Preventing Pesky Parking = $ for the Owner Corporation

Pesky parking practices by owners and occupiers can be a nightmare for strata schemes. However, this source of stress can be translated into a source of revenue for a savvy owners corporation.

It presents a perfect opportunity for an owners corporation to obtain a monetary order of up to $1,100.00 from the NSW Civil and Administrative Tribunal ("NCAT") for every breach of a parking by-law. Plus an order for reimbursement of its legal expenses paid directly to the owners corporation.

1) Read the by-law

Parking by-laws can be complex particularly for some larger schemes. The owners corporation must be certain on the terms of the by-law it is seeking to enforce.

2) Know your respondent

Parking by-laws will only be enforceable against owners and occupiers.

3) Resolve to issue the Notice to Comply

The owners corporation or strata committee may resolve to issue a Notice to Comply for breach of the parking by-law. For greater speed, the strata manager may issue the Notice provided this power has been delegated to them under the Strata Management Agreement.

We recommend using the standard form provided by the Office of Fair Trading which includes helpful instructions on how to effect service. Be sure to complete the affidavit of service on page two of the form as this may need to be relied upon at the hearing.

4) Obtain evidence of breach of the Notice to Comply

It is crucial that the owners corporation catch the pesky parker in the act of parking in breach of the Notice to Comply. A photo of a vehicle illegally parked is insufficient, when the standard model by-law applies, as per the below:

> ***"1 Vehicles***
>
> *An owner or occupier of a lot must not park or stand any motor or other vehicle on common property, or permit a motor vehicle to be parked or stood on common property, except with the prior written approval of the owners corporation or as permitted by a sign authorised by the owners corporation."*

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The pesky parker could simply say that someone else was driving it at the time the parking offence was committed.

The installation of CCTV in the scheme can be great for this purpose. Most CCTV automatically comes programed with facial and license plate recognition which easily allows for the skimming of data to obtain relevant evidence.

The average cost to install CCTV is approx. $1,200 - $1,500 per camera, including installation and equipment. Generally, you need a minimum of two or three cameras in a garage to identify people or vehicles.

5) Commence proceedings

If the owners corporation observes a breach of the Notice to Comply being committed within 12 months of the Notice being served it may then file an application for a penalty order with the Tribunal, immediately. There is no requirement to attend mediation beforehand. Please refer to the below table for more information on what to expect once proceedings are commenced.

STEPS	ESTIMATE OF TIME
Resolution from the owners corporation that it is satisfied that there has been a breach of the by-law	Time required for a notice of a strata committee or general meeting
Preparation, signing and service of notice to comply which is valid for 12 months after service. A separate notice for each by-law and to each owner or occupier should be issued.	2 weeks
Resolution from the owners corporation that it is satisfied that there has been a breach of the notice to comply and that it will commence proceedings in the Tribunal	Time required for a notice of a strata committee or general meeting
Complete and file application for a penalty	12 months from service of Notice.
Tribunal serves application on all parties	1 – 2 weeks
Directions and/or hearing (if it can't be dealt with, within 30 - 45 minutes it will normally be treated as a directions hearing)	4 – 6 weeks
Compliance with directions	As per agreed timetable
Further directions hearing	As required
Hearing	As set by the Tribunal
TOTAL OF ALL THESE STEPS	Usually, completed within 3 to 6 months, however, potentially longer depending on the conduct of the parties.

Recent decision

In a recent decision of *Wheeldon Amigh Pty Ltd ATF The Whelldon Amight Trust v Life Fitness Australia P/L and The Owners – SP No 85582* [2022] the Tribunal made orders with regard to visitors and tenants in a commercial scheme parking in breach of the schemes by-laws. The visitors in question included delivery drivers servicing the tenants in the commercial lots. In its decision, the Tribunal set out that the tenant was breach of the schemes by-laws relating not only to the obstruction of common property and vehicles, but also those relating to the behaviour of invitees by

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allowing delivery drivers to park on the common property. This decision highlights that in commercial schemes, lot owners and tenants may also be in breach of the schemes by-laws as a result of delivery drivers not parking in allocated parking spaces when making deliveries. The owners corporation was also ordered in this matter to ensure that it enforces the by-laws of the scheme, including by issuing notices to owners and occupiers under section 146 of the Strata Schemes Management Act 2015 for infringements of by-laws, and by bringing an application under section 147 of the Strata Schemes Management Act 2015 seeking the imposition of a civil penalty for continued breaches of the schemes by-laws.

Revenue to the owners corporation

The owners corporation can obtain a penalty order of up to $1,100.00 for every breach of a parking by-law which doubles if the offender commits a further breach within 12 months of the order being made. If the owners corporation can establish that special circumstances exist then it may also be entitled to an order for payment of its legal costs of the proceedings.

Examples of special circumstance may be the offender failing to mount an effective defence, missing dates to file evidence, failing to attend hearings or otherwise having no prospects of success.

Conclusion

Pesky parking can often be a source of great angst in strata schemes however by following the above steps, the owners corporation can quickly address this problem. At the same, time promoting the harmony of all owners and occupiers in the scheme by ensuring that it's parking by-laws are complied with.

Related articles:

Unauthorised Parking – What can Owners Corporations do?

Key takeaways

- Owners corporations can obtain monetary orders for breaches of parking by-laws.
- Issuing a Notice to Comply is a crucial step in enforcing parking regulations.
- Evidence of a breach must be carefully documented to support legal proceedings.
- CCTV can be an effective tool for capturing evidence of parking violations.
- The process for commencing proceedings with NCAT is clearly outlined and time-sensitive.

****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.*

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