

STRATA TITLE REFORM - ARE YOU REQUIRED TO CONSOLIDATE YOUR BY-LAWS?

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Real Estate Alert

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WHAT HAS HAPPENED?

There has been significant reform to the *Strata Titles Act 1985 (WA)* (Act) through the *Strata Titles Amendment Bill 2018*. The changes took effect on 1 May 2020.

Some of the important amendments made to the Act include changes to the default by-laws that are automatically adopted upon registration of the scheme if the strata company has not registered its own by-laws. For example, previously the default by-laws prohibited children playing upon common property without adult supervision. This by-law has been deleted as it was deemed to be unfair, discriminatory or oppressive.

Other amendments to the Act include an obligation to consolidate a scheme's unique by-laws (if it has registered its own by-laws or amended the default by-laws) into one document.

IS THERE A REQUIREMENT TO CONSOLIDATE?

If a scheme has existing by-laws in place prior to 1 May 2020 and it is not making, amending or repealing a by-law, then there is no obligation to consolidate.

However, if a scheme wishes to make, amend or repeal a by-law, it must first consolidate its by-laws. The first time the scheme is required to consolidate its by-laws will potentially be an involved and lengthy process.

The consolidation process involves collating all the existing by-laws and compiling them into one document. Then an assessment is undertaken to:

- Determine whether any by-laws are now invalid (eg there is no power to make the by-law or the by-law is inconsistent with the Act or other law)
- Reclassify the by-laws into 'governance' or 'conduct' by-laws. Governance by-laws set out how the strata company is run and require a resolution without dissent to introduce, amend or delete this type of by-law. Conduct by-laws set out how people are to behave in the scheme and require a special resolution to introduce, amend or delete this type of by-law
- Delete or amend and reclassify the default by-laws (if any are applicable to a scheme).

The consolidated by-laws should then be presented to the strata company (and in some cases tabled for a vote) and then registered with Landgate.

HOW DOES A SCHEME MAKE, AMEND OR REPEAL ITS BY-LAWS?

If a scheme wishes to make, amend or repeal any by-laws, it will first need to complete the consolidation process (as outlined above).

Assuming the consolidation process has been completed or is being compiled together with the new, amended or repealed by-law, then the draft new, amended or repealed by-law will need to be:

- checked to ensure the new, amended or repealed by-law is not invalid
- classified as either a 'governance' or 'conduct' by-law
- tabled for a vote by the members of the scheme (noting the above different standard of vote required for 'governance' and 'conduct' by-laws)
- registered within three months from the closing date of voting.

For further information about the kinds of changes a scheme may have to make, please see a diagram here.

HOW CAN K&L GATES ASSIST?

Please contact us if you would like further assistance to consolidate, make, amend or repeal a scheme's by-laws.

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