

SHORT TERM LETTING -

11 STEPS TO COMBAT SHORT TERM LETTING



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THE SITUATION

The Christmas and New Year period highlighted, yet again, the problem of **short term apartment letting** as a swag of units appeared on Airbnb and other such sites.

While owners continue to lobby councils and politicians over the matter, if an owners corporation or lot owner wishes to take steps to combat **short term lettings** in their residential building they should do the following:

1.

Check

the local environmental plan, any other council zoning instruments relevant to the property and the development consent for the strata scheme in order to establish if short term letting is prohibited, permitted with consent or permitted without consent.

2.

If the use is prohibited any lot owner or the owners corporation may commence proceedings in the Land and Environment Court under s123 of the *Environmental Planning and Assessment Act 1979* for an order restraining the owner from conducting **short term lettings** in contravention of the planning instrument.

Costs may be awarded in favour of a successful applicant.

3.

It is necessary to gather **evidence** of any alleged breach.

4.

If the use is permitted with consent...

Enquire

from council if consent for short term letting was given.

5.

If no consent for short term letting was given by council

Gather

evidence of the breach and then commence proceedings under s123 of the *Environmental Planning and Assessment Act 1979*.

6.

If short term letting **does not require consent or consent was given** by council...

Check

to see if the planning instrument contains a clause pursuant to s28 of the *Environmental Planning and Assessment Act* pertaining to by-laws.

7.

If there is no s28 provision in the planning instrument pass a prohibitive by-law. This by-law must be carefully crafted and be referable to land use and not the term or length of the lease.

Prohibitions on letting by reference to the duration of the letting period alone will breach section 49(1) of the *Strata Schemes Management Act 1996* and be void for illegality. It should describe the prohibited land use by reference to land use descriptions which have been judicially reviewed and found to exclude **short term letting.**

8.

If short term letting continues take steps to **enforce** the by-law either by **fines** or **restraining orders**.

9.

If **short term letting** is a use approved under the relevant planning instruments, either without consent or with consent which was obtained by the owner and the planning instrument contains a clause pursuant to s28 of the *Environmental Planning and Assessment Act* pertaining to by-laws, short term letting is a **permitted** use and prohibition is generally not possible.

10.

Where short term letting requires council approval, **owners corporations** and **lot owners** should be advised by council of any application for approval and should lodge objections against council giving that approval within the relevant time limits.

11.

For those contemplating purchasing into a strata scheme and who believe that **short term letting** within that scheme may degrade the enjoyment of their home

we recommend that relevant planning instruments, council records and by-laws be perused before committing to the purchase in order to establish whether **short term letting** is legally permissible and, if so, on what conditions.

SUMMARY.

We see a lot of advice given to owners recommending they approach council in order to have council take steps to restrain unlawful use of premises by way of **short term letting**.

While council certainly has the power to do so the courts have held that it has no duty to exercise that power and, in many cases, refuses to do so. In some cases council does so but only after sustained lobbying by owners over a lengthy period of time.

While we **encourage** lot owners to complain to council about breaches of planning laws where the breach of those laws **affects lot owners and owners corporations** they are entitled to take immediate action themselves to enforce the planning laws.

DISCLAIMER.

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