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ARE THE HOUSE RULES BINDING?

THE ANSWER WILL SURPRISE YOU

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House rules are not binding right? You might be surprised.

By-Laws

The rules which govern participation in a strata scheme are called by-laws. By-laws are made by a developer on registration of a strata plan or by an owners corporation by special resolution passed at a general meeting. By-laws are registered on the title of the common property and are binding on the owners corporation and owners and occupiers of the lots. If by-laws are breached, they are able to be enforced.

House Rules

What about house rules? These are rules that are made by a strata committee. House rules are often put up on a notice board and residents are asked to comply with them. But are house rules binding? The usual answer is “no”. This is because the only way a rule is able to be binding is if it is made into a by-law that is passed at a general meeting and registered on the title of the common property. But a closer analysis of the model by-laws indicates that some house rules are binding.

Binding House Rules?

On 1 July 1997, the NSW Government introduced the third generation of strata legislation. The legislation included regulations which contained model by-laws. The model by-laws dealt with a variety of topics. This included a model by-law dealing with the moving of furniture and large objects through common property (By-Law 13).

Model By-Law 13 prohibited owners and occupiers from transporting furniture or large objects through common property without first giving sufficient notice to the strata committee. Interestingly, though, the by-law enabled an owners corporation to resolve that furniture or large objects were to be transported through common property in a specified manner and prohibited owners and occupiers from transporting furniture or large objects through common property except in accordance with that resolution.

In other words, Model By-Law 13 permitted the owners corporation to make a binding house rule by passing a resolution prescribing the manner in which furniture and large objects had to be transported through common property. The by-law itself made the house rule binding and enforceable.

The New Model By-Laws

Is it still possible to make by-laws that enable an owners corporation to make binding house rules under the *Strata Schemes Management Act 2015*? The answer appears to be “yes”.

The new strata regulations contain model by-laws that apply to new strata schemes that are created from 30 November 2016. The new model by-laws deal with a variety of topics.

Model By-Law 1, for example, deals with the parking of vehicles. It prevents owners and occupiers parking vehicles on common property except with the prior written approval of the owners corporation or as permitted by a sign authorised by the owners corporation. In other words, the new model by-law for parking allows the owners corporation to make a house rule in the form of a sign permitting owners and occupiers to park on certain parts of the common property.

The story does not end there. The new model by-laws contain a by-law dealing with children (By-Law 8). This by-law says that owners and occupiers are able to allow children for whom they are responsible to play on any area of the common property that is designated by the owners corporation for that purpose. Once again, this allows the owners corporation to make a binding house rule designating an area of common property on which children are able to play.

And model By-Law 15, which deals with the disposal of waste, requires owners and occupiers to comply with all reasonable directions given by the owners corporation as to the disposal and storage of waste on common property. Again, this allows the owners corporation to make binding house rules concerning a particular topic, here the disposal and storage of waste on common property.

Conclusion

So what is the position? Are house rules binding? The answer is generally “no”. However, the model by-laws make clear that an owners corporation can make a by-law that permits it to make binding house rules on a particular topic such as parking or rubbish disposal. This is to be commended because it gives owners corporations and strata committees greater flexibility to manage their schemes.

But it is not open slather. House rules will only be binding if they are authorised by a specific by-law and are limited to a particular topic. And any house rule must not be inconsistent with a by-law or the strata legislation and cannot be unreasonable.



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