STR-09 Amendment of By-Laws

Version 4 – 05/06/2019

The information provided in this guide is not intended to amount to legal advice. Professional assistance may be required to determine the most appropriate action to protect your legal rights. Please read our Terms of Use on the Land Titles Registration policy and procedure guides web page. Landgate accepts no responsibility where parties print this guide and seek to rely on information that is out of date.

1 General

A strata company may make by-laws that are not inconsistent with the STA as amended for:

- its corporate affairs

- any of the matters specified in schedule 2A of the STA as amended

- any of the matters set out in s.42A and 42B of the STA as amended

- the establishment of a fund for administrative purposes in the case of a two-lot scheme (see s.36A (3) of the STA as amended)

- the exclusion of certain provisions contained in s.35, 35A and 36 of the STA as amended in the case of 3, 4 or 5 lot schemes (see s.36B (1) of the STA as amended)

and

- other matters relating to the management, control, use and enjoyment of the lots and any common property.

The by-laws set out in Schedules 1 and 2 to the STA as amended are deemed to be the by-laws of a strata company registered after 14th April 1996. These By-laws may be amended, repealed or added to:

- by a resolution without dissent (or unanimous resolution in the case of a two-lot scheme) for Schedule 1 by-laws

- by a special resolution, for Schedule 2 by-laws

or

- in accordance with any order of a court, referee or any written law.
By-laws previously contained in the 1966 and 1985 legislation continue in existence until 14 April 1997 (the Termination Date). After the Termination Date, the by-laws contained in Schedules 1 and 2 of the STA as amended will apply to all strata schemes.

Any by-laws already registered on strata plans before 14th April 1996, or any by-laws added to or amended and which are registered on the strata plan before the Termination Date (which are not inconsistent with the provisions of the STA as amended) will be saved and will become part of either the Schedule 1 or 2 by-laws that will automatically apply after the Termination Date.

A by-law can be made by a strata company at the request of the Local Government or a public authority and may be expressed to require their consent to an amendment or repeal of the by-law. No by-law, amendment or repeal of a by-law may operate so as to restrict the dealing with any lot by a proprietor or modify or destroy any easement implied under the STA as amended.

The amendment, repeal or addition to any by-laws contained in Schedules 1 and 2 have no effect until notification of the change is made to the Registrar of Titles and endorsed on the strata plan.

Note: Definitions of a resolution without dissent, special resolution and unanimous resolution are outlined in s.3(1), 3AC, 3B, 3CA and 3D of the STA as amended.

2 Registration of an Amendment of By-Laws

Registration is achieved by lodging a notification of change of by-laws at Landgate. The notification of change of by-laws must be set out substantially in the manner of Form 21 of the STGR, which may be typed on ordinary sheets of white A4 size paper attached to a Cover Sheet or typed on a Form B4 with additional page to Form, if required.

Amendments to by-laws (where the resolution was passed after 14 April 1996) must be registered within 3 months of the passing of the resolution. The 3 months commence from the date the strata company meeting was held.

Resolutions passed prior to 14 April 1996 must be registered within two years after the date of the resolution or the 14th April 1997, whichever date is the earlier of the two.

3 Exclusive Use By-Laws

Section 42(8) of the STA as amended allows the Strata Company, by a resolution without dissent (or unanimous resolution in the case of a two-lot scheme), to create a by-law to grant exclusive use and enjoyment of, or special privileges to a lot proprietor for all or part of the common property. The lot proprietor must consent in writing to the terms of the by-law.

By-laws for exclusive use or special privilege may contain conditions such as the requirements for maintenance and repair.

The portion of the common property which is subject to exclusive use or special privilege must be clearly defined by a sketch that contains sufficient information to accurately plot the affected land. The sketch must be approved by a Plans Senior Consultant at Landgate. Sketches may be forwarded in PDF format to Plans.Consultants@landgate.wa.gov.au for pre-approval.¹

¹[Email address updated on 5/06/2019⁴]

Note: The areas of exclusive use or special privilege may be described in a narrative form
provided they can be plotted in reference to the lot boundaries. In this circumstance, a sketch is not required. The granting of exclusive use or special privilege is not binding until they are registered as by-laws at Landgate. Registration is affected in the same manner as for a notification of amendment of by-laws outlined above.

The STA has been amended to make it clear that grants of exclusive use and exclusive use by-laws have not in the past and will not in the future require the consent of the West Australian Planning Commission or local government.

4 Also see

- SUB-01 Subdivision
- ST R-01 Strata/Survey-Strata Plans