

AIRBNB & SHORT TERM LETTINGS

You may have:

- + read some horror stories in the media about Airbnb, apartments being vandalised, and the difficulty to invoke the “host protection insurance”;
- + had a personal experience using Airbnb services; or
- + be interested in seeing whether you can earn some funds by letting out your apartment.

This information guide will help by providing you with awareness of the legal framework so that as a Committee you can start a conversation about what to do, if anything, about having short term tenants through services such as Airbnb.

Note that this information is only relevant if your scheme’s “zoning” does not permit “tourist & visitor accommodation”.

LOCAL GOVERNMENT LAWS

Airbnb places responsibility on the Host to comply with local government laws.

The Environmental Planning and Assessment Act 1979 (NSW) provides local Council with the power to determine “zoning” under their local environment plans. The enforcement occurs via their development control plans.

The conditions of development consent given by Council are generally explicit with regards to “zoning”.

“Tourist & visitor accommodation” zoning allows for commercial operations such as a hotel, serviced apartments, backpackers and holiday accommodation etc.

Generally, residential buildings:

- + must be either owner occupied or occupied by a tenant via a lease as constituted by the Residential Tenancy Act; and
- + the zoning does not allow for “tourist & visitor accommodation” without Council consent.

Short term lettings, such as *Airbnb*, are considered commercial activity and thus are not considered “residential purposes”.

There has been an Order issued by NCAT (NSW Civil and Administrative Tribunal) that stated an agreement by Airbnb does not constitute a residential tenancy lease.

There has been an Order issued for the City of Sydney by the NSW Land and Environment Court banning short term tenancies in residential buildings.

Thus, owners corporations can approach both NCAT and/or Council to resolve.

SCHEME SPECIAL BY-LAW

Given that schemes are now required to review their by-laws and adopt one consolidated set, you might like to consider a proactive approach.

Some of our clients have obtained legal advice which enabled their owners corporation to specially resolve a “special by-law” to deal with “short term accommodation”.

Such a by-law is aimed at alerting all owners as to the “zoning” for the scheme. The special by-law can expressly state aspects such as:

- a) Council zoning prevents short term rentals;
- b) examples as to what might be considered by Council as “prohibited use”;
- c) the responsibility with the owner to provide full details of leases and sub-leases; and
- d) the timeframe which the premises might be vacated given an identified breach.

If you have any questions, simply contact your [Strata Plus strata manager](#).



STRATA RESOURCES