

## **SPECIAL BY-LAW NO.2 – OVERCROWDING**

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### **1. Introduction**

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- 1.1 The strata scheme comprises a residential strata title building.
- 1.2 The owners corporation is concerned about the many adverse impacts of the uses of units in the building, including overcrowding.
- 1.3 The objects of this by-law are to:
  - (a) prohibit overcrowding of apartments in the building;
  - (b) eliminate or reduce the detrimental impacts of overcrowding of apartments and short-term accommodation; and
  - (c) assist the owners corporation administer and manage the building for the benefit of the owners.
- 1.4 This by-law is made under sections 43 and 47 of the Strata Act for the purposes of safety and security, addressing matters appropriate to the building and the control, management, administration, use or enjoyment of the apartments and common property in the building.

### **2. Definitions and Interpretation**

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- 2.1 In this by-law, unless the context or subject matter otherwise indicates or requires:
  - 2.1.1 “agreement” includes a lease, residential tenancy agreement, sub-lease, licence, sub-licence, arrangement or understanding;
  - 2.1.2 “apartment” means a residential lot at the building;
  - 2.1.3 “authority” means the local council and any other government, semi-government, statutory, public or other authority having any jurisdiction over the building;
  - 2.1.4 “bedroom” means a bona fide bedroom in an apartment and does not include a balcony, an enclosed balcony, a partitioned room, a study, a sunroom, a lounge or dining area, a kitchen, a hallway, a laundry, a bathroom or a lavatory;
  - 2.1.5 “building” means the building comprising the improvements at the strata scheme;

- 2.1.6 “common property” means the common property for strata scheme 91667;
  - 2.1.7 “common services” includes any services supplying electricity, gas or water to an apartment or which permit the disposal of sewage or waste from an apartment;
  - 2.1.8 “maximum number of persons” means up to two persons per bedroom;
  - 2.1.9 “occupier” means a person in occupation of an apartment (and in the case of a person who is in occupation of an apartment pursuant to an agreement includes a tenant);
  - 2.1.10 “owner” means a person who is the owner of an apartment (and in the case of a person who owns and resides in an apartment includes an occupier);
  - 2.1.11 “owners corporation” means The Owners – Strata Plan No. 91667;
  - 2.1.12 “partitioned room” means a room in an apartment created by partitioning or internal walls erected after completion of construction of the building and without the approval of the owners corporation;
  - 2.1.13 “residential accommodation” means an apartment that is used predominantly as a place of residence;
  - 2.1.14 “Strata Act” means the *Strata Schemes Management Act 1996*;
  - 2.1.15 “tenant” means a person who is entitled to occupy an apartment pursuant to an agreement (and includes a person who is entitled to occupy, but is not in occupation of, an apartment such as a sub-lessee); and
  - 2.1.16 “you” means an owner, occupier and tenant.
- 2.2 In this by-law:
- 2.2.1 headings have been inserted for guidance only and do not affect the interpretation of the by-law;
  - 2.2.2 section 1 headed “ Introduction” shall be taken into account in the interpretation of this by-law;
  - 2.2.3 references to any statutory provisions include any statutory provisions amending, consolidating or replacing them, and all by-laws, ordinances, proclamations, regulations, rules and other authorities made under them;

- 2.2.4 words importing the singular number include the plural and vice versa;
- 2.2.5 words importing the masculine, feminine or neuter gender include both of the other two genders;
- 2.2.6 the words “include”, “includes” and “including” are not words of limitation;
- 2.2.7 where any word or phrase is given a definite meaning any part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 2.2.8 any expression used in this by-law and which is defined in the Strata Act will have the same meaning as that expression has in that Act unless that word is defined in this by-law or a contrary intention is otherwise expressed in this by-law;
- 2.2.9 the provisions of this by-law apply only to the extent permitted by law;
- 2.2.10 any provision of this by-law which is illegal, invalid or unenforceable shall be severed from this by-law and the remaining parts of this by-law shall remain in effect; and
- 2.2.11 if there is any inconsistency between this by-law and any other by-law for the building, the provisions of this by-law will prevail to the extent of that inconsistency.

### **3. Prohibiting Overcrowding**

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- 3.1 You must ensure that your apartment is not occupied by more than the maximum number of persons.

Note: For example, if your apartment contains two bedrooms, you must not permit more than four persons to occupy your apartment.

- 3.2 You must not install or keep a partitioned room in your apartment.

- 3.3 You must not:

- (a) alter the layout of your apartment; or
- (b) carry out any alterations or additions to your apartment,

so as to allow your apartment to be occupied by more than the maximum number of persons.

