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Renovation By-laws

Where do you stand?



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An owner is doing a renovation. Is a by-law needed?



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Section 65A of the Strata Schemes Management Act

65A Owners corporation may make or authorise changes to common property

- (1) For the purpose of improving or enhancing the common property, an owners corporation or an owner of a lot may take any of the following action, but only if a special resolution has first been passed at a general meeting of the owners corporation that specifically authorises the taking of the particular action proposed:
- (a) add to the common property,
 - (b) alter the common property,
 - (c) erect a new structure on the common property.



Section 65A of the Strata Schemes Management Act

- (2) A special resolution that authorises action to be taken under subsection (1) in relation to the common property by an owner of a lot may specify whether the ongoing maintenance of the common property once the action has been taken is the responsibility of the owners corporation or the owner.
- (3) If a special resolution under this section does not specify who has the ongoing maintenance of the common property concerned, the owners corporation has the responsibility for the ongoing maintenance.

Section 65A of the Strata Schemes Management Act

- (4) A special resolution under this section that allows an owner of a lot to take action in relation to certain common property and provides that the ongoing maintenance of that common property after the action is taken is the responsibility of the owner has no effect unless:
- (a) the owners corporation obtains the written consent of the owner to the making of a by-law to provide for the maintenance of the common property by the owner, and
 - (b) the owners corporation makes such a by-law.

Section 65A of the Strata Schemes Management Act

- (5) A by-law made for the purposes of this section:
- (a) may require, for the maintenance of the common property, the payment of money by the owner concerned at specified times or as determined by the owners corporation, and
 - (b) must not be amended or repealed unless a special resolution has first been passed at a general meeting of the owners corporation and the owners corporation has obtained the written consent of the owner concerned.
- (6) The provisions of sections 52 (3), 54 (2) and (3) and 55 apply to a by-law made for the purposes of this section in the same way as those provisions apply to a by-law to which Division 4 of Part 5 of Chapter 2 applies.

Section 5(2) Strata Schemes (Freehold Development) Act – definitions

- (2) The boundaries of any cubic space referred to in paragraph (a) of the definition of ***floor plan*** in subsection (1):
- (a) except as provided in paragraph (b):
 - (i) are, in the case of a vertical boundary, where the base of any wall corresponds substantially with any line referred to in paragraph (a) of that definition—the inner surface of that wall, and
 - (ii) are, in the case of a horizontal boundary, where any floor or ceiling joins a vertical boundary of that cubic space—the upper surface of that floor and the under surface of that ceiling, or
 - (b) are such boundaries as are described on a sheet of the floor plan relating to that cubic space (those boundaries being described in the prescribed manner by reference to a wall, floor or ceiling in a building to which that plan relates or to structural cubic space within that building).



Standard By-law 5

5 Damage to common property

- (1) An owner or occupier of a lot must not mark, paint, drive nails or screws or the like into, or otherwise damage or deface, any structure that forms part of the common property without the approval in writing of the owners corporation.
- (2) An approval given by the owners corporation under subclause (1) cannot authorise any additions to the common property.
- (3) This by-law does not prevent an owner or person authorised by an owner from installing:
 - (a) any locking or other safety device for protection of the owner's lot against intruders, or
 - (b) any screen or other device to prevent entry of animals or insects on the lot, or
 - (c) any structure or device to prevent harm to children.



Standard By-law 5

- (4) Any such locking or safety device, screen, other device or structure must be installed in a competent and proper manner and must have an appearance, after it has been installed, in keeping with the appearance of the rest of the building.
- (5) Despite section 62, the owner of a lot must maintain and keep in a state of good and serviceable repair any installation or structure referred to in subclause (3) that forms part of the common property and that services the lot.



Renovation By-laws

- What if there is no by-law? Who is responsible? What action can be taken?
- What if work is done first and by-law/approval sought later?



Renovation By-laws

- What is a generic renovations by-law?
- What is the purpose of a generic by-law?
- Can you have generic renovation by-laws?



What does a generic renovations by-law say?

- **Option 1** – Minor renovations/attachments are permitted, possibly subject to EC approval.
- **Option 2** – Each owner can install solar panels or air conditioning.
- **Option 3** – Each owner can install solar panels, provided they are in the roof space directly above the lot and not more than 12m².



What does the *Stolfa* case say?

1. If works are not maintenance and repair under section 62, then they are enhancing Common Property under section 65A.
2. Even if the Common Property is subject to the grant of exclusive use, it is still Common Property.
3. Even if the works are “primarily to enhance the amenity of a Lot” the works involve “improving common property”.



Paragraph 94 of Stolfa (underlining added)

The requirements imposed by s.65A for *specific authorisation of the taking of the particular action proposed* ...means that a general authorisation to alter Common Property will not suffice. A resolution authorising enclosure of a particular verandah is a specific authorisation of a particular action, even if it does not specify the precise plans and building materials to be used, specific examples:-



Examples

QUESTIONABLE	GENERIC BY-LAW WHICH SATISFIES STOLFA CASE
Owners can install awnings	Owners can install awnings over their back door of a similar colour to the external wall
Owners can install solar panels	Owners can install solar panels on the roof directly above their villa provided the solar panels are flush with the roof and do not exceed 12m ² in size
Owners can install air conditioners	Owners can install air conditioners if they are placed on or bolted to the lot's balcony floor and the split system is attached to the wall separating the inside and the outside of the lot
Owners can install skylights	Owners can install skylights in the roof above their lounge room as long as they are consistent
Owners can remove internal walls	Owners can remove the internal wall between the Lot's kitchen and living area – and set out parameters, like must submit engineering certificate before commencing works
Owners can install pergolas	Owners can install pergolas in their rear courtyard as long as they: <ul style="list-style-type: none">• are no higher than 2.5m from ground floor slab level;• are no bigger than 20m² in area; and• are of a similar colour to the external paint colour of the building.• Note Stolfa – materials don't <i>have</i> to be stated, but certainly can be



THANK YOU

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