

INDUSTRY UPDATE

SHORT TERM LETTING LONG TERM HEADACHE



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The issue about short term letting has been an ongoing problem for owners corporations and bodies corporate for many years. Common causes of conflict are:

- Lots being used as backpacker accommodation;
- Lots being used for short term holiday accommodation;
- Lots being used as serviced apartments;
- Overcrowding of lots.

In the appropriate types of buildings, short term letting is of benefit to the majority owners so long as the rules are clear and are clearly enforceable. In inappropriate types of buildings, short term letting is a nightmare in terms of the effect it has on the peace and wellbeing of long term residents, the strain it causes on the common property and the potential effect on the extent and cost of obtaining building insurance.

The problem caused by short term letting has been exacerbated by the advent of “collaborative consumption” websites (for example *airbnb*) that may “influence” the status quo. Collaborative consumption often relies upon loopholes in current structures to be successful, for example planning controls and taxations systems that apply to companies and not individuals.

In this article, we provide a practical guide to common issues and possible solutions.

Issues to consider:

- *Determine precisely what uses are permitted and not permitted in your building.*

This means more than simply assuming what has been the case for a number of years is what is “permitted”.

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INDUSTRY UPDATE

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The terms of the original development consent, any restrictive covenants registered on the title of the common property and units, the planning controls applying at the time the building was approved, the changes in those controls since that time and the by-laws of the building all influence what is “permitted”.

Determining what is a “permitted use” is often not easy. For example, a development consent might impose a condition that a building can only be used for “permanent residential accommodation” but then not define what that phrase means. Another example is that planning controls change over time in relation to what uses they permit (with council approval) and what uses are not permitted at all from the time of the building was originally approved and now.

- *The extent to which physical characteristics in your building can control the use of common property.*

For example, do you have concierge service or a programmable security card access system?

- *Whether the building insurance policy excludes or does not cover particular short term letting such that if the common property were to be damaged or a person injured as a result of such a use the owners corporation is not covered;*
- *Whether the by-laws for the building are consistent with the permitted uses and sufficient to ensure unlawful uses are not allowed.*

In the absence of an appropriate by-law(s), owners corporations and bodies corporate have limited ability to prevent short term letting.

INDUSTRY UPDATE

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Possible solutions:

- Review and amend by-laws so that they regulate an appropriate way that permitted uses and prohibit unlawful uses are well defined. This includes making sure by-laws restricting the use of an apartment are drafted in conjunction with by-laws that control how residents access the common property. For example, security access cards can only be issued by persons using an apartment for a permitted use;
- Keep lot owners and residents properly informed. This means making sure all lot owners and residents are continuously aware of what uses are permitted and not permitted in the building;
- Have a system of enforcement in place and make sure that system is known to all lot owners and residents. For example, a series of warning letters before action is taken for the unlawful use (referral to the local council, breach notices for by-laws or Tribunal action);
- Use all of the tools available to prevent an unlawful use. This includes enforcing by-laws, gathering evidence to assist local councils prosecute short term lettings and overcrowding, prosecuting uncooperative owners for breach environment regulations (for example creating unreasonable levels of noise);
- Review your building insurance policy to make sure you are covered. This means considering carefully any restrictions and exclusions to insurance cover. Not all building insurance policies are the same and cheaper policies often cover less.

For further information please contact Colin Grace on (02) 9284 2700.