- 3.4 You must not arrange or increase the number of the beds in your apartment so as to allow your apartment to be occupied by more than the maximum number of persons.
- 3.5 You must not alter or add to common services so as to allow your apartment to be occupied by more than the maximum number of persons.
- 3.6 You must ensure that your apartment is not used for any purpose that is prohibited by law.

#### **4. Notifying Apartment Leases and Occupants**

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- 4.1 If you are an owner and you permit your apartment to be occupied by any other person you must give the owners corporation:
  - (a) the names of the persons who occupy your apartment within 14 days after those persons begin occupying the apartment; and
  - (b) a copy of any agreement pursuant to which those persons occupy your apartment within 14 days after the commencement of the agreement.
- 4.2 If you are a tenant and you permit your apartment to be occupied by any other person you must give the owners corporation:
  - (a) the names of the persons who occupy your apartment within 14 days after those persons begin occupying the apartment; and
  - (b) a copy of any agreement (for example, a sub-lease) pursuant to which those persons occupy your apartment within 14 days after the commencement of the agreement.
- 4.3 If you are an owner and your tenant permits your apartment to be occupied by any other person, you must promptly give the owners corporation the information and documents referred to in clause 4.2 if your tenant does not do so, within 14 days of you being requested to by the owners corporation.
- 4.4 If you are a tenant, you must give the owner of your apartment sufficient information and documents within 14 days of being requested to by the owner to enable the owner to provide the owners corporation the information and documents required under clause 4.3.
- 4.5 You must ensure that any information you give or are required to give the owners corporation under this by-law is kept current and up to date.

Note: For example, if you are an owner and your apartment becomes occupied by new tenants, you must give the owners corporation the names of those tenants within 14 days after those persons begin occupying the apartment.

## **5. Requiring Owners to Act**

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- 5.1 If you are an owner of an apartment, you must provide any occupiers and tenants of your apartment with a copy of this by-law within 7 days after the occupiers and tenants become entitled to possession of the apartment.
- 5.2 If you are an owner of an apartment and this by-law is amended, you must provide any occupiers and tenants of your apartment with a copy of the amended by-law within 7 days after the amendment of the by-law is recorded by the Registrar-General under section 48(1)(b) of the Strata Act.
- 5.3 If you are an owner of an apartment, you must take all reasonable steps to ensure that any occupiers and tenants of your apartment comply with this by-law.
- 5.4 If you are an owner of an apartment, and any occupiers and tenants of your apartment do not comply with this by-law, you must take any reasonable and lawful action available to you against the occupiers and tenants including to enforce or terminate an agreement with those occupiers and tenants.

## **6. Making You Liable for Breaches of this By-Law**

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- 6.1 If you breach this by-law the owners corporation may remedy or restrain the breach.
- 6.2 If you breach this by-law you are liable to the owners corporation for:
  - (a) any cost or expense the owners corporation incurs in relation to or arising out of your breach including:
    - (i) any additional cost or expense the owners corporation incurs in connection with the increased usage of any common services;
    - (ii) any additional cost or expense the owners corporation incurs cleaning, maintaining, repairing, renewing, replacing or upgrading any part of the common property including any common services;
  - (b) any cost or expense the owners corporation incurs investigating the breach;

- (c) any cost or expense the owners corporation incurs remedying or restraining the breach or attempting to remedy or restrain the breach; and
  - (d) any cost or expense the owners corporation incurs in or in connection with action taken against you to remedy or restrain the breach including legal action.
- 6.3 If an amount for which you are liable to the owners corporation pursuant to clause 6.2 or 6.6 or any other provision of this by-law is not paid by you within one (1) month of the owners corporation requesting that you pay the amount, the amount bears until paid simple interest at the same annual rate that applies to interest on overdue contributions under the Strata Act (currently 10%).
- 6.4 The owners corporation may recover from you as a debt:
  - (a) any amount for which you are liable to the owners corporation under clause 6.2 or 6.6 or any other provision of this by-law;
  - (b) any interest that accrues under clause 6.3; and
  - (c) any cost or expense the owners corporation incurs recovering that amount and interest including legal costs and disbursements on an indemnity basis.
- 6.5 You must indemnify and keep indemnified the owners corporation against all actions, proceedings, claims, demands, costs, damages and expenses which are incurred by or which may be brought or made against the owners corporation in relation to or arising out of:
  - (a) a breach of this by-law by you;
  - (b) the exercise by the owners corporation of any rights under this by-law; and
  - (c) the enforcement of this by-law by the owners corporation.
- 6.6 You will be liable to the owners corporation for any damage to the common property arising from or caused by your breach of this by-law.