will apply to all participants in the short-term rental market.
- Operators must share data with NSW Fair Trading for enforcement purposes.
- New planning laws will impose a 180-day cap on short-term lettings in Sydney.

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